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OF

LINCOLN CREEK VILLAGE  
HOMEOWNERS' ASSOCIATION, INC.

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**BYLAWS  
OF  
LINCOLN CREEK VILLAGE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I  
GENERAL**

Section 1.1 - Purpose of Bylaws. These Bylaws are adopted for the regulation and management of the affairs of Lincoln Creek Village Homeowners' Association, Inc., a Colorado nonprofit corporation (the "Association") organized to be the association to which reference is made in the Supplemental Declaration of Covenants, Conditions and Restrictions for The Bluffs, The Colony and The Courtyard Homes at Lincoln Creek Village ("Supplemental Declaration"), to perform the functions as provided in the Supplemental Declaration and to further the interests of Owners of Lots within The Bluffs, The Colony and The Courtyard Homes at Lincoln Creek Village.

Section 1.2 - Terms Defined in Supplemental Declaration. Capitalized terms in these Bylaws shall have the same meaning as any similarly capitalized terms in the Supplemental Declaration.

Section 1.3 - Controlling Laws and Instruments. These Bylaws are controlled by and shall always be consistent with the provisions of the Colorado Revised Nonprofit Corporation Act, the Colorado Common Interest Ownership Act, the Supplemental Declaration and the Articles of Incorporation of Lincoln Creek Village Homeowners' Association, Inc. filed with the Secretary of State of Colorado, as any of the foregoing may be amended from time to time.

**ARTICLE II  
OFFICE AND AGENT**

Section 2.1 - Principal Office. The principal office of the corporation shall be 7315 East Orchard Road, Suite 200, Greenwood Village, Colorado 80111. The Board of Directors, in its discretion, may change, from time to time, the location of the principal office.

Section 2.2 - Registered Office and Agent. The Colorado Revised Nonprofit Corporation Act requires that the Association have and continuously maintain in the State of Colorado a registered office and a registered agent whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Association. The initial registered office and the initial registered agent are specified in the Articles of Incorporation of the Association but may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the Office of the Secretary of State of Colorado.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

Section 3.1 - Membership in Association. There shall be one (1) class of members of the Association consisting of:

Owner Members: Owner Members shall be all Owners of Lots except the Declarant.

Declarant Member(s): Declarant Member(s) shall be the Declarant or persons or parties designated by Declarant. Declarant Member(s) shall be entitled to appoint and remove all or a majority of the officers and directors during the Period of Declarant Control, subject to the terms of the Supplemental Declaration and these Bylaws.

The voting rights of members shall be as follows:

(a) Owner Members shall vote as provided in the Supplemental Declaration to approve a raise in the minimum assessment which is greater than that allowed by the Supplemental Declaration; to veto special assessments; to approve mergers, consolidations, or dissolution of the Association; to approve conveyance, dedication, or mortgaging of the Common Elements; to approve amendments to the Supplemental Declaration after the Declarant's rights to amend have terminated; to elect up to two (2) Members to the Board of Directors of the Association with the timing and manner of election to be described in the Bylaws of the Association during the Period of Declarant Control; and to elect a majority of the members of the Board of Directors after the Period of Declarant Control.

(b) Declarant Member(s) shall be entitled to the same voting privileges as have been identified for the Owner Members until the voting rights of the Declarant Member(s) shall cease.

Each Member of the Association (both Owner Members and Declarant Members(s)) shall be entitled to vote on all matters that are subject to a vote by the Owners. Each Owner shall be entitled to one vote for each Lot owned; provided that (i) the Association may suspend any Owner Member's voting rights in the Association during any period or periods that such Owner fails to comply with any obligation of the Member under the Bylaws or the Supplemental Declaration, (ii) no Owner Member shall have the right to vote until the Secretary of the Association has received from either the Member or from a title company licensed to do business in the State of Colorado a certified copy of the recorded deed or other recorded instrument establishing record title to a Lot.

Members shall have no preemptive rights to purchase other Lots or the Membership appurtenant thereto.

Any person or entity qualifying as a Member of more than one voting class may exercise those votes to which the Member is entitled for each class of membership.

