

**BYLAWS  
OF  
PROMONTORY POINT SOUTH AT HIGHLAND MEADOWS ASSOCIATION**

**ARTICLE 1  
DEFINITIONS**

1.1 “Declaration” means the Supplemental Declaration of Covenants, Conditions and Restrictions for Promontory Point South at Highland Meadows (a Common Interest Community) recorded with the Clerk and Recorder of Larimer County, Colorado, together with any amendments.

1.2 “Director” means any natural person serving on the Executive Board.

1.3 “Member” means any Owner of a Lot within the Common Interest Community.

1.4 Unless otherwise defined in these Bylaws, all words and terms used in these Bylaws shall have the meanings given to them in the Declaration. If not defined in the Declaration, such words and terms shall be as defined in the Colorado Common Interest Ownership Act, as amended (“Act”).

**ARTICLE 2  
MEETINGS OF MEMBERS**

2.1. Annual Meeting. The annual meeting of the Members shall be held each year on such date as shall be selected by the Executive Board for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

2.2 Budget Meeting. Meetings of Members to consider proposed budgets shall be called and conducted in accordance with budget meeting provisions of the Declaration. The budget may be considered at annual or special meetings called for other purposes as well.

2.3 Special Meetings. Special meetings of the Association may be called by the president, by a majority of the Directors on the Executive Board or by Members holding at least 20% of the votes in the Association.

2.4 Place of Meetings. Meetings of the Members shall be held at any suitable place convenient to the Members, as may be designated by the Executive Board or the president.

2.5 Notice of Meetings. The secretary shall cause notice of meetings of the Members to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to the mailing address designated in writing by the Member, not less than 10 nor more than 50 days in advance of a meeting. In addition, if electronic means for providing such notice are available to the Association, the Association shall cause notice of meetings of the Members to be given by email to all Members who so request and who furnish the Association with their email addresses. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including a summary of any proposed amendments to the Declaration, the Bylaws, or the Articles of

term or is applicable for a specific meeting. The holder of a Member's proxy need not be a Member. A proxy shall not be valid if obtained through fraud or misrepresentation.

2.12 Validity of Vote or Proxy. The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or revocation of a proxy appointment if the Secretary or other officer or agent authorized to tabulate the votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Member. The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or revocation of proxy appointment in good faith and in accordance with the standards of these Bylaws are not liable in damages for the consequences of the acceptance or rejection. Any Association action based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or revocation of a proxy appointment is valid unless a court of competent jurisdiction determines otherwise.

2.13 Voting by Entity Owners. 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 board of directors 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 vote of a limited liability company may be cast by any manager (if a manager-managed limited liability company) or by any Member (if a member-managed limited liability company) in the absence of express notice of the designation of a specific person by the owning limited liability company. The person presiding over the meeting may require reasonable evidence that a person voting on behalf of a corporation, business trust, partnership or limited liability company owner is qualified to vote. Votes allocated to a Lot owned by the Association may not be cast.

2.14 Adjournment of Meeting. At any meeting of Members, whether or not a quorum is present, those Members who are present at that meeting and who hold a majority of those votes allocated to all Members present in person or by proxy may adjourn the meeting to another time.

2.15 Action by Consent. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Members entitled to vote on such action.

2.16 Action by Written Ballot. Any action that may be taken at any annual or special meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when 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 written ballot. All solicitations for votes by written ballot shall indicate the number of responses to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of directors, specify the time by which a ballot must be received by the Association in order to be counted, and be accompanied by written information sufficient to permit each Member casting such ballot to reach an

Incorporation, any budget changes, and any proposal to remove an officer or a Director. The notice shall include a copy of a proxy that can be cast in lieu of attendance at the meeting. No action shall be adopted at a meeting except as stated in the notice.

2.6 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.

2.7 Participation in Members' Meetings. All meetings of the Members are open to every Member and any person designated by a Member in writing as the Member's representative. At an appropriate time determined by the Executive Board, but before formal action is taken on an issue under discussion, Members or their designated representatives shall be permitted to speak regarding that issue. The Executive Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Executive Board shall provide for a reasonable number of persons to speak on each side of the issue. At any time, the Executive Board may delegate its authority under this Article 2.7 to the officer presiding over the Members' meeting.

2.8 Quorum. Except as otherwise provided in these Bylaws, the Declaration, or by law, at any meeting of the Members the presence in person or by proxy of Members entitled to cast at least 20% of all votes entitled to be cast on the matter to be voted upon shall constitute a quorum. If a quorum exists at the beginning of any meeting, a quorum is deemed present throughout that meeting despite any subsequent departure of Members.

