

BYLAWS
OF
THE PONDS AT BLUE RIVER OWNERS ASSOCIATION,
INC.

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BYLAWS
OF
THE PONDS AT BLUE RIVER OWNERS ASSOCIATION, INC.

ARTICLE 1 -- INTRODUCTION, PURPOSES AND DEFINITIONS

Section 1.1 Introduction. These are the Bylaws of The Ponds at Blue River Owners Association, Inc. (the "**Association**"), which Association operates under the Colorado Revised Nonprofit Corporation Act, as amended, and applicable portions of the Colorado Common Interest Ownership Act, as amended (the "**Act**").

Section 1.2 Purposes. The purposes for which the Association was formed are to preserve and enhance the value of the properties of members and to operate, govern, manage, supervise and care for the Common Interest Community and the Common Elements of "The Ponds at Blue River" (the "**Community**" or "**The Ponds**"), situated in the County of Summit, State of Colorado, as the Community was created pursuant to the Declaration and Map.

Section 1.3 Definitions. Terms used herein shall have the meanings set forth in the Declaration, unless expressly defined herein.

ARTICLE 2 -- MEMBERSHIP

Section 2.1 Membership. Every person or entity who is a record owner of a Unit which is subject to the Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each member shall be allocated votes pursuant to the Declaration.

Section 2.2 Suspension of Member Rights. During any period in which a member shall be in default in the payment of any Common Expense Assessment levied by the Association, the voting rights and right to use any recreational facilities of the Community by such member shall be deemed suspended by the Executive Board, without notice or hearing, until such assessment has been paid. Such rights of a member may also be suspended, after notice or hearing, during any period of violation of any other provision of the Declaration, Articles of Incorporation ("**Articles**"), Bylaws or rules and regulations established by the Executive Board.

ARTICLE 3 -- MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. An 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 Executive Board and set forth in the notice. At these meetings, the Directors shall be elected by

ballot of the members, in accordance with the provisions of these Bylaws, the Declaration and Articles. The members may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association.

Section 3.2 Special Meetings. Special meetings of the Association may be called by the President, by a majority of the members of the Executive Board or by a petition signed by Unit Owners comprising twenty percent (20%) of the votes in the Association.

Section 3.3 Budget Meeting. Meetings of Unit Owners to consider proposed budgets shall be called in accordance with the Colorado Common Interest Ownership Act ("CCIOA"). The CCIOA budget process allows a majority of the Unit Owners (or a higher percentage, if set in the Declaration) to veto a budget adopted by the Executive Board. CCIOA's budget process to be followed is as follows: The Association is to prepare and approve a budget at least annually. Each budget is to first be prepared and approved by the Executive Board as a proposed budget. Then, within thirty (30) days after the Executive Board's adoption of the proposed budget, the Executive Board must mail or deliver a summary of the proposed budget to all Unit Owners and set a date for a special or annual meeting of the Unit Owners to consider ratification of the proposed budget. The budget meeting can be combined with the annual meeting. Notice for the meeting at which the a proposed budget will be considered by Unit Owners must be mailed not less than fourteen (14) days nor more than sixty (60) days before the meeting. At the meeting, unless a majority of the Unit Owners reject the budget, the budget is ratified and becomes the approved budget. CCIOA does not require that a quorum of owners be present at the meeting if the meeting is just a budget meeting, but does require a quorum if the meeting is also an annual meeting. In the event the proposed budget is rejected by a majority of Unit Owners, the budget last ratified by the Unit Owners is continued until such time as the owners ratify a subsequent budget proposed by the Executive Board.

Section 3.4 Notice of Meetings. 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 at least ten (10) days before, but not more than fifty (50) days before such meeting, to each member entitled to vote. Notice may be provided by telephone, facsimile, e-mail, or by first class mail, postage pre-paid. Such 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 or allowed in the notice.

Section 3.5 Owner Addresses for Notices. Unless an Owner shall have notified the Association by registered or certified mail of a different address, any notice required to be given, or otherwise given by the Association under these Bylaws to any Owner or any other written instrument to be given to any Owner, may be mailed to such Owner in a postage prepaid envelope and mailed by first-class, registered or certified mail to the address of the Unit shown upon the Association's records as being owned by such Owner. If more than one (1) Owner owns a particular Unit, then any notice or other written instrument may be addressed to all of such Owners and may be mailed

in one envelope in accordance with the foregoing. Any notice or other written instrument given by the Association in accordance with the foregoing will be deemed to have been given on the date that it is mailed.