#### Section 3.2 - Election of Directors.

(a) Appointed Directors. During the period of time identified in the Supplemental Declaration that the Declarant shall be entitled to appoint directors, the Declarant shall be allowed to appoint a maximum of three (3) directors until that right ceases in accordance with the Supplemental Declaration. Appointed directors need not be members of the Association.

(b) Elected Directors. No later than sixty (60) days after conveyance of twenty-five percent (25%) of Lots to Owner Members, Owner Members shall have elected at least twenty-five percent (25%) of the Board, but not less than one (1) director. No later than sixty (60) days after conveyance of fifty percent (50%) of Lots to Owner Members, Owner Members shall have elected at least one-third (1/3) of the Board. No later than the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant; (ii) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (iii) two (2) years after any right to add new Lots was last exercised by Declarant, if applicable, the Lot Owners (other than Declarant) shall elect the majority of the Board, which majority must be elected by Owner Members and or designated representatives of Owner Members. Each elected director's term shall expire annually.

(c) Number of Directors. The Board of Directors shall consist of a maximum of three (3) individuals. Initially, three (3) directors shall be appointed by the Declarant during the Period of Declarant Control and elected subsequent to the Period of Declarant Control, subject to Section 3.2(b).

(d) Declarant's Rights. The Declarant may voluntarily surrender the right to appoint and remove officers and Members of the Board before termination of the Period of Declarant Control; however, in such an event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

#### Section 3.3 - Annual Meetings and Special Meetings.

(a) Annual meetings of the Members shall be held in December of each year beginning in December of 2008, on such day in December and at such time of day as is fixed by the Board of Directors of The Association and specified in the notice of meeting. The annual meeting shall be held to elect directors of the Association and to transact such other business as may properly come before the meeting.

(b) It shall be the duty of the President, and, should the President fail to do so, of the Vice President, to call a special meeting of the Owners as provided in this section. Special meetings may be called by the President, by a majority of Board Members, or upon a petition signed by twenty percent (20%) of the Members of the Association. Notice of a special meeting shall be given in compliance with Section 3.7. The date of any special meeting being called upon by a petition of Members shall be not less than fourteen (14) days nor more than thirty (30) days from receipt of such petition by the Secretary.

(c) Pursuant to the Colorado Common Interest Ownership Act, at the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Lot Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the proposed budget approved by the Board of Directors shall be mailed to the Owners within thirty (30) days after its adoption along with a written notice

of a meeting of the Association to be held not less than fourteen (14) nor more than sixty (60) days after mailing of the summary to the Owners (or, in the alternative, together with a ballot and information sufficient to satisfy the provisions of Section 109 of Article 127 of the Colorado Revised Nonprofit Corporation Act). Unless Members holding sixty-seven percent (67%) of the total voting power of the Association reject the proposed budget, the budget is ratified. There are no quorum requirements for this meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratify a subsequent budget proposed by the Board of Directors as provided above.

Section 3.4 - Quorum. A quorum is deemed present throughout any meeting of the Association if Members holding twenty percent (20%) of the votes entitled to be cast are present, in person or in proxy at the beginning of the meeting except as otherwise provided in these Bylaws or in the Supplemental Declaration. The question as to the presence of a quorum may only be raised immediately after the meeting has been called to order. If the presence of a quorum has not been questioned or if by count it appears that a quorum is present, then the regularity of the proceedings or the validity of the transactions of the meeting shall in no way be affected by lack of a quorum or by change in the number present that may take place during the meeting. If no quorum be present, the presiding officer may adjourn the meeting to some other time, not later than seven (7) days from the date of such meeting, and such adjourned meeting shall have the same effect as if held on the day appointed.

When a quorum is present at any meeting, the vote of Members representing a majority of the votes present at such meeting (in person or represented by written proxy) shall decide all questions and such vote shall be binding upon all Owners, unless the question is one upon which, by express provision of the Supplemental Declaration, Articles of Incorporation, or these Bylaws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

Section 3.5 - Waiver and Consent. Whenever the vote of Members at a meeting is required or permitted by any provision of the Supplemental Declaration, Articles of Incorporation, or of these Bylaws to be taken in connection with any action, or any other 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 actions to be taken shall be signed by Members holding at least fifty-one percent (51%) of the votes entitled to be cast with respect to the subject matter thereof.

