

COPY
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BYLAWS

OF THE

**JACKSON CREEK FILING NO. 5
HOMEOWNERS' ASSOCIATION, INC.**

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**BYLAWS
OF
JACKSON CREEK FILING NO. 5
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 Jackson Creek Filing No. 5 Homeowners' Association, Inc., a Colorado nonprofit corporation (the "Association") organized to be the association to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Jackson Creek Filing No. 5 ("Declaration"), to perform the functions as provided in the Declaration and to further the interests of Owners of Lots within Jackson Creek Filing No. 5.

Section 1.2 - Terms Defined in Declaration. Capitalized terms in these Bylaws shall have the same meaning as any similarly capitalized terms in the 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 Declaration and the Articles of Incorporation of Jackson Creek Filing No. 5 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 9116 West Bowles Avenue, Unit 15, Littleton, Colorado 80123. 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 two classes of members of the Association, to-wit:

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 Declaration and these Bylaws.

The voting rights of members shall be as follows:

(a) Owner Members shall vote as provided in the Declaration to approve a raise in the minimum assessment which is greater than that allowed by the 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 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 the rules and regulations of the Association adopted by the Board of Directors or with any other obligation of the Member under the Bylaws or the 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 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 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 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 two (2) Directors. No later than the expiration of the period of Declarant Control (as described in Section 3.2(c) of the Declaration), Owner Members shall elect at least a majority of the Directors, which majority must be Owner Members or designated representatives of Owner Members. At such time as any Director is elected by Owners, either during the period of Declarant Control or subsequent to that period, for purposes of apportioning the elected members of the Board of Directors, the Association may be divided into no more than three (3) representative areas. After apportionment, Owner Members shall elect the Board of Directors in accordance with an election schedule which shall be established by the initial Board of Directors, appointed by the Declarant, with the qualification that one-third (1/3) of the total number of the elected Board Members' terms shall expire annually. Elected Members of the Board shall be Owners within Jackson Creek Filing No. 5.

(c) Number of Directors. The Board of Directors shall consist of a maximum of five (5) individuals. Three (3) directors shall be appointed during the period of Declarant Control and elected subsequent to the period of Declarant Control. Two (2) additional directors shall be elected as provided in Section 3.2(b) during the period of Declarant Control. After the period of Declarant Control, the number of Directors shall be five (5), and all directors shall be elected.

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 2005, 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 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 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 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(c), 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 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 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 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 Declaration. 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. The Lot Owners shall elect up to two (2) directors to increase the total number of Directors to five (5) members as provided for in Section 3.2(b), of these Bylaws. Following the period of Declarant Control, the Owners shall elect all five (5) 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 Declaration, and these Bylaws. It shall have the powers granted to the Association in the Articles of Incorporation or 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 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 Declaration, shall have and may exercise such powers of the Board in the management of the business and affairs of Jackson Creek Filing No. 5 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. The provisions of this Section 4.6 shall not apply to the Architectural Review Committee nor the Tribunal (per Section 12.4) and shall not require a Director as a member of those Committees.

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 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 to 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 Institutional Mortgagees; 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 - Audited Financial Statements. The Board shall provide for an annual accounting of Association funds and an audited 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 Jackson Creek Filing No. 5 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 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.

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 Jackson Creek Filing No. 5: (i) Declaration of Covenants, Conditions and Restrictions for Jackson Creek Filing No. 5; (ii) Articles of Incorporation for Jackson Creek Filing No. 5 Homeowners' Association, Inc.; (iii) these Bylaws; (iv) Rules and

Regulations of the Association as well as any other rules concerning Jackson Creek Filing No. 5; (v) minutes of Board meetings and Owners' meetings; and (vi) 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 Jackson Creek Filing No. 5.

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 Declaration. All amendments to the 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.

