

***SECOND AMENDED AND RESTATED
BYLAWS
OF
THE PINERY HOMEOWNERS'
ASSOCIATION, INC.***

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SECOND AMENDED AND RESTATED
BYLAWS
OF
THE PINERY HOMEOWNERS' ASSOCIATION, INC.

RECITALS

The Pinery Homeowners' Association, Inc., a Colorado nonprofit corporation ("**Association**" or "**PHA**"), certifies that:

- (1) The PHA and required number of Members [at least a two-thirds vote of 100 voting Members, and after at least two weeks notice in writing was provided to each Member of the PHA (via the PHA newsletter and via the PHA website) which notice set forth the proposed amendment, alteration, or change, together with the place and hour of the meeting at which the approval vote was cast] desire to amend and restate the Bylaws currently in effect as set forth below.
- (2) The Members voting to approve those Bylaws and the PHA desire to continue "The Pinery" based on its past record and character, and also based on its status as a common interest community under the Colorado Common Interest Ownership Act.
- (3) Voting in the Pinery is based on one Lot - one vote, with an Owner required to be in good standing, as set forth below.
- (4) The Members and the PHA do not desire to create powers in the PHA that are autocratic; but rather, desire that the PHA and the Community continue to operate as in the past, yet with all Owners as "Members," and in a manner where the PHA and its committees continue to reach out to Owners/Members to build consensus in the best practices and best operations for "The Pinery."
- (5) The provisions set forth in these Amended and Restated Bylaws supersede and replace the existing Bylaws and all past amendments.
- (6) The Bylaws of the PHA are amended by striking in their entirety all of the existing Bylaws and by substituting the following:

ARTICLE 1 -- INTRODUCTION, PURPOSES AND DEFINITIONS

Section 1.1 Introduction/"The Pinery" is a Common Interest Community/501(c)(4) Status. These are the Bylaws of The Pinery Homeowners' Association, Inc., which association operates under the Colorado Revised Nonprofit Corporation Act, as amended, and applicable

portions of the Colorado Common Interest Ownership Act, as amended (“**CCIOA**” or the “**Act**”), as set forth in the Declarations. “The Pinery” is a common interest community under CCIOA, based on rulings by a Douglas County Judge and by determinations of the Board and the Members. As a common interest community under CCIOA, the Community and the PHA are subject to those parts of CCIOA that apply to communities that were in existence on July 1, 1992. The PHA is also a 501(c)(4) exempt organization, under rulings of and a prior application and approval of the IRS

Section 1.2 Purposes. The purposes for which the PHA was formed are to preserve and enhance the value of the properties of Members and to operate, manage, supervise and care for the Common Interest Community known as “the Pinery” and the common elements (as defined under CCIOA, which property may also be known as “**Common Area**”) or of “the Pinery” (“**Community**”), situated in Douglas County, State of Colorado, as the Community was created pursuant to the Declarations and plats.

Section 1.3 Definitions. Terms used herein shall have the meanings set forth in the Declarations, unless the context requires otherwise, or unless expressly defined in these Bylaws, or unless defined below:

“**Association**” or “**PHA**” means the Pinery Homeowners’ Association, Inc., a Colorado nonprofit corporation.

“**The Pinery**” or “**Community**” or “**Common Interest Community**” means the real estate described in the recorded Declarations with respect to which a person, by virtue of such person’s ownership of a Lot, is obligated to pay dues to the PHA.

“**Declarations**” or “**Covenants**” means any recorded instruments, however denominated, including the Protective Covenants for Filings 1 – 8A Amended, all of which, together, have created the Pinery as a Common Interest Community, including any amendments to those instruments and also including, but not limited to, plats and maps.

“**Lot**” or “**Unit**” means a physical portion of the Pinery, which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declarations and/or plats.

ARTICLE 2 -- MEMBERSHIP

Section 2.1 Membership in the PHA.

- (a) Every person or entity who is a record owner of a Lot or property which is subject to the Declarations (consisting of the Protective Covenants and all related documents that are deemed a part of a “declaration” as defined under CCIOA and as defined and treated in the holdings and rulings of the Colorado Supreme Court in the case of Evergreen Highland Association v. West, including the Protective Covenants for Filings 1 – 8A Amended) is and shall be a Member of the PHA.