Section 3.6 Place of Meetings. Meetings of the members shall be held in the Community, or in the greater Silverthorne area, and may be adjourned to a suitable place convenient to the members, as may be designated by the Executive Board or the President.

Section 3.7 Quorum of Members. The presence at the meeting of members, in person or by proxy, entitled to cast twenty-five percent (25%) of all the votes shall constitute a quorum for any action except as otherwise provided in the Articles, Declaration and these Bylaws. If the required quorum is not present at a meeting, the members who are present shall have power to adjourn the meeting to another time.

Section 3.8 Adjournment of the Meeting. By majority vote (as provided herein), any meeting of the Owners may be adjourned to another time and place or to a time and place to be designated by notice.

Section 3.9 Voting. At all meetings of members, each member may vote in person or by proxy. If only one of several Owners of a Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Unit. If more than one of the Owners is present, the vote allocated to the Unit 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 Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit. The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Executive Board or Bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Unit Owner is qualified to vote. Votes allocated to Units owned by the Association may not be cast.

Section 3.10 Proxies. The vote allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. All proxies shall be in writing and filed with the Secretary or designee of the Association. If a Unit is owned by more than one person, each Unit Owner of the Unit may vote or register protest to the casting of the vote by the other Owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term or a specific purpose.

Section 3.11 Majority Vote. The vote of a majority of the votes present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, Articles, these Bylaws or by law.

Section 3.12 Voting by Mail. The Executive Board may decide that voting of the members on any matter required or permitted by the statutes of Colorado, the Declaration, Articles or these Bylaws shall be by mail. In case of a vote by mail, the Secretary shall mail written notice to all members at the member's address as it appears in the records of the Association. The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that members are entitled to vote by mail for or against such proposal, and (iii) a date, at least thirty (30) days after the date such notice shall have been given, on or before which all votes must be received at the office of the Association at the address designated in the notice. Voting by mail shall be acceptable in all instances in the Declaration, Articles or these Bylaws requiring the vote of members at a meeting.

Section 3.13 Order of Business and Rules at Meeting. The Executive Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Executive Board and Unit Owners. At meetings of the members, the Executive Board may order the business of the meeting as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of Minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Executive Board (if required and noticed);
- (f) Election of inspectors of election (when required);
- (g) Election of Directors of the Executive Board (when required);
- (h) Ratification of budget (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

Section 3.14 Waiver of Notice. Any member may, at any time, waive notice of any meeting of the members, in writing, and the waiver shall be deemed equivalent to the receipt of notice.

ARTICLE 4 -- EXECUTIVE BOARD

Section 4.1 Number, Qualification and Term of Office. The affairs of the Community and the Association shall be governed by an Executive Board which shall consist of three (3) members, elected or appointed as provided below (the "**Executive Board**"). If any Unit is owned by a partnership, corporation, limited liability company or other entity, any officer, partner or employee of that Unit Owner shall be eligible to serve as a Director and shall be deemed to be a Unit Owner for the purposes of these Bylaws. The terms of office of Directors shall be three (3) years or until such time as a successor is elected, and the terms of at least one-third (1/3) of the Directors shall expire annually. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Colorado Revised Nonprofit Corporation Act for conducting the elections.

Section 4.2 Election. The Executive Board shall be elected by the members at the Annual Meeting. The members may adopt specific procedures which are not inconsistent with these Bylaws or the Act for conducting the elections by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Declaration shall govern appointment of Directors of the Executive Board during the period of Declarant control, as allowed under the Act.

Section 4.3 Removal of Directors. The Unit Owners, by a vote of at least two-thirds (2/3) of the votes at any meeting of the Owners at which a quorum of members is present, may remove a Director, other than a Director appointed by Declarant, with or without cause, during that Director's term. The entire Executive Board may be removed at any meeting of members, with or without cause, by a vote of two-thirds (2/3) of the members of the votes at any meeting of the Owners at which a quorum is represented. Directors appointed by the Declarant may not be removed by the members under this section of the Bylaws. Directors sought to be removed shall have the right to be present at such meeting and shall be given the opportunity to speak to the members prior to a vote to remove being taken. Upon removal, the members, by majority vote, shall then elect such new members of the Executive Board to replace those members removed.