2.9 Voting. Votes for contested positions on the Executive Board shall be taken by secret ballot. Furthermore, at the discretion of the Executive Board or upon the request of Members holding 20% of the votes of all those Members who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any other matter on which all Members are entitled to vote shall be by secret ballot. Ballots shall be counted by either (a) a neutral third party, or (b) a committee of volunteers. Such volunteers shall be Members who are elected or appointed at an open meeting, in a fair manner, by the officer presiding during that portion of the meeting. The volunteers shall not be Directors and, in the case of a contested election for an Executive Board position, shall not be candidates. The results of a vote taken by secret ballot shall be reported without reference to names, addresses or other identifying information of the Members voting.

2.10 Majority Vote. At any meeting of the Members at which a quorum is present, the vote of Members present in person or by proxy to whom are allocated a majority of those votes allocated to all Members present in person or by proxy shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws or by law.

2.11 Proxies. The vote or votes allocated to a Lot may be cast under a written proxy duly executed by the Member owning that Lot and filed with the Association prior to the meeting. A Member may revoke a proxy given under this Article 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 11 months after its date, unless it specifies a shorter

informed decision on the matter. A written ballot may not be revoked. The solicitation of votes by written ballot, and the submission of any ballot by a Member, may be done electronically. Action taken under this Article has the same effect as action taken at a meeting of Members and may be described as such in any document.

2.17 Meetings by Telecommunication. Any or all of the Members may participate in an annual or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

### **ARTICLE 3** **EXECUTIVE BOARD**

3.1 Powers and Duties. The affairs of the Common Interest Community and the Association shall be governed by the Executive Board. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Common Interest Community, or to elect Directors or determine the qualifications, powers and duties, or terms of office of Directors, but the Executive Board may fill vacancies on the Board as provided in **Article 3.5** below. The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community including, without limitation, the following powers and duties:

3.1.1 Prepare budgets for revenues, expenditures and reserves;

3.1.2 Adopt and amend budgets for revenues, expenditures and reserves;

3.1.3 Collect Assessments for Common Expenses from Members;

3.1.4 Suspend the voting interest allocated to a Lot, and the right of a Member to cast such vote, or by proxy the vote of another, during any period in which such Member is in default in the payment of any assessments or, after notice and an opportunity to be heard, during any time in which a Member is in violation of any other provision of the Association's Declaration, Bylaws or Rules and Regulations;

3.1.5 Hire and discharge managing agents;

3.1.6 Hire and discharge employees, independent contractors and agents other than managing agents;

3.1.7 Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Association's Declaration, Bylaws or Rules and Regulations in the Association's name, on behalf of the Association or two or more Members on matters affecting the Common Interest Community;

3.1.8 Make contracts and incur liabilities;

3.1.9 Establish from time to time and impose a reasonable charge for late payment of assessments and, after notice and hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, or Rules and Regulations of the Association;

3.1.10 Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid assessments;

3.1.11 Provide for the indemnification of the Association's officers and the Executive Board, provide for the indemnification of committee Members to the extent the Executive Board deems it just and reasonable, and maintain directors' and officers' liability insurance;

3.1.12 Adopt and amend Bylaws and reasonable Rules and Regulations;

3.1.13 By resolution, set forth policies and procedures which shall be considered incorporated herein by reference as though set forth in full, and which provide for corporate actions and powers which are different from those set forth in the Colorado Revised Nonprofit Corporation Act, as amended ("CRNCA"), but which are permitted by law to be "otherwise set forth in the Bylaws." Such resolutions shall be given the same force and effect as if specifically enumerated in these Bylaws.

3.1.14 Exercise any other powers conferred by the Declaration, the Articles of Incorporation, or these Bylaws;

3.1.15 Exercise any other power that may be exercised in the Colorado by a legal entity of the same type as the Association;

3.1.16 Exercise any other power necessary and proper for the governance and operation of the Association; and

3.1.17 By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain minutes of their meetings and shall make periodic reports to the Executive Board.

3.2 Number and Qualifications. The Executive Board shall consist of such number of natural persons (not less than three nor more than five) as may be determined from time to time by resolution of the Executive Board. All Directors shall be Members who are in compliance with the Declaration and other governing documents of the Association.

