

**BYLAWS  
OF  
WHISPERING PINES RANCH HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE 1  
GENERAL PROVISIONS**

These are the Bylaws of Whispering Pines Ranch Homeowners' Association, Inc., a Colorado nonprofit corporation (the "Association"). The Association is organized under the Colorado Revised Nonprofit Corporation Act, Articles 121-137 of Title 7 of the Colorado Revised Statutes, as amended (the "Corporation Act"). The purpose of the Association is to serve as the owners' association for Whispering Pines Ranch (the "Project"), which is a planned community created pursuant to the Colorado Common Interest Ownership Act, Article 33.3 of Title 38 of the Colorado Revised Statutes, as amended (the "CCIO Act"). Except as otherwise stated in these Bylaws, terms used in these Bylaws have the same meanings given those terms in the Declaration of Covenants, Conditions, Restrictions and Easements for the Project (the "Declaration") or, if they are not defined in the Declaration, the same meaning given those terms in the CCIO Act.

**ARTICLE 2  
MEMBERSHIP**

**2.1** Each "Owner" a Member. Each Person who is an "Owner" as defined in Section 3.1 of the Declaration shall automatically be a member of the Association. No Person who is not an Owner may be a member of the Association. A Person shall cease to be a member when that Person ceases to be an Owner.

**2.2** **Registration of Owners.** Each Owner shall register with the Secretary of the Association, in writing, within 30 days after taking title to a Lot, (a) the name and address of each Owner of the Lot or an interest in the Lot, and, if then known, the name and address of any tenant or other person who will occupy the Lot when it is not occupied by the Owner, (b) the nature of such Owner's interest or estate in the Lot, (c) the address at which such Owner wishes to receive notice of any meeting of the Owners, if other than the address of the Lot, (d) the name and address of the Person holding the First Mortgage on the Lot, if any, and the loan number associated by that Person with the loan secured by the First Mortgage, and (e) if there are multiple Owners of the Lot, the name of the Owner who is authorized to cast the votes allocated to the Lot. Each Owner shall have a continuing duty to advise the Association in writing of any changes in or additions to the foregoing information.

**2.3** **Transfers.** The interests, rights and obligations of an Owner in the Association may be assigned, pledged, encumbered or transferred, but only along with and as a part of the title to the Owner's Lot or as otherwise specifically authorized by the

Association Documents or by law. No Person shall be a member of the Association solely because such Person has a lien on or security interest in a Lot.

### ARTICLE 3 VOTING

**3.1 Entitlement.** Votes shall be allocated to each Lot as provided in the Declaration. However, no vote shall be exercised as to a Lot while the Lot is owned by the Association.

**3.2 Authority to Cast Vote.** At any meeting of the Owners, an Owner included on the voting register presented by the Secretary in accordance with Section 4.6, or the holder of such Owner's proxy, shall be entitled to cast the vote allocated to the Lot owned by such Owner. If there is more than one Owner of a Lot, only one of the Owners may cast the vote. If the Owners of a Lot fail to agree as to who shall cast the votes, or fail to register pursuant to Section 2.2, no vote shall be cast with respect to that Lot.

**3.3 Voting by Proxy.** An Owner may cast the vote allocated to the Owner's Lot, and be counted as present at any meeting of the Owners, by executing a written proxy naming another Person entitled to act on that Owner's behalf, and delivering the same to the Secretary before the commencement of such meeting. Any proxy granted by an Owner shall remain in effect until the earliest of the following events: (a) revocation by the granting Owner by written notice or by personal attendance at the meeting for which the proxy is effective, (b) eleven months after the date of the proxy, unless otherwise provided in the proxy, or (c) cessation by the granting Owner to be an Owner.

**3.4 Voting by Mail Ballot.** The entire vote for an election of directors, for an amendment to the Declaration, the Association's articles of incorporation or these Bylaws, for a proposed plan of merger, consolidation or dissolution or for termination of the Project may be conducted by mail, subject to the following requirements:

(a) The notice of the vote shall (i) clearly state the proposed action, (ii) indicate the number of responses needed to meet the quorum requirements, (iii) state the percentage of approvals necessary to approve each matter other than election of directors, (iv) specify the time by which a ballot must be received by the Association in order to be counted, and (v) include or be accompanied by written information sufficient to permit each Person casting a ballot to reach an informed decision on the matter.