Section 4.4 Vacancies. Vacancies in the Executive Board caused by any reason (other than removal) may be filled by the Executive Board at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be subject to the reserved rights of Declarant to appoint Directors, unless those rights have expired, in which event, appointments shall be made by a majority of the remaining elected Directors constituting the Executive Board. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

Section 4.5 Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a majority of the votes in the Association at a regular or special meeting of the Association. Any Director may be reimbursed for expenses

incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested Director.

ARTICLE 5 -- MEETINGS OF THE EXECUTIVE BOARD

Section 5.1 Regular Meetings. Regular meetings of the Executive Board shall be held at least twice per year at such place and hour as may be fixed by the Board, without notice. The Board may set a schedule of additional regular meetings by resolution and no further notice is necessary to constitute regular meetings, except as may be required by law.

Section 5.2 Special Meetings. Special meetings of the Executive Board shall be held when called by the President of the Association or by any two Directors after not less than one (1) day notice to each Director. The notice shall be delivered in a manner whereby confirmation of receipt of the notice is received and shall state the time, place and purpose of the meeting.

Section 5.3 Location of Meetings and Open Meetings. All meetings of the Executive Board shall be open to attendance by members, as provided by applicable Colorado law. All meetings of the Executive board shall be held within the greater Silverthorne area, unless all Directors consent in writing to another location.

Section 5.4 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 such meeting.

Section 5.5 Quorum. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, unless there are less than three (3) 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 less than three (3) Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 5.6 Proxies. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Director may execute, in writing, a proxy, to be held by another Director. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed. Proxies which do not

specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present or as a vote on the particular proposal before the Board.

Section 5.7 Consent to Corporate Action. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. The Secretary shall file these consents with the Minutes of the meetings of the Executive Board.

Section 5.8 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Executive 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 Executive Board. The Director's vote shall be counted and his or her presence noted as if that Director were present in person on that particular matter.

ARTICLE 6 -- POWERS AND DUTIES OF THE EXECUTIVE BOARD

Section 6.1 Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, Articles, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration, Articles 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 property, including the following powers and duties:

- (a) Adopt and amend Bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves (subject to the budget being distributed to the Owners and not vetoed by the Owners at a meeting of the Owners, as that procedure is set forth in the Declaration, the Act and in these Bylaws);
- (c) As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;
- (d) Collect assessments for Common Expenses from Owners;
- (e) Hire and discharge managing agents, provided that any agreement for professional management of the Community may not exceed one (1) year. Any such agreement must provide for the termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days written notice;
- (f) Hire and discharge employees, independent contractors and agents other than managing agents;

- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, Bylaws or rules in the Association's name, on behalf of the Association or two (2) or more Owners on matters affecting the Community;
- (h) Make contracts and incur liabilities;
- (i) Regulate the use, maintenance, repair, replacement and modifications of Common Elements;
- (j) Cause additional improvements to be made as a part of the Common Elements;
- (k) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to Section 312 of the Act;
- (l) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one (1) year, through or over the Common Elements;
- (m) Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections 202(1)(b) and (d) of the Act;
- (n) Impose a reasonable charge for late payment of assessments and after notice and hearing, levy reasonable fines or assessments provided for or allowed in the Declaration, Bylaws, rules and regulations of the Association;
- (o) Keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements of the Association;
- (p) Borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Executive Board may deem necessary and give security therefor;
- (q) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, liens or statements of unpaid assessments;
- (r) Provide for the indemnification of the Association's Officers and the Executive Board and maintain Directors' and Officers' liability insurance;
- (s) Procure and maintain adequate liability and hazard insurance on property owned by the Association and as further set forth in the Declaration;
- (t) Cause all Directors, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate;

(u) Declare the office of a member of the Executive Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Executive Board;

(v) 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 Declaration, Articles, these Bylaws or the Act; and

(w) Exercise any other powers conferred by the Declaration or Bylaws.

Section 6.2 Manager. The Executive Board may employ a manager, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the manager pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. Regardless of any delegation to a manager or managing agent, the members of the Board shall not be relieved of responsibilities under the Declaration, Articles, these Bylaws or Colorado law.

Section 6.3 Limits on Delegation, Requirements for Association Funds and Financial Statements. Pursuant to the Colorado Common Interest Ownership Act, if the Association has thirty (30) or more units and the Association delegates powers of the Executive 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 fifty thousand dollars (\$50,000) 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.