3.3 Election of Directors/Terms of Office. The Directors shall be elected by the Members. The initial Directors shall be the members of the Neighborhood Committee current at the time of incorporation. Each member's term as a Director shall expire on the same day as their term on the Neighborhood Committee. At the first annual meeting after formation of the Association, the terms of Directors elected by the Members shall be at least one of the Executive Board for a term of one year, at least one of the Executive Board for a term of two years and the remainder of the Executive Board for a term of three years. At each annual meeting thereafter, the Members shall elect the appropriate number of persons serving on the Executive Board, depending on the group of such persons whose term has expired. At annual meetings of the Members, candidates for Directors

may be nominated from the floor. As required under **Article 2** above, votes for any contested election of Directors shall be taken by secret ballot.

**3.4 Managing Agent.** The Executive Board may employ a managing agent for the Common Interest Community, at a compensation established by the Executive Board, to perform duties and services authorized by the Executive Board. The Executive Board may delegate to the managing agent only the powers granted to the Executive Board by these Bylaws under **Articles 3.1.1** (Preparation of Budgets), **3.1.3** (Collection of Assessments), and **3.1.6** (Hiring and Discharging Employees, Independent Contractors and Agents other than Managing Agents). Additionally, licenses, concessions and contracts may be executed by the managing agent pursuant to specific resolutions of the Executive Board. The managing agent shall also:

**3.4.1** Maintain fidelity insurance coverage or a bond in an amount of not less than \$50,000.00 or such higher amount as the Executive Board may require;

**3.4.2** Maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the managing agent, and maintain any reserve account of the Association separate from operational accounts of the Association; and

**3.4.3** Prepare and present to the Executive Board (either itself, or through a public accountant or a certified public accountant) an accounting for Association funds and a financial statement not less frequently than monthly.

**3.5 Vacancies.** Vacancies on the Executive Board, caused by any reason other than the removal of a Director by a vote of the Members, may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. The filling of vacancies shall be determined by a majority vote of the remaining Directors.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced. Any vacancy caused by removal of a Director by a vote of the Members shall be filled as provided in **Article 3.6** below.

**3.6 Removal of Directors.** The Members, by two-thirds of the votes held by all persons present and entitled to vote at any meeting of the Members at which a quorum is present, may remove, with or without cause, any Director serving on the Executive Board. At the meeting where any Director has been removed, or at any subsequent properly called meeting of the Members, the Members shall elect a new Director to fill the unexpired term of the removed Director.

**3.7 Regular Meetings.** The Board may hold regular meetings at such time and place a majority of the directors shall determine, but the Board shall hold at least four such meetings during each fiscal year with at least one per quarter. The Board shall give notice of the time and place of a regular meeting to members not less than six days prior to the meeting; provided, the Board need not give notice of a meeting to any member who has signed a waiver of notice or a written consent to holding the meeting. Notice may be transmitted by e-mail.

3.8 Special Meetings. Special meetings of the Executive Board may be called by the president or by a majority of the Directors on at least three business days' written notice to each Director. The notice shall be hand-delivered, mailed or emailed, and shall state the time, place and purpose of the meeting.

3.9 Member Participation in Executive Board Meetings. Except for executive or closed-door sessions of the Executive Board called in accordance with the Act, all meetings of the Executive Board are open to every Member, or to the designated representative of a Member. At an appropriate time determined by the Executive Board, but before the Executive Board votes on an issue under discussion, Members or their designated representatives shall be permitted to speak regarding that issue. The Executive Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Executive Board shall provide for a reasonable number of persons to speak on each side of the issue.

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

3.11 Quorum; Actions of the Executive Board. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Executive Board, unless otherwise required by law, the Declaration, the Articles of Incorporation or these Bylaws. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12 Proxy. For purposes of determining a quorum at any meeting of the Executive Board, and for purposes of casting a vote for or against a particular proposal, a Director may be deemed to be present at a meeting and to vote if the Director has granted a signed written proxy to another Director who is present at the meeting, authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in these Bylaws and as otherwise permitted by the CRNCA, Directors may not vote or otherwise act by proxy.

3.13 Types of Communication in Lieu of Attendance. Any Director may attend a meeting of the Executive Board by: (i) using an electronic or telephonic communication method whereby the Director may be heard by the other Directors and may hear the deliberations of the other Directors on any matter properly brought before the Executive Board; or (ii) by participating in "real time" e-mail communication when all Directors are participating in this form of communication. The vote of such Director shall be counted and the presence noted as if that Director was present in person on that particular matter.