Section 3.6 - Place of Meetings. Meetings shall be held at a suitable place within the State of Colorado convenient to the Members as may be determined by the Board of Directors.

Section 3.7 - Notice of Meetings. Except for meetings held to approve the annual budget pursuant to Section 3.3(e), notice shall be given by the Secretary, at least fourteen (14) but not more than thirty (30) days prior to each meeting, to cause notice to be given to each Owner; provided, however:

(a) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published. Notice by publication is effective on the date of first publication.

(b) Nothing in this Section 3.7 shall prohibit oral notice to members of the Board of Directors concerning its matters and meetings.

(c) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to Owners shall constitute a written notice or report if addressed or delivered to the Owner's address shown in the Association's current list of owners, or in the case of Owners who are residents of the same household and who have the same address in the Association's current list of owners, if addressed or delivered to one of such Owners, at the address appearing on the current list of owners.

(d) The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposals to remove an officer or member of the Board of Directors.

Section 3.8 - Order of Business. The order of business at all meetings shall be as follows to the extent require:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Report of officers
- (d) Report of Board of Directors
- (e) Report of committees

- (f) Election of inspectors of election (in the event there is an election)
- (g) Election of directors (in the event there is an election)
- (h) Unfinished business
- (i) New business
- (j) Adjournment

Section 3.9 - Record Date. The record date for determination of Members entitled to notice of or to vote at a meeting of the Members shall be the date on which the notice of the meeting is mailed or otherwise delivered.

Section 3.10 - Voting List. The officer or agent having charge of the records of the Association shall make, at least ten (10) days before each meeting of Members, a complete list of Members entitled to vote at such meeting or any adjournment thereof arranged in alphabetical order together with the address of such Member, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of the meeting.

Section 3.11 - Voting By Multiple Owners. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast all the voting power allocated to that Lot. If more than one of the multiple Owners are present, the voting power allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners, unless the Supplemental Declaration expressly provides otherwise. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

Section 3.12 - Proxies. At all meetings of the Members, a Member may vote by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. If any Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. Such proxy may be filed with the Secretary of the Association before or at the time of the meeting. A Lot Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it provides otherwise.

Section 3.13 - Voting by Corporations, Limited Liability Companies or Partnerships. The vote of a corporation or limited liability company may be cast by an officer of that corporation or by the manager of the limited liability company in the absence of express notice of the designation of a specific person by the board of directors, members, manager, operating agreement or bylaws of the owning corporation or limited liability company. 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 person presiding over the meeting may require reasonable evidence that a person voting on behalf of a corporation, limited liability company, partnership or Lot Owner is qualified to vote.

Section 3.14 - Lots Owned by Association. The votes allocated to a Lot owned by the Association may not be cast.

Section 3.15 - Majority Vote. The term "Majority Vote" shall mean the votes of Owners representing a majority of the votes represented in person or by proxy at a meeting. If a quorum is present at a meeting, a Majority Vote shall be binding upon all Owners for all purposes except where a higher percentage vote is required in the Supplemental Declaration or these Bylaws.

Section 3.16 - Voting by Mail. The Board of Directors may decide that voting of the Owners on any matter required or permitted by the statutes of Colorado, the Supplemental Declaration, the Articles of Incorporation, or these Bylaws shall be by mail. Pursuant to the Colorado Revised Nonprofit Corporation Act, any action that may be taken at any annual regular or special meeting of the Owners may be taken without a meeting if the Secretary delivers a written ballot to every Owner entitled to vote on the matter.

(a) A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot shall be valid only when the cumulative voting power cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number or

percentage of approvals equals or exceeds the voting percentage that would be required to approve the matter at a meeting at which the total voting percentage cast was the same as the total voting percentage cast by ballot.

(c) All solicitations for votes by written ballot shall: (i) indicate the number of responses or total percentage of voting power of the Association needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of members of the Board of Directors; (iii) specify the time by which a ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(d) A written ballot may not be revoked.