ARTICLE 7 -- OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Offices. The Officers of this Association shall be a President, Vice President, Secretary and Treasurer, and such other officers as the Executive Board may from time to time create by resolution. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to authority in these Bylaws, and that the offices of the Secretary and Treasurer may be held by the same person.

Section 7.2 Appointment of Officers. The Officers shall be appointed by the Executive Board at the organizational meeting of each new Executive Board. The Officers shall hold office at the pleasure of the Executive Board.

Section 7.3 Special Appointments. The Executive Board may elect such 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 Executive Board may, from time to time, determine.

Section 7.4 Resignation and Removal. Any Officer may resign at any time by giving written notice to the Executive Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. Any Officer may be removed from office with or without cause by a majority of the Executive Board.

Section 7.5 Vacancies. A vacancy in any office may be filled by appointment by the Executive Board by majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7.6 Duties. The Duties of the Officers are as follows:

7.6.1 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 including, but not limited to, the following: preside at all meetings of the Board of Directors, appoint committees, and see that orders and Resolutions of the Executive Board are carried out. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

7.6.2 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 Executive Board 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 Executive Board or by the President.

7.6.3 Secretary. The Secretary shall have charge or shall keep the Minutes of all meetings of the Owners and proceedings of the Executive Board. The Secretary shall have charge of the Association's books and papers and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

7.6.4 Treasurer. The Treasurer shall be responsible for Association funds and for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This Officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of an to the credit of the Association in banks designated by the Association.

Section 7.7 Delegation. The duties of any Officer may be delegated to the manager or another Executive Board member; *provided, however*, the Officer shall not be relieved of any responsibility under these Bylaws or under Colorado law.

Section 7.8 Agreements, Contracts, Deeds, Checks, Etc. Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any Officer of the Association or by any other person or persons designated by the Executive Board.

Section 7.9 Statements of Unpaid Assessments. The Treasurer, assistant treasurer, a manager employed by the Association, if any, or, in their absence, any Officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments in accordance with Section 316 of the Act.

The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

Section 7.10 Compensation. Compensation of Officers shall be subject to the same limitations as imposed in these Bylaws on compensation of Directors.

ARTICLE 8 -- COMMITTEES

Section 8.1 Designated Committees. The Association may appoint committees, as deemed appropriate, in carrying out its purposes. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Executive Board.

ARTICLE 9 -- ENFORCEMENT

Section 9.1 Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the rules and regulations adopted by the Executive Board or the breach of any provision of

the Governing Documents shall give the Executive Board the right, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

(a) To enter the Unit or Limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Governing Documents. The Executive Board shall not be deemed liable for any manner of trespass by this action; or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

Section 9.2 Fines for Violation. By action of the Executive Board, following notice and hearing, the Executive Board may levy reasonable fines for a violation of the Governing Documents or rules, but this amount shall not exceed that amount necessary to insure compliance with the rule or order of the Executive Board.

ARTICLE 10 -- BOOKS AND RECORDS

Section 10.1 Records. The Association or its manager or managing agent, if any, shall keep the following records:

(a) An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense Assessment, the dates on which each assessment comes due, any other fees payable by the Unit Owner, the amounts paid on the account and the balance due;

(b) An account for each Unit Owner showing any other fees payable by the Unit Owner;

(c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;

(d) The current operating budget;

(e) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;

(f) A record of insurance coverage provided for the benefit of Unit Owners and the Association;

(g) Tax returns for state and federal income taxation;

(h) Minutes of proceedings of meetings of the Unit Owners, Directors, committees of Directors and waivers of notice; and

(i) A copy of the most current versions of the Declaration, Articles, Bylaws, rules and regulations, and Resolutions of the Executive Board, along with their exhibits and schedules.

Section 10.2 Examination. The books, records and papers of the Association shall at all times, during normal business hours and after reasonable notice, be subject to inspection and copying by any member, at their expense, for any proper purpose, as set forth in a records policy duly adopted by the Executive Board of the Association. The Executive Board or the manager shall determine reasonable fees for copying.

ARTICLE 11 -- INDEMNIFICATION

Section 11.1 Actions Other Than By or In the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or Officer of the Association, who is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his conduct was unlawful.

Section 11.2 Actions By Or In The Right of The Association. The Association shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a Director or Officer of the Association or is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made with respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his or her duty in the Association unless and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view

of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

Section 11.3 Successful on the Merits. To the extent that a Director, manager, Officer, project manager, employee, fiduciary or agent of the Association has been wholly successful on the merits in defense of any action, suit or proceeding as above referred to and allowed, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred him or her in connection therewith.