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 this 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 Manager 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 reserve 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 Jackson Creek Filing No. 5) 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 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

ARCHITECTURAL REVIEW COMMITTEE

Section 8.1 - Composition. If activated by the Board of Directors of the Association, the members of the Committee shall include three (3) persons appointed by the Board of Directors and shall serve staggered three (3) year terms as determined by the Board after the period of Declarant Control. Membership to the Architectural Review Committee shall be limited to Association Members.

Section 8.2 - Vacancies. Appointments to fill vacancies of unexpired terms to the Committee shall be made by the Board, and the individual selected shall complete the unexpired term if any vacancy is created.

Section 8.3 - Duties. The Architectural Review Committee shall be responsible for the administration of the Design Guidelines, as defined in the Declaration, to facilitate the purposes and intent of the Declaration.

ARTICLE IX

RULES AND REGULATIONS

Reasonable uniform rules and regulations governing the use of the Common Elements and Limited Common Elements and the conduct of persons entitled to use such Property may be adopted and amended from time to time by the Board. All Lot Owners shall obey the rules and regulations as promulgated by the Board.

ARTICLE X

MORTGAGEES

Section 10.1 - Notice to Association. A Mortgagee who holds a Security Interest in any Lot shall be entitled to notice of certain events of the Association, more specifically enumerated in the Declaration, upon request, if such Mortgagee provides the Association notice of the Mortgagee's Security Interest, including the Mortgagee's name and address, and identification of the property subject to such Security Interest.

Section 10.2 - Notice of Default. The Association shall give notice to a Lot Owner of a default in payment of Common Expense Assessments or other default imposed by the terms and conditions of the 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 a Mortgage covering such Lot if the name and address of such Mortgagee has been previously furnished to the Association as provided in Section 10.1.

ARTICLE XI

AMENDMENTS

Section 11.1 - 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 Declaration.

Section 11.2 - Amendments to Declaration. Except as otherwise provided in the Declaration, any provision or restriction contained in the 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 Declaration. The amendment or repeal shall be effective upon the Recordation in the office of the Clerk and Recorder of the County of El Paso, 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 XII

NOTICE AND HEARING PROCEDURES

Section 12.1 - Association Enforcement Rights. In the event of an alleged violation, by a Member or a guest/related user of a Member ("Respondent"), of the Declaration, these Bylaws or the Rules and Regulations of the Association, the Board of Directors shall have the right, upon an affirmative vote of a majority of all Directors on the Board, to take any one or more of the actions and to pursue one or more of the remedies permitted under the provisions of the Declaration, these Bylaws, or the Rules and Regulations of the Association. If, under the provisions of the Declaration, these Bylaws, or such Rules and Regulations, Notice and Hearing is required prior to taking action or pursuing remedies, the following provisions of Article XII of these Bylaws shall be applicable. The failure of the Board or the Review Committee to enforce the Rules and Regulations of the Association, these Bylaws or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth and provided in the Declaration, the Rules and Regulations of the Association or these Bylaws shall be cumulative and none shall be exclusive. However, any individual Member must exhaust all available internal remedies of the Association prescribed by these Bylaws and the Rules and Regulations of the Association before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Declaration, these Bylaws or the Rules and Regulations of the Association, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of any Assessments, as provided for in the Declaration.

Section 12.2 - Written Complaint. A hearing to determine whether enforcement action under the Declaration, the Rules and Regulations of the Association or these Bylaws should be taken and shall be initiated by the filing with the President or the Board of Directors of the Association of a written complaint by any Member of the Association, any officer, any member of the Board of Directors or the Review Committee or any employee or agent of the Association (the "Complaint"). The Complaint shall contain a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged and a reference to the specific provisions of the Declaration, these Bylaws or the Rules and Regulations of the Association which the Respondent is alleged to have violated. If the charges relate to a party who is a tenant, invitee, spouse, child or other party occupying a Lot with the Owner's consent ("Related User"), both the Related User and the Member shall be considered as Respondents.