#### ARTICLE IV BOARD OF DIRECTORS

Section 4.1 - Number, Qualifications and Term. The number of directors which shall constitute the whole Board shall be as set forth in Section 3.2, of these Bylaws. All elected directors shall be Owners, an officer, or manager of an Owner (limited liability company or partnership, respectively), if the Owner shall be a corporation, and any such director who ceases to be an Owner shall automatically be deemed to have resigned. At the expiration of the initial term of office of each such respective director, a successor shall be elected to serve a term of one (1) year. All directors shall hold office until their successors have been elected and qualify.

Section 4.2 - Vacancy and Replacement. If the office of any elected director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, a majority of the remaining directors, though less than a quorum, at a special meeting of the directors, duly called for this purpose, shall choose a successor or successors who shall hold office for the unexpired term with respect to which such vacancy occurred.

Section 4.3 - Removal. Elected directors may be removed with or without cause by an affirmative Majority Vote of the Members at any meeting of Members where quorum is present so long as the notice therefor indicates the purpose. No elected director shall continue to serve on the Board if, during that term of office, the director shall cease to be an Owner.

Section 4.4 - Initial Board of Directors. The initial Board of Directors shall consist of three (3) persons designated as such by the Declarant who shall hold office and exercise all powers of the Board of Directors until the expiration of the Period of Declarant Control as provided for in the Supplemental Declaration, as limited by Section 3.2(b) hereof. Any or all of said directors designated in the Declarant Action and/or appointed by Declarant may be replaced by the Declarant during the Period of Declarant Control. Following the Period of Declarant Control, the Owners shall elect all three (3) directors, a majority of whom shall be Owners other than Declarant or designated representatives of Owners other than Declarant.

Section 4.5 - Powers. The Board shall have general charge, management, and control of the affairs, funds, and property of the Association and shall authorize and control all expenditures pursuant and subject to the Articles of Incorporation, the Supplemental Declaration, and these Bylaws. It shall have the powers granted to the Association in the Articles of Incorporation or Supplemental Declaration and the duty to carry out the purposes of the Association according to law and as set forth in the Articles, these Bylaws, and the Supplemental Declaration.

Section 4.6 - Committees. The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each of such committees to consist of two (2) directors which, to the extent provided in said resolution or resolutions and subject to the limitations of Colorado law and of the Supplemental Declaration, shall have and may exercise such powers of the Board in the management of the business and affairs of the Project as the resolution or resolutions of the Board shall specifically provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Committees established by resolution of the Board of Directors shall keep regular minutes of their proceedings and shall report the same to the Board as required.

Section 4.7 - Compensation. Directors and officers shall receive no compensation for their services as such.



Section 4.8 - Meetings.

(a) Following the Period of Declarant Control, the annual meeting of each Board of Directors newly elected by the Owners shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable at the same place as the Owners' Meeting at which time the dates, places, and times of regularly scheduled meetings of the Board shall be set.

(b) There shall be held at least two (2) regularly scheduled meetings of the Board each year without special notice to the directors.

(c) Special meetings of the Board may be called by the President on seven (7) days' notice (except in emergency when less notice may be given) to each director either personally or by mail or telegram except in the event of an emergency when less notice may be given. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) directors. All such notices of special meetings shall state the purpose thereof.

(d) A quorum is deemed present throughout any meeting of the Board of Directors if persons entitled to cast a majority of votes on the Board are present at the beginning of the meeting. Any act of the majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may otherwise specifically be provided by Statute, Articles of Incorporation, by the Supplemental Declaration or by these Bylaws. If a quorum shall not be present at any meeting of directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(e) Before, at, or after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice thereof by that director. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 4.9 - Meetings Open to Owners. Meetings of the Board shall be open to all Owners and Security Interest holders; provided, however, the Board (or any committee of the Board) may hold executive or closed door meetings for matters described in Section 308(4) of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et. seq. (hereinafter "CCIOA"), and may restrict attendance to such meetings as provided in Section 308(3) of CCIOA.

Section 4.10 - Meeting by Telecommunication. The Board of Directors may permit any director to participate in a regular, special or other meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.11 - Board Action in Lieu of Meeting. Any action required or permitted to be taken by the Board of Directors at a board meeting may be taken without a meeting if each and every member of the Board in writing either (i) votes for such action, or (ii) votes against such action or abstains from voting and waives the right to demand that a meeting be held.