Section 11.4 Determination Required. Any indemnification under the first two sections of this Article (unless ordered by a court) and as distinguished from the third section of this Article, shall be made by the Association only as authorized by the specific case upon a determination that indemnification of the Director or Officer is proper in the circumstances because such individual has met the applicable standard of conduct set forth above. Such determination shall be made by the Executive Board by majority vote of a quorum consisting of those members of the Executive Board who were not parties to such action, suit or proceeding or, if a majority of disinterested members of the Executive Board so directs, by independent legal counsel in a written opinion or by members entitled to vote thereon.

Section 11.5 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses incurred by a former or current Director or Officer who is a party to a proceeding in advance of final disposition of the proceeding if the Director or Officer furnishes to the Association a written affirmation of the Director's good faith belief that he or she has met the standard of conduct described in the first two sections of this Article, the Director or Officer furnishes to the Association a written understanding, executed personally or on the Director's or Officer's behalf, to repay the advance if it is ultimately determined that the Director or Officer did not meet the standard of conduct and a determination is made that the facts then known to those making the determination would not preclude indemnification under this article. The undertaking required in this paragraph shall be an unlimited general obligation of the Director or Officer but need not be selected and may be accepted without reference to financial ability to make repayment.

Section 11.6 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 Executive Board, 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 11.7 Directors and Officers Insurance. The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Executive Board or an Officer or Director of the Association against any liability asserted against him or her and incurred by such

individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article.

ARTICLE 12 - CONSTRUCTION LITIGATION PROCEDURES

Section 12.1 Association's Enforcement Rights. In the event of an alleged defect in (i) the soils of any property which lie within the Community or any part or parcel thereof or any Improvement thereon; (ii) the physical condition of any Common Element or any Improvement thereon; or (iii) any Improvement to the Real Estate (collectively, a "Defect"), or in the event of any other claim for any other alleged matter whatsoever, including without limitation, a breach of the Declaration, Articles or Bylaws (collectively, a "General Claim"), brought by the Association against Declarant, the Board of Directors shall have the right, after complying with the procedures set forth in this Article, and upon an affirmative vote of a majority of the Board and of a majority of the Members as hereinafter provided, to proceed with a cause of action against the Declarant for any of the foregoing reasons.

Section 12.2 Written Notice. The Association shall be required to give written notice to the Declarant specifying the particular Defect which is the subject of the claim, including identification of the affected property or Improvements and specifying the facts and circumstances supporting any General Claim. Within thirty (30) days following receipt of the notice, the Declarant shall make a written request to inspect the same in order to evaluate the Defect or the General Claim. Such request shall have the effect of tolling all statutes of limitations to a noticed claim until thirty (30) days after the Declarant delivers written notice to the Association canceling the tolling.

Section 12.3 Declarant Inspections. The Association shall allow the Declarant to inspect all property and Improvements identified in the Association's notice. A majority of the Board of Directors shall be required to meet and confer with the Declarant on at least one occasion to discuss the alleged Defect or General Claim. Either party may be represented at the meeting by attorneys and independent consultants. The Association shall be required to make arrangements for the Declarant, at the Declarant's cost, to do reasonable destructive testing, provided that the Declarant shall pay all costs to restore all property or Improvements to its original condition and indemnify the Association against any liability for such destructive testing. All inspections and destructive testing must be completed within thirty (30) days following the property and/or Improvements being made available.

Section 12.4 Declarant Settlement Proposal. Within thirty (30) days after completion of the inspection and destructive testing, the Declarant shall submit a written statement to the Association setting forth the Declarant's proposed settlement of each claim of Defect and General Claim and the reasons therefor, and stating whether the Declarant proposes to do any necessary remedial work or to pay the Association a cash sum in lieu thereof. A majority of the Board of Directors shall be required to meet and confer with the Declarant on at least one occasion to discuss

the proposed settlement, if any. Either party may be represented at the meeting by attorneys or independent consultants. If the Declarant does not deliver such a written statement to the Association within thirty (30) days following the completion of the destructive testing, the Association shall have the right to institute a cause of action against the Declarant in accordance with the procedures set forth herein.