Section 12.3 - Notice of Complaint and Notice of Defense. A copy of the Complaint shall be served on each Respondent in accordance with the notice provisions set forth in the Declaration, together with a statement which shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of a person named as Respondent in the accompanying Complaint is delivered or mailed to the Board of Directors within fifteen (15) days after the Complaint is served upon you, the Board of Directors may proceed upon the Complaint without a hearing and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense" to the Board of Directors at the following address:

You may, but need not be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Directors, you may contact -----

A Respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board of Directors. Regardless of whether or not a Notice of Defense is filed, a Respondent may file a separate statement wherein he or she sets forth information which he or she feels is relevant to the circumstances surrounding the alleged violation giving rise to the Complaint and which may justify his or her action or inaction, as the case may be (the "Statement of Mitigation").

Section 12.4 - Tribunal. Upon receipt of a written Complaint, the President shall appoint a Hearing Committee ("Tribunal") of three (3) Association Members who are natural persons. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing next-door neighbors of the Respondent or any Members of the Association who are essential witnesses to the alleged violation giving rise to the Complaint. The decision of the President shall be final, except that each Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence at the hearing. In the event of such a challenge, the Board of Directors shall meet to determine the sufficiency of the challenge. If such a challenge is sustained, the President shall appoint another Member to replace the challenged member of the Tribunal. All decisions of the Board of Directors in this regard shall be final. The Tribunal shall elect a Chairman and appoint a hearing officer who shall take evidence and ensure that a proper record of all proceedings is maintained.

Section 12.5 - Notice of Hearing. The Tribunal shall serve a Notice of Hearing, as provided herein, on all parties at least ten (10) days prior to the hearing if such hearing is requested by a Respondent. The hearing shall be held no sooner than thirty (30) days after the Complaint is mailed or delivered to each Respondent. The Notice of Hearing to each Respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before a Tribunal appointed by the President of the Jackson Creek Filing No. 5 Homeowners' Association, Inc., at -----

----- on the ----- day of -----,
20_____, at the hour of ----- m., upon the charges made in the Complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to seek the attendance of witnesses and to compel the production of books, documents or other items in the possession of the Association by applying to the Board of Directors of the Association.

Section 12.6 - Hearing.

(a) Oral evidence shall be taken only on oath or affirmation administered by a member of the Tribunal. The use of affidavits and written questions and responses in lieu of oral testimony shall be encouraged by the Tribunal.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues; to impeach any witness; and to rebut the evidence against such party. If Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitive evidence shall be excluded.

(d) Neither the person filing the Complaint nor the Respondent must be in attendance at the hearing. The hearing shall be open to attendance by any Members of the Association to the extent of the permissible capacity of the hearing room.

(e) In rendering a decision, official notice may be taken at any time of any provision of the Declaration, these Bylaws, the Rules and Regulations of the Association or any generally understood matter within the working of the Association. Persons present at the hearing shall be informed of the matters to be noticed by the Tribunal, and these matters shall be made a part of the record of proceedings.

(f) The Tribunal may grant continuances on a showing of good cause.

(g) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear the case and the hearing officer shall replace the withdrawing member.