(a) The affirmative vote for such action must equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted.

(b) No action taken shall be effective unless done in writing and describing the action taken and otherwise satisfying the requirements of Section 4.11(a), signed by all members of the Board of Directors and not revoked pursuant to Section 4.11(c) below, are received by the Association (including electronically transmitted facsimile or other form of wire or wireless communication). Action taken pursuant to this Section 4.11 shall be effective when the last writing necessary to effect the action is received by the Association unless the writings describing the action taken set forth a different effective date.

(c) Any member of the Board of Directors who has signed a writing pursuant to this Section 4.11 may revoke such writing by a writing signed and dated by the Board member describing the action and stating that the prior vote with respect thereto is revoked. Provided, however, such writing must be received by the Association before the last writing necessary to effect the action is received.

(d) Action taken pursuant to this Section 4.11 has the same effect as action taken at a meeting of the Board of Directors and may be described as such in any record of the Association.

(e) All signed written instruments necessary for any action taken pursuant to this Section 4.11 shall be filed with the minutes of the meetings of the Board of Directors.

Section 4.12 - Financial Statements. The Board shall provide for an annual accounting of Association funds and an audited or reviewed financial statement to be prepared and presented to the Association within one hundred twenty (120) days of the Association's fiscal year-end (provided the Association has been established for a full fiscal year). Copies of the accounting report and audit shall be made available to any Owner or any holder, insurer or guarantor of any first mortgage on any Lot within the Project on submission of a written request for the same and upon the payment by such party of the reasonable cost of copying the same.

Section 4.13 - Management Agent. The Board of Directors may employ under a term contract or otherwise at a compensation established by the Board of Directors a management agent to perform such duties and services as the Board shall authorize subject to the provisions and limitations set forth in the Supplemental Declaration and Article VI of these Bylaws.

Section 4.14 - Limited Liability; Indemnification. Subject to the provisions of the Articles of Incorporation of the Association, neither Declarant, the Association, nor an elected Board Member shall be liable to the Association or any Owner for any action or for any failure to act with respect to any matter, so long as such person or entity was not guilty of willful and wanton misconduct in taking such action or failing to act.

The members of the Board, the Declarant, or the Association shall not be liable, individually or as a group, to Owners, Members, or other interested persons for errors in judgment, negligence, or otherwise, unless guilty of willful and wanton misconduct. The Association shall indemnify, defend, and hold the Declarant, any Member of the Board, and any employee or agent of Declarant or the Association harmless against any liability or claims made by any Owner, Member, or other interested person, unless and until it is determined that any of them acted in bad faith, with malicious motive, or engaged in willful and wanton misconduct. Should any of the latter be determined, then the Association's responsibility as to any person so acting shall terminate, and if any expenses or other payments have been made pursuant hereto for the benefit of any person who so acted, then the Association shall have a cause of action against that person for reimbursement for all such payment.

The indemnification authorized by this Section 4.14, shall include payment of (i) reasonable attorney's fees or other expenses incurred in settling any action or proceedings, or threatened action or proceeding, or incurred in any finally adjudicated legal action or proceeding, and (ii) expenses incurred in the removal of any liens affecting any property of the indemnitee. Indemnification shall be made from assets of the Association, and no Owner shall be personally liable for any indemnitee.

Section 4.15 - Colorado Common Interest Ownership Act. The Board of Directors as described herein shall be considered the "Executive Board" as described in the CCIOA. All provisions of the CCIOA which are applicable to an Executive Board shall be applicable to the Board of Directors described herein.

Section 4.16 - Board Members' Fiduciary Duty. If appointed by the Declarant, such directors are required to exercise care required of fiduciaries of the Owners in the performance of their duties. If not appointed by the Declarant, no director shall be liable for actions taken or omissions made in performance of such director's duties, except for wanton and willful acts or omissions.

## ARTICLE V OFFICERS

Section 5.1 - Elective Officers. The Board shall elect at its annual meeting each year a President, a Vice President, a Secretary, and a Treasurer. All officers (other than those selected by Declarant) must be Owners.

Section 5.2 - Term. Each officer shall hold office until his or her successor is elected and shall qualify, but any officer may be removed and/or replaced, with or without cause, at any time by the affirmative vote of a majority of the whole Board of Directors.