(b) The ballot shall (i) set forth each proposed action, and (ii) provide an opportunity to vote for or against each proposed action.

(c) The Board shall set the time for the return of ballots, which shall not be less than 15 days nor more than 30 days after the date of mailing of the ballots to the

Owners. The Board shall provide notice of the results of the vote to the Owners within 10 days after the expiration of the voting period.

(d) Approval by written ballot under this section is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(e) A ballot submitted to the Association under the procedure contemplated by this Section 3.4 may not be revoked or changed.

(f) Action taken under this Section 3.4 has the same effect for all purposes as action taken at a meeting of the Members, and any requirement in the Declaration for the holding of a meeting of Members may be satisfied by the conduct of an election in accordance with the provisions of this Section 3.4.

(g) Nothing in this Section 3.4, or elsewhere in these Bylaws, shall be construed to permit the Association to take any action that is inconsistent with the provisions of the Declaration, the CCIO Act or the Corporation Act. Without limiting the effect of the preceding sentence, the procedure contemplated by this Section 3.4 does not affect any requirement in the Declaration or elsewhere for consent by the Declarant or by any Mortgagee.

**3.5 Vote Required.** A majority of the votes cast at any properly constituted meeting of the Owners, or cast by mail in accordance with Section 3.4, shall decide all matters properly brought before the Owners, except where a different vote is specifically required by the Association Documents, the Corporation Act or the CCIO Act. The term "majority" as used in these Bylaws shall mean in excess of 50% of the votes cast at a meeting, in person or by proxy, or voting by mail, in accordance with the allocation of voting power set forth in the Declaration.

#### **ARTICLE 4 MEETINGS OF OWNERS**

**4.1 Place.** All meetings of the Owners shall be held at the office of the Association or at such other place in the State of Colorado, reasonably accessible to the Owners, as may be designated by the Board in any notice of a meeting of the Owners.

**4.2 Annual Meetings.** An annual meeting of the Owners shall be held in each fiscal year on a date, and at a reasonable time and place, designated by the Board. At each annual meeting of the Owners, (a) the Persons who are to constitute the Board shall be elected pursuant to Article 6, (b) reports shall be made to the Owners on the activities and financial condition of the Association, and (c) any other matter that is included in the notice

of the annual meeting, and is a proper subject for discussion or decision by the Owners, shall be considered and acted upon at the meeting.

**4.3 Special Meetings.** Special meetings of the Owners may be called by the President, by a majority of the members of the Board or by Owners entitled to cast at least 20% of all votes in the Association. Any such meeting called by Owners or by members of the Board shall be held within 60 days after the issuance of the call for the meeting. The call for any special meeting of the Owners shall state the items to be listed on the agenda for the meeting, including the general nature of any proposed amendment to the Declaration or to these Bylaws, any budget changes and any proposal to remove an officer or a member of the Board. The business transacted at the special meeting shall be confined to the matters listed in the call for the meeting. The purposes for which the meeting is requested and held must be lawful and consistent with the Association's purposes and authority under the Association Documents.

**4.4 Notice of Meetings.** Not less than ten nor more than 50 days in advance of any annual or special meeting of the Owners, the Secretary shall send, to all Persons who are registered (pursuant to Section 2.2 above) as Owners as of the date the notice is sent, written notice of the date, time, place and agenda of the meeting, including the general nature of any proposed amendment to the Declaration or to these Bylaws, any budget changes and any proposal to remove an officer or a member of the Board. Such notice shall be given to each Owner by United States mail, or by hand delivery, at the address of such Owner's Lot or at such other address as the Owner may have designated in writing. Notice of any meeting to vote on any proposed amendment to any of the Association Documents shall also be given separately to each officer and director of the Association.

*Amended* **4.5<sup>2016</sup> Quorum/Adjournment.** The presence, in person or by proxy, of Owners who have authority to cast more than 50% of all votes in the Association shall constitute a quorum at all meetings of the Owners for the transaction of any business. In the absence of a quorum, a majority of those present may nonetheless vote to adjourn the meeting and reconvene it at a later time. If a quorum is present at the reconvened meeting, any business may be transacted that might have been transacted at the meeting as initially called had a quorum then been present. The quorum, having once been established at a meeting or a reconvened meeting, shall continue to exist for that meeting notwithstanding the departure of any Owner previously in attendance in person or by proxy. In determining the presence of a quorum, the Association may not be counted as to any Lot owned by the Association. Any meeting may be adjourned from time to time without notice other than announcement at the meeting as initially called, provided that no single adjournment may be for more than 15 days unless notice is again given in accordance with Section 4.4 above.