3.14 Action Without a Meeting. Any action required or permitted to be taken at an Executive Board meeting may be taken without a meeting using the procedure described in this Article. Notice of the action to be taken shall be transmitted in writing to each Director by hand delivery, mail or email, and is effective upon receipt. The written notice shall state:

- The action to be taken;
- The date and time by which a Director must respond; and
- That failure to respond by the time stated in the notice will have the same effect as abstaining in writing or failing to demand in writing that the action be taken at a meeting.

By the time stated in the notice, each Director may:

- Vote in writing for the action;
- Vote in writing against the action;
- Fail to respond or vote; or
- Demand in writing that the action be taken at a meeting. If a Director makes this demand in a timely manner, the Executive Board may no longer take the action without a meeting and must take the action at a meeting.

Once the time stated in the notice has elapsed, and assuming no written demand from any Director is received requiring that the action be taken at a meeting, then the action of the Board without a meeting is deemed effective if the number of affirmative votes in writing for such action equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors were present and voted. Any writing submitted by a Director under this Article shall be transmitted by hand delivery, mail or email, and shall inform the Association of the (a) identity of the Director, (b) the vote, abstention or demand of the Director, and (c) the proposed action to which such vote, abstention or demand relates. Any writing submitted by a Director to the Association is effective upon receipt. Action taken pursuant to this Article without a meeting has the same effect as action taken at a meeting of the Directors and may be described as such in any document. All writings made pursuant to this Article shall be filed with the minutes of the Executive Board meetings.

3.15 Compensation. No Director shall receive any compensation from the Association for acting as such, however Directors may be reimbursed for reasonable 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 Directors, excluding the interested Director.



## **ARTICLE 4**

### **OFFICERS**

4.1 **Designation.** The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer. The Executive Board may also elect an assistant treasurer, an assistant secretary and the treasurer. The Executive Board may also elect an assistant treasurer, and assistant secretary and other officers as it finds necessary. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant. All officers must be Directors.

4.2 **Election of Officers.** The officers of the Association shall be elected annually by the Executive Board at the first meeting of the Board following the annual meeting of the Members. Accordingly, the terms of all officers shall be for one year.

4.3 **Removal and Resignation of Officers.** Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose. Any officer may resign at any time by giving written notice to the president or secretary. Such resignation shall take effect on the date of receipt of the notice or any later date specified in the notice. Unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

4.4 **Vacancy.** A vacancy in any office may be filled by the vote of the Executive Board.

4.5 **President.** The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Members and of the Executive Board. The president shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to power to appoint committees from among the Members from time to time as the president may decide is appropriate to assist in the conduct of the affairs of the Association. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute, certify and record 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.

4.6 **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 another Director to act in the place of the president on an interim basis. The vice president shall also perform other duties as directed by the Executive Board or by the president.

4.7 **Secretary.** The secretary shall keep the minutes of all meetings of the Members and the Executive Board. The secretary shall have charge of the Association's books and papers as the Executive Board may direct 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.

4.8 Treasurer. The treasurer shall be responsible for Association funds and securities, 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 and to the credit of the Association in banks designated by the Executive Board. Except for reserve funds described below, the treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Executive Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the treasurer, and executed by two Directors, one of whom may be the treasurer.

4.9 Execution of Instruments. Except as provided in Articles 4.5, 4.7, and 4.8 above, all agreements, contracts, deeds, checks and other instruments of the Association shall be executed by the officer or officers of the Association, or such other person or persons, as may be designated by resolution of the Executive Board.

4.10 Compensation. No person shall receive compensation for serving as an officer of the Association. An officer shall be entitled to such reimbursement for reasonable expenses incurred on behalf of the Association as may be approved by the Executive Board.

## **ARTICLE 5**

### **INDEMNIFICATION**

5.1 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 or she 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 or her 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 or her conduct was unlawful.

**5.2 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 to any claim, issue or matter as to which such person has been adjudged to be liable for negligence, recklessness, or willful 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 it proper.

**5.3 Successful on the Merits.** To the extent that a Member of the Executive Board or any 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 referred to in **Articles 5.1** or **5.2** of this **Article 5**, 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 by him or her in connection therewith.

**5.4 Determination Required.** Any indemnification under **Articles 5.1** or **5.2** of this **Article 5** (unless ordered by a court) and as distinguished from **Article 5.3** of this **Article 5**, 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 in **Articles 5.1** or **5.2** above. Such determination shall be made by the Executive Board by majority vote of a quorum consisting of those Directors who were not parties to such action, suit or proceeding or, if a majority of disinterested Directors so direct, by independent legal counsel or by Members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence or record, and supported by a written opinion. The Executive Board shall provide a copy of its written opinion to the officer or Director seeking indemnification upon request.