Section 5.3 - The President. The President shall be chosen from among the members of the Board of Directors and shall be the Chief Executive Officer of the Association. He or she shall preside at all meetings of the Association and the Board of Directors, shall be a member of all standing committees except any nominating committee, and shall perform such other duties as are incident to the office or properly required by the Board.

Section 5.4 - The Vice President. The Vice President shall perform such duties as are properly required by the Board of Directors and, in the absence or disability of the President, take the place and perform all duties of the President.

Section 5.5 - The Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board in a business-like manner and shall issue all general notices. The Secretary shall make such reports and perform such other duties as are incident to the office or are properly required by the Board. The minutes of all such meetings shall be available for inspection by Owners at all reasonable times. The Secretary shall keep current copies of the following documents and make the same available for inspection by Lot Owners or holders, insurers or guarantors of first mortgages secured by Lots within the Project: (i) Supplemental Declaration of Covenants, Conditions and Restrictions for The Bluffs, The Colony and The Courtyard Homes at Lincoln Creek Village; (ii) Articles of Incorporation for Lincoln Creek Village Homeowners' Association, Inc.; (iii) these Bylaws; (iv) minutes of Board meetings and Owners' meetings; and (v) other records as may be determined by the Board.

Section 5.6 - The Treasurer. The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate chronological account of receipts and disbursements in books belonging to the Association including the vouchers for such disbursements and shall deposit all monies and other valuable effects in the name and the credit of the Association in such depositories as may be designated by the Board of Directors.

He or she shall disburse the funds of the Association as may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and directors, at the regular meetings of the Board or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Association.

He or she shall keep detailed financial records and books of account of the Association including a separate account for each Lot which, among other things, shall contain the amount of each Assessment against such Lot, the date when due, the amounts paid thereon, and the balance remaining unpaid. Such financial records shall be made available for inspection by Lot Owners or by holders, insurers, and guarantors of first mortgages that are secured by Lots in the Project.

He or she shall perform all other duties incident to the office or which may be properly required by the Board.

Section 5.7 - Agreements. All agreements and other instruments authorized by the Board shall be executed by the President and/or such other person or persons as may be designated by the Board.

Section 5.8 - Vacancy and Replacement. If the position of any officer becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, the Board, at a special meeting of the officers duly called for this purpose, shall choose a successor or successors who shall hold office for the unexpired term with respect to which such vacancy occurred.

Section 5.9 - Removal. Officers may be removed with cause by an affirmative Majority Vote of the Members at any meeting of Members when the notice therefor indicates the purpose. No officer shall continue to serve on the Board if, during the term of office, the officer shall cease to be an Owner.

Section 5.10 - Assistants. An Assistant Secretary shall be appointed by the Board of Directors if the Board of Directors determines the position is necessary. The qualifications for the position of Assistant Secretary shall be identical to the position of Secretary. If appointed, the Assistant Secretary shall serve in the absence of the Secretary, and shall have all powers, duties and responsibilities of the Secretary.

Section 5.11 - Informal Action by Directors. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the directors.

Section 5.12 - Amendments to the Supplemental Declaration. All amendments to the Supplemental Declaration on behalf of the Association shall be:

- (a) Prepared by the Secretary or any other officer as directed by the President;
- (b) Executed by the President;

- (c) Certified to by the Secretary;
- (d) Recorded by the Secretary or any other officer.

Section 5.13 - Officers' Fiduciary Duty. If appointed by the Declarant, such officers are required to exercise care required of fiduciaries of the Owners in the performance of their duties. If not appointed by the Declarant, no officer shall be liable for actions taken or omissions made in performance of such officer's duties, except for wanton and willful acts or omissions.

## ARTICLE VI MANAGING AGENT

Section 6.1 - Employment of Managing Agent. The Association shall have the power to retain and pay for the services of a Manager or Managers to undertake any of the management or functions for which the officers or directors of the Association has responsibility under the Supplemental Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to any such Manager. Any contract or agreement with any such Manger shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. Any agreement or contract with a Manager shall contain any other provisions which are required to be contained therein by any government mortgage agency.