**4.6 Voting Register.** The Secretary shall have available at each meeting a list of Lot numbers, the names of the Owners and the name of the Person (in the case of multiple Owners) authorized to cast the vote allocated to each Lot.

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**4.7 Agenda.** The agenda for regular annual meetings of the Owners shall be established by the Board, consistent with the Association Documents, and shall be sent to all Owners along with the notice of the meeting. The agenda for any special meeting shall be established as provided in Section 4.3 above.

## ARTICLE 5 ANNUAL REPORT

**5.1 Contents of Annual Report.** With respect to the first fiscal year of the Association that ends after the Association has first levied an Annual Assessment, and with respect to each subsequent fiscal year, the Board shall prepare an annual report on behalf of the Association, which shall be mailed or delivered to each Owner with the notice of the annual meeting. The report shall contain at a minimum:

- (a) A statement of any capital expenditures in excess of two percent of the current operating budget or \$1,000, whichever is greater, approved by the Board for the current year or succeeding two fiscal years;
- (b) A statement of the balance in any reserve or replacement fund and any portion of the fund designated for any specified project by the Board;
- (c) A copy of the statement of revenues and expenses for the Association's last fiscal year, and a balance sheet as of the end of that fiscal year;
- (d) A statement of the status of any pending litigation to which the Association is a party, including any unsatisfied judgment (whether or not stayed) in favor of or against the Association;
- (e) A description of the insurance coverage maintained by the Association, including as to each coverage the nature of the risk, the dollar limits of coverage, the amount of any deductible and the Persons or classes of Persons protected by that coverage; and
- (f) A Lot-by-Lot statement of all past due assessments on all Lots, current as of a date not more than 45 days before the date of the report.

## ARTICLE 6 BOARD OF DIRECTORS

*Amended* **6.1 Number and Qualification.** The affairs of the Association shall be governed by a board of directors (referred to, in these Bylaws and in the Declaration, as the "Board"). The first Board shall consist of three individuals appointed as directors by the Declarant pursuant to Section 4.4 of the Declaration. From and after the expiration of the Declarant Control Period, the Board shall be composed of five directors, at least four of whom shall be

either Owners or designated representatives of Owners that are corporations, partnerships, limited liability companies, trusts or other entities that have the capacity to hold title to real estate.

**6.2 Term of Office.** The terms of office of the members of the Board shall be as follows:

(a) Subject to subsection (b), the terms of all directors appointed by Declarant as authorized by the Declaration shall terminate 30 days before the end of the Declarant Control Period (or, if earlier, at such time as the Declarant voluntarily surrenders the right to appoint and remove directors in accordance with Section 4.4 of the Declaration). The term of office of any director elected to the Board by Owners other than the Declarant shall terminate at the same time as the terms of those directors who were appointed by Declarant.

(b) Notwithstanding the provisions of subsection (a), the Owners other than Declarant shall have the right to nominate and elect one director at a meeting of the Owners held within 60 days following the conveyance by Declarant of 25% of the total number of Lots authorized to be included in the Project.

(c) Of the five directors elected by the Owners immediately following the end of the terms provided for in subsection (a), two shall serve for a term of one year, two shall serve for a term of two years and the fifth shall serve for a term of three years. The length of the five directors' respective terms shall be determined by lot immediately after the election. Directors elected subsequently shall serve for terms of three years each.

(d) Once selected, whether by appointment by the Declarant or by election by the Owners, a director shall continue in office until a successor is elected, notwithstanding the expiration or termination of such director's stated term, or until such director is removed in accordance with these Bylaws. A director appointed or elected to fill an uncompleted term shall serve until the normal expiration or termination of that term, unless removed in accordance with these Bylaws.

(e) At any meeting for election of directors, nominees equal in number to the number of vacancies, and receiving the greatest numbers of votes, shall be elected, whether or not any nominee receives a majority of the votes cast.

**6.3 Nominations.** Nominations for election to the Board shall be made by a nominating committee appointed by the Board, or from the floor at the annual meeting or by "write-in" if authorized by the Board.