**5.5 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 (i) 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 **Articles 5.1** or **5.2** of this **Article 5**; (ii) the Director or officer furnishes to the Association a written undertaking, 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 (iii) 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 **Article 5.5** shall be an unlimited general obligation of the Executive Board but need not be accepted by the Director or officer or may be accepted without reference to financial ability to make repayment.

5.6 No Limitation of Rights. The indemnification provided by this **Article 5** 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 Directors, or otherwise, nor by any rights which are granted pursuant to the Act and the CRNCA. Upon a vote of the Executive Board, the Association may also indemnify a Member appointed by the Executive Board to serve on a committee (when such committee Member is not also a Director) upon such terms and conditions as the Executive Board shall deem just and reasonable.

5.7 Directors and Officers Insurance. To the extent reasonably obtainable and affordable, the Association shall purchase and maintain insurance on behalf of any person who is or was a Director or an officer 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 5**.

## **ARTICLE 6**

### **ASSOCIATION RECORDS**

6.1 Records to be Maintained. The Association shall maintain as permanent records at its principal office the following:

6.1.1 The Association's governing documents (Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations).

6.1.2 Minutes of all Members' meetings, a record of all actions taken by the Members by written ballot or written consent in lieu of a meeting, and all waivers of notices of meetings of Members.

6.1.3 Minutes of all meetings of the Executive Board, a record of all actions taken by the Executive Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Executive Board in place of the Executive Board on behalf of the Association, and a record of all waivers of notices of meetings of the Executive Board or any committee of the Executive Board.

6.1.4 Resolutions adopted by the Executive Board relating to the characterizations, qualifications, rights, limitations and obligations of Members or any class or category of Members.

6.1.5 A record of Members in a form that permits preparation of a list of the names and addresses of all Members, showing the number of votes each Member is entitled to cast.

6.1.6 All written communications within the past three years from the Association to Members generally as Members.

6.1.7 A list of the names and business or home addresses of current Association Directors and officers.

6.1.8 The Association's most recent annual report, if any.

6.1.9 All financial audits or reviews conducted of the Association during the immediately preceding three years.

6.2 Form of Records. The Association shall maintain its records in written form or in any other form capable of conversion into written form within a reasonable time.

6.3 Availability of Records. All financial and other records shall be made reasonably available for examination and copying by any Member and such Member's authorized agents. As used above, "reasonably available" means available during normal business hours, upon five business days notice, to the extent that:

6.3.1 The request is made in good faith and for a proper purpose;

6.3.2 The request describes with reasonable particularity the records sought and the purpose of the request; and

6.3.3 The records are relevant to the purpose of the request.

6.4 Copying Fee. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of Association records.

6.5 Other Rights Unaffected. Nothing in this Article shall be construed to affect:

6.5.1 The right of a Member to inspect records under corporation statutes governing the inspection of lists of Members prior to an annual meeting, or, if the Member is in litigation with the Association, to the same extent as any other litigant; or

6.5.2 The power of a court, independently of this Article, to compel the production of Association records for examination on proof by a Member of proper purpose.

## **ARTICLE 7**

### **ASSOCIATION RESPONSIBILITIES**

7.1 Annual Disclosure to Members. At least once a year, the Association shall provide notice to all Members with the following information:

7.1.1 The name of the Association.

7.1.2 The name of the Association's designated agent or management company, if any.

7.1.3 A valid physical address and telephone number for both the Association and the designated agent or management company, if any.

7.1.4 The name of the Common Interest Community.

7.1.5 The initial date of recording of the Declaration, along with the reception number or book and page numbers for the Declaration.

If the Association's address, designated agent or management company changes, the Association shall provide all Members with an amended notice within 90 days after the change.

**7.2 Availability of Association Information.** Within 90 days after the end of each fiscal year thereafter, the Association shall make the following information available to Members in the manner provided below:

7.2.1 The date on which the Association's fiscal year commences.

7.2.2 The Association's operating budget for the current fiscal year.

7.2.3 A list, by Lot type, of the Association's current assessments, including both regular and special assessments.

7.2.4 The Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure.

7.2.5 The results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure.

7.2.6 A list of all Association insurance policies including, but not limited to, property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the insurance company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.