Section 12.5 Lawsuit Against the Declarant. The consent of a majority of Members of the Association entitled to vote thereon must be obtained before the Association shall have the power to institute a cause of action against the Declarant for the Defect or the General Claim. However, such consent must be obtained by the Association only after it delivers ballots to all Members of the Association in accordance with the notice procedures set forth in the Bylaws with respect to special meetings. Such deliver shall also include written materials which provide:

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

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

Section 12.6 Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant. No officer or director of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion such cause of action in the following criteria are satisfied:

- (a) the officer or director was acting within the scope of his duties;
- (b) the officer or director was acting in good faith; and

- (c) the act or omission was not willful, wanton or grossly negligent.

Section 12.7 Alternative Dispute Resolution. Any claim of a Defect or a General Claim shall, upon the demand of the Association or the Declarant, be submitted to mediation or binding arbitration, subject to the following requirements:

- (a) if the parties cannot agree upon utilizing binding arbitration or mediation, but one of the parties wants to utilize an alternative dispute resolution method, binding arbitration shall be utilized;
- (b) the arbitrator or mediator must be a person qualified, either with applicable industry experience or legal experience with respect to the claim of a Defect or General Claim, to consider and resolve the applicable claim;
- (c) if the parties cannot agree upon an arbitrator or mediator, either party may petition the District Court to appoint such arbitrator or mediator;
- (d) the fees and costs of the arbitrator or mediator and its consultants shall be borne equally by the Association and the Declarant;
- (e) the arbitrator or mediator shall have authority to establish reasonable terms regarding inspections, destructive testing, and retention of independent consultants;
- (f) the arbitrator or mediator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;
- (g) the arbitrator or mediator shall issue a written report determining all claims, including any defenses raised by the Declarant, and which shall include a recommendation for settlement (in the case of mediation) or a binding arbitration award;
- (h) all statutes of limitations on any claim subject to the mediation shall be tolled for the period of mediation or binding arbitration, but no longer than 120 days;
- (i) the Declarant shall have the right to allow subcontractors to participate in the arbitration or mediation proceedings to determine indemnification rights and obligations, provided that the Association is not made to bear the cost of resolution of such indemnity issues; and
- (j) any arbitration shall be determined under the American Arbitration Association, Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Article. Any issue about whether a claim is covered by this Article shall be determined by the arbitrator. There shall be no substantive motions or

discovery, except the arbitrator shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held within 120 days of the demand, and concluded within three (3) days. These time limits are not jurisdictional. The arbitrator shall apply substantive law and may award injunctive relief or any other remedy available in Colorado including attorney fees and costs to the prevailing party, but shall not have the power to award punitive damages.

Section 12.8 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as a result of any settlement, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall:

- (a) deposit the proceeds in a special, interest-bearing account; and,
- (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the claim of Defect or for purposes of remedying the General Claim.

ARTICLE 13 -- MISCELLANEOUS

Section 13.1 Notices to the Association. All notices to the Association or the Executive Board shall be delivered to the office of the manager, or if there is no manager, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Unit Owners.

Section 13.2 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 13.3 Office. The principal office of the Association shall be within the Community or at such other place as the Executive Board may from time to time designate.

Section 13.4 Working Capital. A working capital fund is established pursuant to the Declaration. Any amounts paid into this fund shall not be considered as advance payment of assessments. Each Unit's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Unit is closed or at the termination of Declarant control. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment.

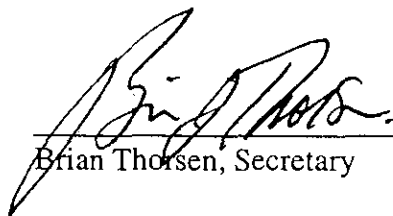
ARTICLE 14 -- AMENDMENTS

Section 14.1 Bylaw Amendments/Vote of the Members. These Bylaws may be amended only by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association present or represented by proxy at any regular or special meeting, provided that a quorum is present at any such meeting.

Section 14.2 Restrictions on Amendments. No amendment of the Bylaws of this Association shall be adopted which would affect or impair the validity or priority of any security interest covering any Unit, or which would materially change the provisions of the Bylaws with respect to a first lien security interest or the interest of an institutional mortgagees of record.

CERTIFICATION

I, the undersigned, do hereby certify that I am the Secretary of The Ponds at Blue River Owners Association, Inc., a Colorado nonprofit corporation, and that the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted by the Executive Board.



Brian Thorsen, Secretary