**6.4 Powers.** The Board shall have all powers necessary for the administration of the affairs of the Association, and may exercise for the Association all powers and authority

vested in or delegated to the Association (and not expressly prohibited to the Board or reserved to the Owners) by law or by the Association Documents. The powers of the Board shall include, without limitation, the power to:

(a) adopt, amend and revoke Rules and Regulations not inconsistent with the Association Documents, as follows: (i) regulating the use of the Common Area, (ii) regulating use of the Lots, and conduct of Owners and their tenants and invitees, to the extent such use or conduct may jeopardize the health, safety or welfare of other Owners and their tenants or invitees, involve noise or other disturbing activity, or damage the Common Area or other Lots, (iii) regulating or prohibiting animals in a manner not inconsistent with the Declaration, (iv) regulating changes in the appearance of the Common Area, (v) regulating the exterior appearance of the Property, including, for example, balconies and patios, window treatments and signs and other displays, including features that are inside a residence on a Lot but visible from other Lots or the Common Area, (vi) implementing the Association Documents, and exercising the powers granted by this section and by other provisions of the Association Documents, and (vii) otherwise facilitating the operation of the Project;

(b) adopt and amend budgets for revenues, expenditures and reserves, and levy and collect Assessments for Common Expenses from Owners;

(c) hire or retain, and discharge, property managers, managing agents and other employees, agents and independent contractors;

(d) institute, defend or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more Owners on matters affecting the Common Area or other matters affecting the Property or the Association, or (ii) with the consent of the Owners of the affected Lots, on matters affecting only those Lots;

(e) make contracts and incur liabilities;

(f) regulate the use, maintenance, repair, replacement and modification of the Common Area and the Lots;

(g) cause improvements to be made to, or as a part of, the Common Area;

(h) acquire, hold, encumber and convey in its own name any right, title, or interest to real estate or personal property, subject to provisions of the Declaration or of the CCIO Act restricting the conveyance or encumbrance of the Common Area;

(i) grant easements, leases, licenses and concessions through, over or under the Common Area, subject to the terms of the Declaration;

(j) impose and receive any payments, fees or charges for services provided to Owners and for the use, rental or operation of the Common Area;

(k) impose charges for late payment of assessments, recover reasonable attorneys' fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, whether or not suit is initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Rules and Regulations or other Association Documents;

(l) impose reasonable charges for the review, preparation and recordation of amendments to the Declaration or Bylaws, statements of unpaid assessments or furnishing copies of Association records;

(m) provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;

(n) provide for reasonable procedures, consistent with the Association Documents, governing the conduct of meetings and the election of directors;

(o) appoint, regulate and dissolve committees; and

(p) exercise any other powers conferred by law or the Association Documents, or that are necessary and proper for the governance of the Association.

**6.5 Meetings and Notices.** An annual meeting of the Board shall be held promptly following each annual meeting of the Owners. At each annual meeting the officers of the Association shall be elected. Other meetings of the Board shall be held in accordance with the following provisions:

(a) Regular meetings of the Board shall be held at least on a quarterly basis, at such times as may be fixed from time to time by a majority of the members of the Board. A schedule of the regular meetings shall be provided to each director, and any amended schedule shall likewise be provided to each director.

(b) Special meetings of the Board may be called by the President of the Association or by any two directors. Notice of any special meeting shall be given to each director not less than three days in advance of the meeting. Unless otherwise required by law or these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting.

(c) Any director may at any time waive notice of any meeting of the Board orally, in writing, or by attendance at the meeting. If all the directors are present at a meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

**6.6 Quorum and Voting.** A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting thereof. A quorum, once

established, shall continue to exist, regardless of the subsequent departure of any director. Each director shall have one vote. The vote of a majority of the directors present at any meeting at which a quorum is present shall be sufficient to adopt any action. Proxies shall not be permitted.

**6.7 Action Taken Without a Meeting.** The Board may take without a meeting any action that it could take at a meeting, provided such action is authorized in a writing signed by all directors. Signatures of directors on two or more counterparts of substantively identical documents shall be equivalent to signatures on the same document, and signatures transmitted by facsimile shall have the same effect as the originals.

**6.8 Vacancies.** A vacancy on the Board shall be filled by a person elected within 15 days following the occurrence of the vacancy by a majority vote of the remaining directors, regardless of their number; except for vacancies created pursuant to Section 6.2 or Section 6.9. Each person so elected shall serve out the term vacated.