7.2.7 All of the Association's Articles of Incorporation, Bylaws, and Rules and Regulations.

7.2.8 The minutes of the Executive Board and Member meetings for the fiscal year immediately preceding the current annual disclosure.

7.2.9 The Association's responsible governance policies referenced under **Article 7.3** below.

Disclosure of the above information shall be accomplished by (a) the Association posting it on an Internet web page with an accompanying notice of the web address sent to Members via first-class mail or e-mail; (b) the maintenance of the literature table or binder at the Association's principal place of business; or (c) mail or personal delivery. The cost of such distribution shall be a common expense liability of the Association.

**7.3 Governance Policies.** The Association shall:

7.3.1 Maintain accounting records using generally accepted accounting principles.

7.3.2 Adopt policies, procedures, and rules and regulations concerning all of the following:

- Collection of unpaid assessments.
- Handling of conflicts of interest involving Board Members.
- Conduct of meetings, which may refer to applicable provisions of Colorado law or other recognized rules or principles.
- Enforcement of the Declaration and Rules and Regulations, including notice and hearing procedures and the schedule of fines.

- Inspection and copying of Association records by the Members.
- Reserve studies and investment of reserve funds.
- Procedures for the adoption and amendment of policies, procedures and rules.
- Resolution of disputes between the Association and Members.

7.4 Member Education. The Association shall provide, or cause to be provided, education of Members at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Members, the Association, and its Executive Board under Colorado law. The criteria for compliance with this provision shall be determined by the Executive Board.

## **ARTICLE 8**

### **REVIEW OR AUDIT OF ASSOCIATION BOOKS AND RECORDS**

The books and records of the Association shall be subject to a review, using statements on standards for accounting and review services, at least once every two years by a person selected by the Executive Board, who need not be a certified public accountant. Furthermore, if (a) the Association has annual revenues or expenditures of at least \$250,000, and (b) an audit is requested by the Owners of at least one-third of the Lots represented by the Association, then the books and records of the Association shall be subject to an audit by a certified public accountant using generally accepted auditing standards, using generally accepted auditing standards by a certified public accountant. Such an audit may be requested no more than once every two years. Copies of any review or audit shall be made available upon request to any Member beginning no later than 30 days after its completion.

## **ARTICLE 9**

### **MISCELLANEOUS**

9.1 Notices. All notices to the Association or the Executive Board shall be delivered to the office of the managing agent, or, if there is no managing agent, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Members and to all holders of Security Interests in the Lots who have notified the Association that they hold a Security Interest in a Lot. Except as otherwise provided, all notices to any Member shall be sent to the Member's address as it appears in the records of the Association. All notices to holders of Security Interests in the Lots shall be sent to their respective addresses, as designated by them in writing to the Association. Except as otherwise provided, notices shall be hand delivered or sent by United States mail, first class with postage prepaid. All notices shall be deemed to have been given when hand delivered or, if mailed, when deposited in the United States mail, except notices of changes of address, which shall be deemed to have been given when received.

9.2 Fiscal Year. The Executive Board shall establish the fiscal year of the Association.

9.3 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.

**ARTICLE 10**  
**AMENDMENTS**

These Bylaws may be amended (by (a) either modifying or deleting any existing provisions, or (b) adding new provisions) by the vote of a majority of the Directors serving on the Executive Board. After such approval notice of the amendment shall be sent to all members. The amendment shall go into effect thirty days after such notice has been given unless a majority of the members object in writing by email or other means. No amendment of the Bylaws of this Association shall be adopted which would impair the validity or priority of any Security Interest in any Lot.

**ARTICLE 11**  
**CONFLICTING DOCUMENTS**

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the case of any conflict between the Articles of Incorporation and the Declaration, the Declaration shall control.

The undersigned, being all of the Directors of Promontory Point South at Highland Meadows, have adopted these Bylaws effective as of the 10 day of DECEMBER 2018.

James D Moss  
\_\_\_\_\_, Director  
[Signature]  
\_\_\_\_\_, Director  
\_\_\_\_\_

Beth Stevens  
\_\_\_\_\_, Director  
Jack Shepard  
\_\_\_\_\_, Director  
\_\_\_\_\_

**CERTIFICATION**

I certify that I am the duly elected and acting secretary of Promontory Point South at Highland Meadows Association, and the foregoing Bylaws constitute the original Bylaws of the Association as adopted by unanimous consent of the Executive Board on the 10 day of December, 2018.

Wanda Koch  
\_\_\_\_\_, Secretary  
\_\_\_\_\_