Section 12.7 - Decision. If a Respondent fails to file a Notice of Defense as provided in Section 12.3, of these Bylaws, or fails to appear at a hearing, the Tribunal may take action based upon the evidence presented to it without further notice to the Respondent. However, the Respondent may make any showing by way of a Statement of Mitigation. The Tribunal will prepare written findings of fact and recommendations for consideration by the Board of Directors. The Tribunal shall make its determination only in accordance with these Bylaws. After all testimony and documentary evidence has been presented by the Tribunal, the Tribunal may vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling. A copy of the findings and recommendations of the Tribunal may be posted by the Board of Directors at a conspicuous place in Jackson Creek Filing No. 5, and a copy shall be served by the President to each Person directly involved in the matter and his attorney, if any, in accordance with the notice provisions set forth in the Declaration. Disciplinary action, levy of an Assessment or other action or remedies which require Notice and Hearing under the Declaration, these Bylaws or Rules and the Regulations of the Association shall be imposed only by the Board of Directors of the Association and in accordance with the findings and recommendations of the Tribunal. The Board of Directors may adopt the recommendations of the Tribunal in their entirety or the Board may reduce the proposed penalty and adopt the balance of the recommendations. In no event shall the Board impose more stringent enforcement action than recommended by the Tribunal. The decision of the Board shall be in writing and shall be served and may be posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board shall become effective ten (10) days after it is served upon each Respondent, unless otherwise ordered in writing by the Board of Directors. The Board may order a reconsideration at any time within fifteen (15) days following a service of its decision on the involved persons, on its own motion or on petition by any party. However, no action against a Respondent arising from the alleged violation shall take effect prior to the expiration of the later of (a) fifteen (15) days after each Respondent's receipt of the Notice of Hearing; or (b) five (5) days after the hearing required herein.

ARTICLE XIII

BINDING ARBITRATION; LIMITATION OF DAMAGES, WAIVER OF RIGHT TO TRIAL BY OWNERS; NO DESTRUCTIVE TESTING

Section 13.1 - Binding Arbitration, Limitation of Damages, and Waiver of Right to Trial by Owners. The Association acknowledges that Owners of Lots within Jackson Creek Filing No. 5 have agreed (either expressly by agreement with the original seller of Lots within Jackson Creek Filing No. 5, or by taking title to a Lot subject to notice set forth in the Declaration and in the real estate records affecting the Lot and Jackson Creek Filing No. 5, 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 Jackson Creek Filing No. 5 or any Lots within Jackson Creek Filing No. 5 without the express written consent of members representing at least sixty-seven percent (67%) of all members of the Association. This Section 13.1 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.

Section 13.2 - No Destructive Testing. In the event any design or construction defect relating to the construction or maintenance of common areas within Jackson Creek Filing No. 5 is alleged, neither the Association, any member of the Association, nor any Owner of a Lot within Jackson Creek Filing No. 5 shall have a right to perform destructive testing on any portion of the common areas within Jackson Creek Filing No. 5 (including, without limitation, any common areas adjacent to or being a part of any Lot within Jackson Creek Filing No. 5) unless the party proposing such destructive testing can show direct proof that there is actual, identifiable and confirmable evidence of a material defect in construction or design, which evidence is provided to the Association and reviewed and confirmed by the Association prior to any such destructive testing. Mere allegation of defects in construction or design (without concrete proof of such defect) will not be sufficient. In the event substantial evidence is provided to the Association, and in the event the Association has thoroughly reviewed and confirmed the existence of a material defect in construction or design, the Association shall not grant its consent to any destructive testing unless and until the Association has received both an affirmative, written obligation from the party who proposes such testing to immediately repair and/or replace the tested area and improvements, together with a cash deposit, letter of credit or bond to cover one hundred twenty five percent (125%) of the estimated cost to repair and/or replace the areas and improvements to be tested, such deposit, letter of credit or bond being in a form that will allow the Association to immediately draw against the same in the event the common areas subject to such destructive testing is not repaired or replaced to an as-new condition within seven (7) days from the date such testing has been completed, or within twenty one (21) days from the date such testing commenced (whichever is earliest). This Section 13.2 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 XIV MISCELLANEOUS

Section 14.1 - 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 14.2 - 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 14.3 - 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 14.4 - 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 14.5 - 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 14.5. 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 14.5(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 this 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 14.5. This Section 14.5 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 Jackson Creek Filing No. 5 Homeowners' Association, Inc., a Colorado non-profit corporation (the "Association"); and
2. The foregoing Bylaws, comprised of fourteen (14) 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 the 17th day of October, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 17th day of October, 2004.

(Seal)

Janet Lovall Dod
Secretary