**6.9 Removal.** A director may be removed from the Board, with or without cause, by a vote of 67% of the votes allocated to all Owners present (in person or by proxy) and entitled to vote at any annual or special meeting of the Owners; *provided*, that (a) a quorum shall be present at the time the vote is taken, (b) the notice of the meeting at which removal is to be considered shall have stated such consideration as a purpose or agenda item for the meeting, (c) the director to be removed shall have been given a reasonable opportunity to be heard at the meeting, (d) either the Declarant Control Period shall have ended before the date of the meeting, or the director to be removed shall not hold his or her directorship by virtue of being appointed by the Declarant, and (e) a new director is elected at the meeting by the Owners to fill the vacant position caused by the removal. A director may also be removed by the Board if such director (i) has more than two unexcused absences from meetings of the Board or meetings of the Owners meetings within the preceding 12 months, or (ii) Assessments with respect to any Lot owned or represented by such Director are more than 60 days past due. A vacancy resulting from the removal of a director by the Board shall be filled by the remaining members of the Board as provided in Section 6.8 of these Bylaws.

**6.10 Compensation.** Except as may be authorized by a majority vote of the Owners, the directors of the Association shall receive no compensation for their services in such capacity. A director or other Owner may, upon approval by the Board, be retained by the Association and be compensated reasonably for specific goods or services furnished to the Association by such Person in an individual capacity. Directors shall be reimbursed for out-of-pocket expenses properly incurred in the performance of their duties.

**6.11 Fidelity Bond.** From and after the end of the Declarant Control Period, fidelity bonds or insurance coverage for unlawful taking of Association funds shall be obtained and maintained on all directors, officers and other persons authorized to handle the Association's funds and other monetary assets. The Board shall determine the amount of

such coverage from time to time, but such amount shall at no time be less than [50%] of the aggregate budgeted Assessments for the then-current fiscal year.

## ARTICLE 7 OFFICERS

**7.1 Principal Officers.** The principal officers of the Association shall be a President, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may from time to time elect one or more Vice Presidents or such other officers and designate their duties as in their judgment may be necessary to manage the affairs of the Association. A person may hold more than one office simultaneously, except that the President may not hold either the office of Secretary or the office of Treasurer. The President must be a member of the Board; the other officers may, but need not, be members of the Board.

**7.2 Election.** The officers of the Association shall be elected annually by the Board at its annual meeting and shall hold office at the pleasure of the Board.

**7.3 Removal.** Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and a successor may be elected, at any regular or special meeting of the Board.

**7.4 President.** The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Board and of the Association. The President shall have all of the powers and duties which are customarily vested in the office of president of a corporation, including without limitation the duty to supervise all other officers and to execute all contracts and similar obligations on behalf of the Association. The President shall have such other duties as may from time to time be prescribed by the Board.

**7.5 Vice President.** The Vice President, if any, shall take the place of the President and perform the duties of the office whenever the President shall be absent or unable to act. Any Vice President shall also perform such other duties as shall from time to time be prescribed by the Board.

**7.6 Secretary.** The Secretary shall be responsible for recording the minutes of all meetings of the Board and the Association. The Secretary shall be responsible for keeping the books and records of the Association, and shall give all notices required by the Association Documents or the Act unless another person is directed by the Board to give any such notice. The Board may delegate the Secretary's administrative functions to a managing agent; provided that such delegation shall not relieve the Secretary of the ultimate responsibility for the Secretary's duties.

**7.7 Treasurer.** The Treasurer shall have responsibility for all financial assets of the Association, and shall be covered by a fidelity bond or insurance in such sum and with such companies as the Board may require, consistent with the requirements of Section 6.11.

The Treasurer shall be responsible for keeping the Association's financial books, assessment rolls and accounts. The Treasurer shall cause the books of the Association to be kept in accordance with customary and accepted accounting practices and shall submit them to the Board for its examination upon request. The Treasurer shall cause all moneys and other monetary assets of the Association to be deposited in the name of or to the credit of the Association in depositories designated by the Board, shall cause the funds of the Association to be disbursed as ordered by the Board and shall perform all other duties incident to the office of Treasurer. The Board may delegate the Treasurer's administrative functions to a managing agent; provided that such delegation shall not relieve the Treasurer of the ultimate responsibility for the Treasurer's duties.