Section 6.2 - Fidelity Insurance. The Manager shall maintain fiduciary insurance coverage or a bond in an amount not less than the higher of (i) Fifty Thousand Dollars (\$50,000.00); (ii) an amount not less than three (3) months' current assessments plus reserves; or (iii) such other amount as the Board of Directors may require.

Section 6.3 - Maintaining Association Funds. The Manager shall maintain all funds and accounts of the Association separate from the funds and accounts of other Associations managed by the Manager and shall maintain all rescrve accounts of each Association so managed separate from operational accounts of the Association.

Section 6.4 - Annual Accounting. An annual accounting for Association funds and a financial statement shall be prepared and presented to the Association by the Manager, a public accountant, or a certified public accountant.

## ARTICLE VII NOTICES AND MAILING ADDRESSES

Each Owner shall register a mailing address with the Association, and except for monthly statements, notices for Members' meetings, and other routine notices, all other notices or demands intended to be served upon an Owner (including, without limitation, notice of matters affecting the Project) shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the event an Owner fails to register a mailing address with the Association as set forth herein, such Owner's registered mailing address shall be the mailing address of the Lot owned by such Owner. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent certified mail, postage prepaid, to the office of the Association at such address as identified by the Association in writing to each Owner.

Whenever any notice is required to be given under the provisions of the Supplemental Declaration, or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE VIII MORTGAGEES

Section 8.1 - Notice to Association. A Security Interest holder in any Lot shall be entitled to notice of certain events of the Association, more specifically enumerated in the Supplemental Declaration, upon request, if such Security Interest holder provides the Association notice of the Security Interest, including the Security Interest holder's name and address, and identification of the property subject to such Security Interest.

Section 8.2 - Notice of Default. The Association shall give notice to a Lot Owner of a default in payment of General Assessments or other default imposed by the terms and conditions of the Supplemental Declaration, the Articles of Incorporation, or Bylaws of the corporation, and if such default is not cured within sixty (60) days, the Association shall send a copy of such notice to each holder of an Eligible Security Interest.

#### ARTICLE IX AMENDMENTS

Section 9.1 - Amendments to Bylaws. Amendments to these Bylaws may be adopted at a regular or special meeting of the members of the Association upon receiving the vote of Members representing seventy-five percent (75%) of the total voting power of the Association and who are entitled to vote thereon; provided, however, that no amendments shall be adopted which would render these Bylaws inconsistent with the Supplemental Declaration. Notwithstanding any other provision of these Bylaws to the contrary, any amendments to these Bylaws that purport to amend or delete any section under Article X (BINDING ARBITRATION; LIMITATION OF DAMAGES, WAIVER OF RIGHT TO TRIAL BY OWNERS; NO DESTRUCTIVE TESTING) of these Bylaws shall be effective only as to claims, disputes or issued that (i) arise entirely after the effective date of such amendment, and (ii) are based solely on factual circumstances that occur entirely after the effective date of such amendment. No such amendment to these Bylaws shall be effective (a) until written evidence of such amendment, executed and certified to under penalty of perjury by the President of the Association that such amendment was properly procured, is recorded in the real estate records of the Clerk and Recorder of the County of Douglas, State of Colorado; and (b) unless similar provisions of the Supplemental Declaration and the Articles of Incorporation of the Association (if applicable) are also amended to reflect the same changes or deletions.

Section 9.2 - Amendments to Supplemental Declaration. Except as otherwise provided in the Supplemental Declaration, any provision or restriction contained in the Supplemental Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by members of the Association holding at least sixty seven percent (67%) of the voting power of the Association, as more specifically provided by the Supplemental Declaration. The amendment or repeal shall be effective upon the Recordation in the office of the Clerk and Recorder of the County of Douglas, State of Colorado, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the Members as herein provided.