**7.8 Compensation.** Except as authorized by a vote of the Owners at a meeting thereof, officers of the Association shall receive no compensation for their services in such capacity. An officer, or other Owner or Guest may, upon approval by the Board, be retained by the Association and be compensated reasonably for specific goods or services furnished to the Association by such Person in an individual capacity. Officers shall be reimbursed for out-of-pocket expenses properly incurred in the performance of their duties.

## ARTICLE 8 OPERATION OF THE PROPERTY

**8.1 Assessment Procedures.** The Board shall, at least 30 days before the first day of each fiscal year of the Association that begins after end of the Declarant Control Period, prepare a budget of Common Expenses for the Association and assess and levy Assessments to pay such Common Expenses against the Lots according to their respective Common Expense liability as set forth in the Declaration. The annual budget shall include a general operating reserve, and an adequate reserve fund for maintenance, repair and replacement of those features of the Common Area that must be maintained, repaired or replaced by the Association on a periodic basis.

(a) The Board shall fix the amount of the annual Assessment against each Lot and advise the Owners in writing of the amounts of the Assessments against each Lot at least 30 days before the first installment thereof is due. The failure of the Board to levy timely an annual Assessment shall not relieve any Owner of the obligation to continue paying assessment installments in the amount last levied, as well as any increases subsequently levied.

(b) If an annual Assessment proves to be insufficient, the budget and the Assessments may be amended, or a Special Assessment levied, by the Board at any time. The levy shall be deemed to occur upon the date specified in the resolution which fixes the Assessment.

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(c) The Association shall distribute copies of each budget on which the Common Expenses and Assessments are based to each Owner in accordance with the provisions of Section 11.3 of the Declaration.

**8.2 Payment of Assessments.** Annual Assessments shall be due and payable in monthly installments in advance on the first day of each month of the year or other period for which the Assessments are made. Special Assessments shall be due when designated by the Board. All Owners shall be absolutely and unconditionally obligated to pay the Assessments levied pursuant to the Association Documents. No Owner shall have any right of withholding, offset or deduction against the Association with respect to any Assessments, or related late charges or costs of collection. Any rights or claims alleged by an Owner may be pursued only by separate action.

**8.3 Default in Payment.** If any Owner fails to pay any Assessment or installment thereof, on or before the date on which such Assessment or such installment thereof is due (subject to such grace periods as may be provided in these Bylaws), such Owner shall be in default of such Owner's obligations to the Association, and the following provisions shall apply:

(a) If such failure continues for 30 days, such Owner shall be obligated to pay to the Association a late charge equal to five percent of the amount in default; *provided*, that only one late charge shall be payable with respect to a single delinquency, even if such delinquency continues for more than a single month.

(b) If such failure continues for 30 days, the Board may accelerate any remaining installments of the Assessment by giving written notice to the Owner of the Board's election to do so, at which time the entire unpaid balance of the Assessment and late charges shall become immediately due and payable.

(c) If such failure continues for 30 days, the Board may assess an interest charge from the date of delinquency at a yearly rate that is two percentage points above the prime rate charged by the Association's bank, or such other rate as the Board may establish, not to exceed the lesser of twenty-one percent (21%) per year or the maximum rate permitted by law;

(d) If requested in writing by the First Mortgagee of a Lot to do so, the Association shall notify such First Mortgagee in writing of any delinquency in the payment of Assessments by an Owner whose Lot is encumbered by a First Mortgage held by such First Mortgagee, if such delinquency continues for 60 days.

(e) The Board shall have the right and duty to attempt to recover all assessments for Common Expenses, together with any late charges, attorneys' fees and other expenses relating to the collection thereof.

(f) The rights and remedies provided for in these Bylaws are in addition to those available to the Association under the Declaration or provided for by law.

**8.4 Foreclosure of Liens for Unpaid Assessments.** The Association has the right to foreclose a lien against a Lot for assessments imposed by the Association as more fully described in the Declaration and the CCIO Act.

**8.5 Records.** The Board shall cause to be kept at the registered office of the Association, and at such other place as the Board may determine, records of the actions of the Board, minutes of the meetings of the Board, minutes of the meetings of the Owners, names of the Owners and Mortgagees, and detailed and accurate records of the receipts and expenditures of the Association. All Association records, including those relating to receipts and expenditures and any vouchers authorizing payments, shall be available for examination by Owners and Mortgagees upon reasonable notice and during normal business hours. A separate account shall be maintained for each Lot, setting forth the amount of the assessments against the Lot, the date when due, the amount paid thereon and the balance remaining unpaid.

**8.6 Enforcement of Obligations.** All Owners and their tenants and invitees are obligated and bound to observe the provisions of the Rules and Regulations, the other Association Documents and the CCIO Act. The Association may impose any or all of the charges, sanctions and remedies authorized by the Rules and Regulations, the other Association Documents and the CCIO Act, and take such action as may be appropriate to enforce and implement the Association's rights and to otherwise enable it to manage and operate the Project.

## ARTICLE 9 AMENDMENTS

These Bylaws may be amended, and the amendment shall be effective, upon the satisfaction of the following conditions:

**9.1 Approval.** During the Declarant Control Period, any amendment must be approved by the Board but need not be approved by the Owners. After the end of the Declarant Control Period, any amendment must be approved by Owners who have authority to cast more than 50% of the total votes in the Association, at an annual or properly called special meeting of the Owners, or by the procedure described in Section 3.4.

**9.2 Notice.** A copy of any proposed amendment to be considered by the Owners shall be mailed by U.S. Mail, or hand delivered, with or before the notice of the meeting at which the amendment is to be considered, or with the notice called for in Section 3.4(a), to all Owners authorized to cast votes.

**9.3 Effective Date; Recording.** Any amendment shall be effective on the date of approval by the required vote of the Board or of the Owners, as the case may be. Amendments need not be recorded in any public office, but shall be maintained by the Secretary of the Association with the other permanent records of the Association.

## ARTICLE 10 INDEMNIFICATION

### 10.1 Definitions. As used in this Article 10:

(a) "corporation" includes any domestic or foreign entity that is a predecessor of the Association by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(b) "director" means an individual who is or was a director of the Association or an individual who, while a director of the Association, is or was serving at the Association's request as a director, officer, partner, trustee, employee, fiduciary or agent of another domestic or foreign corporation or other person or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the Association's request if his or her duties to the Association also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. The term "director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(c) "expenses" includes counsel fees.

(d) "liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(e) "official capacity" means, when used with respect to a director, the office of director in the Association and, when used with respect to a person other than a director as contemplated in Section 10.7, the office in the Association held by the officer or the employment, fiduciary or agency relationship undertaken by the employee, fiduciary or agent on behalf of the Association. "Official capacity" does not include service for any other domestic or foreign corporation or other person or employee benefit plan.

(f) "party" includes a person who was, is or is threatened to be made, a named defendant or respondent in a proceeding.

(g) "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

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## 10.2 Authority to Indemnify Directors.

(a) Except as provided in Section 10.2(d), the Association shall indemnify a person made a party to a proceeding because the person is or was a director against liability incurred in the proceeding if:

(i) The person's conduct was in good faith; and

(ii) The person reasonably believed:

(A) In the case of conduct in an official capacity with the Association, that the conduct was in the Association's best interests; and

(B) In all other cases, that the conduct was at least not opposed to the Association's best interests; and

(iii) In the case of any criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirement of Section 10.2(a)(ii)(B). A director's conduct with respect to an employee benefit plan for a purpose that the director did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of Section 10.2(a)(i).

(c) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this Section 10.2.

(d) Except to the extent authorized by a court as provided in Section 10.5, the Association may not indemnify a director under this Section 10.2:

(i) In connection with a proceeding by or in the right of the Association in which the director was adjudged liable to the Association; or

(ii) In connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that he or she derived an improper personal benefit.

(e) Indemnification permitted under this Section 10.2 in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

**10.3 Mandatory Indemnification of Directors.** The Association shall indemnify a person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, against reasonable expenses incurred by him or her in connection with the proceeding.

**10.4 Advance of Expenses to Directors.**

(a) The Association shall pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(i) The director furnishes to the Association a written affirmation of the director's good faith belief that the director has met the standard of conduct described in Section 10.2;

(ii) The director furnishes to the Association a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(iii) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article 10.

(b) The undertaking required by Section 10.4(a)(ii) shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this Section 10.4 shall be made in the manner specified in Section 10.6.