#### ARTICLE X BINDING ARBITRATION; LIMITATION OF DAMAGES; WAIVER OF RIGHT TO TRIAL BY OWNERS

The Association acknowledges that Owners of Lots within the Project have agreed (either expressly by agreement with the original seller of Lots within the Project, or by taking title to a Lot subject to notice set forth in the Supplemental Declaration and in the real estate records affecting the Lot and the Project., subject to the specific deed restrictions and other specific restrictions discussed herein) that in exchange for a unified consolidated forum for resolving disputes relating to any potential design or construction defect allegations with or among the original Declarant, the contractor, subcontractors, design professionals or other relevant parties, Owners have agreed to **BINDING ARBITRATION, LIMITATION ON TYPES OF DAMAGES AND AMOUNT OF DAMAGES,** and a **WAIVER OF THE RIGHT TO A TRIAL BY JURY OR TO A JUDGE** for any and all such claims. The Association is obligated to and shall honor such waivers and obligations of the Owners (for example, waivers of trial by jury and the obligation for binding arbitration) and shall only participate in arbitration whenever it is designated as a party in an action including an Owner. The Association shall not voluntarily participate in any litigation in which there are allegations of construction or design defects relating to the Project or any Lots within the Project without the express written consent of members representing at least sixty-seven percent (67%) of all members of the Association. This Article X cannot be amended or deleted from these Bylaws without the express written consent of at least seventy-five percent (75%) of all members of the Association, notwithstanding any other quorum requirements.

#### ARTICLE XI MISCELLANEOUS

Section 11.1 - Severability. Should any of the covenants, terms, or provisions herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of these Bylaws shall, nevertheless be and remain in full force and effect.

Section 11.2 - Construction. Wherever the masculine singular form of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine, or neuter; singular or plural; wherever the context so requires.

Section 11.3 - Rules of Procedure. The Rules of Parliamentary Procedure as set forth in Roberts' "Parliamentary Law" shall prevail at all meetings of members or directors of the Association.

Section 11.4 - Interpretations. In the event that any question arises with respect to the construction of any of the provisions of the Bylaws or the Rules and Regulations of the Association, the decision of the Board with respect thereto shall be final and binding upon the Association and the Owners.

Section 11.5 - Consent for Litigation or Arbitration. In order to protect the Members and the Association from indiscriminate arbitration or litigation, and the accompanying expense, distraction and commitment of financial and other resources, the Association shall not initiate or participate in any arbitration or litigation (other than the collection of dues payable to the Association), in its own name or on behalf of the Members, without complying with the provisions of this Section 11.5. Prior to the initiation or participation by the Association in any arbitration or litigation, the Board must first give due consideration to (a) the expense, distraction, and commitment of financial and other resources that will be incurred or suffered by the Association and its Members; and (b) whether mediation is a valid and reasonable alternative to such arbitration or litigation. If the Board reasonably determines that arbitration or litigation is appropriate after such due consideration, the Board shall (i) call a special meeting of the Members (pursuant to the terms of these Bylaws); (ii) report to the Members at the Special Meeting all of the Board's concerns, deliberations and conclusions as required in above Section 11.5(a) and (b); (iii) establish a budget for such arbitration or litigation and describe that budget in reasonable detail to the Members; (iv) recommend to the Members that the Association initiate or participate (as the case may be) in arbitration or litigation; and (v) recommend adoption of the budget for such action. Notwithstanding any other provision of the Supplemental Declaration, the Articles or these Bylaws, and regardless of the number of Members actually attending such Special Meeting, the Association shall not initiate or participate in any arbitration or litigation without the prior written consent of Members representing at least sixty-seven percent (67%) of all Members of the Association to that course of action, subject to the budget for such action which must be separately approved by the same percentage of Members. The above procedure shall not be required whenever the Association is named as a defendant in an arbitration or litigation; however, the Board shall attempt to mediate or seek alternative dispute resolution of any such dispute and the Association shall not expand the scope of such dispute by prosecuting counterclaims without Members' consent as required by this Section 11.5. This Section 11.5 cannot be amended or deleted from these Bylaws without the express written consent of at least seventy-five percent (75%) of all members of the Association, notwithstanding any other quorum requirements.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Lincoln Creek Village Homeowners' Association, Inc., a Colorado non-profit corporation (the "Association"); and
2. The foregoing Bylaws, comprised of twelve (12) pages, including this page, constitute the Bylaws of the Association duly adopted at the meeting of the Board of Directors of the Association duly held on September 19, 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 26<sup>th</sup> day of September, 2007.

(Seal)

Janelle Taylor  
Janelle Taylor, Secretary