**10.5 Court-Ordered Indemnification of Directors.** A director who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under Section 10.3, the court shall order indemnification, in which case the court shall also order the Association to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 10.2(a) or was adjudged liable in the circumstances described in Section 10.2(d), the court may order such indemnification as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged in the circumstances described in Section 10.2(d) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

#### **10.6 Determination and Authorization of Indemnification of Directors.**

(a) Except to the extent authorized by a court as provided in Section 10.5, the Association shall not indemnify a director under Section 10.2 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 10.2. The Association shall not advance expenses to a director under Section 10.4 unless authorized in the specific case after the written affirmation and undertaking required by Section 10.4(a)(i) and Section 10.4(a)(ii) are received and the determination required by Section 10.4(a)(iii) has been made.

(b) The determinations required by Section 10.6(a) shall be made:

(i) By the Board by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(ii) If a quorum cannot be obtained, by a majority vote of a committee of the Board designated by the Board, which committee shall consist of two or more directors not parties to the proceeding; except that directors who are parties to the proceeding may participate in the designation of directors for the committee.

(c) If a quorum cannot be obtained as contemplated in Section 10.6(b)(i), and a committee cannot be established under Section 10.6(b)(ii), or even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made by Section 10.6(a) shall be made:

(i) By independent legal counsel selected by a vote of the Board or the committee in the manner specified in Section 10.6(b)(i) or Section 10.6(b)(ii), or, if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full Board; or

(ii) By the Owners.

(d) Authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible; except that, if the determination that indemnification or advance of expenses is required or permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

#### **10.7 Indemnification of Officers, Employees, Fiduciaries, and Agents.**

(a) The Association shall indemnify and advance expenses to an officer to the same extent as a director.

(b) The Association may indemnify and advance expenses to an employee, fiduciary or agent of the Association to the same extent as to a director.

(c) The Association may also indemnify and advance expenses to an officer, employee, fiduciary or agent who is not a director to a greater extent than is provided in these bylaws, if not inconsistent with public policy, and if provided for by general or specific action of its Board or members or by contract.

**10.8 Insurance.** The Association may (and shall, to the extent required by the Declaration) purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary or agent of the Association, or who, while a director, officer, employee, fiduciary or agent of the Association, is or was serving at the request of the Association as a director, officer, partner, trustee, employee, fiduciary or agent of another domestic or foreign corporation or other person or of an employee benefit plan, against liability asserted against or incurred by the person in that capacity or arising from his or her status as a director, officer, employee, fiduciary or agent, whether or not the Association would have power to indemnify the person against the same liability under Section 10.2, Section 10.3 or Section 10.7. Any such insurance may be procured from any insurance company designated by the Board, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere.

**10.9 Notice to Members of Indemnification of Director.** If the Association indemnifies or advances expenses to a director under this Article 10 in connection with a proceeding by or in the right of the Association, the Association shall give written notice of the indemnification or advance to the Owners with or before the notice of the next Owners' meeting. If the next membership action is taken without a meeting at the instigation of the Board, such notice shall be given to the Owners at or before the time the first Owner signs a writing consenting to such action.

**ARTICLE 11  
MISCELLANEOUS**

**11.1 Notices.** Unless specifically provided otherwise in the CCIO Act, the Declaration or these Bylaws, all notices required to be given by or to the Association, the Board, the Association officers or Owners shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 shall be effective upon receipt by the Association.

**11.2 Severability.** The invalidity or unenforceability of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect the balance of these Bylaws.

**11.3 Captions.** All captions and titles of headings of articles and sections in these Bylaws are for the purpose of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect the construction of any provision of these Bylaws.

**11.4 Conflicts in Documents.** In the event of any conflict among the provisions of the CCIO Act, the Declaration, the Bylaws and the Rules and Regulations, the CCIO Act shall control unless it permits the Association Documents to control. As among the Declaration, Bylaws and Rules and Regulations, the Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

**11.5 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 thereof which may occur.

**11.6 Fiscal Year.** The fiscal year of the Association shall be as determined by the Board.

The undersigned hereby executes these Bylaws and certifies that they were adopted by Whispering Pines Ranch Homeowners' Association, Inc., a Colorado nonprofit corporation, effective as of the date specified below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary  
Whispering Pines Ranch Homeowners'  
Association, Inc.