- (b) Membership shall be appurtenant to and may not be separated from ownership of any Lot or property.
- (c) Ownership of a Lot or property shall be the sole qualifications for membership.
- (d) Each Member shall be allocated votes based on one vote for each Lot, with good standing status of the Owner, as a Member, required as set forth in provisions of these Bylaws.
- (e) Certain neighborhoods within, adjacent to or near The Pinery may also have their own owners association (“**HOA**”). The PHA is independent of these HOAs and membership in such other HOAs neither includes nor precludes Membership in the PHA.

Section 2.2 Annual Dues, Assessments, Other Sums of the PHA and Suspension of Member Rights.

- (a) Current Dues. At the time these Bylaws were presented to the Members for approval, the annual dues were \$30.00.
- (b) Proration. Dues may be prorated to reflect only one, two, or three quarters, as appropriate to the date a new Member joins the PHA.
- (c) Payment. PHA dues may either be paid in full for Members or in periodic installments (for participants in PHA programs that collect PHA dues with other program fees).
- (d) First Limitation on Dues Increases. The annual dues are required to not be greater than \$30.00 per year for at least one full fiscal year following the year in which these Bylaws are adopted.
- (e) Second Limitation on Dues Increases. After the expiration of one full fiscal year, following the year in which these Bylaws are adopted, the dues may be raised by up to \$3.00 per year, by the Board, without the vote or approval of the Members. After the expiration of one full fiscal year, following the year in which these Bylaws are adopted, the dues may be raised by more than \$3.00 per year only with the approval of at least a majority of a quorum of the Members.
- (f) Limitation on any Additional Assessments. Assessments, above and beyond the dues of the PHA, may not be imposed by the PHA without the affirmative vote and approval of at least 500 voting Members, and with more votes for the proposed assessment than against.

- (g) Results of Nonpayment. During any period in which a Member shall be in default in the payment of any annual dues, charges agreed to be paid by an Owner or charges or assessments that the PHA is authorized to collect levied by the PHA, the voting rights of such Member shall be deemed suspended by the Board of Directors, without notice or hearing, until such sums have been paid.

Section 2.3 Use of Words, Names and Marks. No resident or Owner shall use the words "The Pinery", the "Pinery Homeowners' Association," the "Pinery Architectural Review Committee," or the "Pinery Community Services Committee" or the logo, trade mark or service mark of The Pinery Community, the Association or the Committees, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the PHA Board of Directors.

ARTICLE 3 -- MEETINGS OF MEMBERS

Section 3.1 Annual or General Member Meetings and Budget Presentation.

- (a) An annual or general meeting of the Members shall be held during each of the PHA's fiscal years, at such time of the year (preferably in January, May and September) and date as determined by the Board of Directors and set forth in the notice. At these meetings, the at large Directors shall be elected by ballot of the Members, in accordance with the provisions of these Bylaws, the Declarations and Articles.
- (b) The Members may also be presented with the budget of the PHA, which budget, if not vetoed by a majority of Members at a meeting of Members at which a quorum is present, shall become effective, subject to the other limitations included in these Bylaws.
- (i) Meetings of Members to consider proposed budgets shall be called in accordance with the Colorado Common Interest Ownership Act ("CCIOA").
- (ii) The "CCIOA budget" process allows a majority of the owners (or a higher percentage, if set in the declaration) to veto a budget proposed by the executive board. The Pinery has determined to allow a smaller group of Members to be able to veto a budget.
- (iii) As set forth above, the budget may be vetoed by a majority of a quorum of Members voting at meeting of the Members.
- (iv) The Pinery's budget process under CCIOA is to be as follows: The Board of the PHA is to prepare and approve a proposed budget. Then, within ninety (90) days after the Board's adoption of the proposed budget, the

Board must mail or deliver a summary of the proposed budget to all Members and set a date for a special or annual or general meeting of the Members to consider ratification of the proposed budget. Typically, the budget meeting should be combined with the January annual or general meeting. Notice for the meeting at which the proposed budget will be considered by Members must be provided in a reasonable time and manner, as allowed by state law. At the meeting, unless a majority of a quorum of Members vetoes the proposed budget, the proposed budget becomes the budget of the PHA. In the event a proposed budget is rejected by a majority of a quorum of Members, the budget last approved is continued until such time as the Members allow for approval of a subsequent budget proposed by the Board.

- (v) In all events, a budget is to be prepared and proposed at least annually.
- (c) At the annual or general meeting, the Members may also transact other business as may properly come before them at these meetings.
- (d) Failure to hold an annual or general meeting shall not work a forfeiture or dissolution of the PHA.
- (e) A spring meeting of the Members may be held during May of each year, or at such time of the year and date as determined by the Board of Directors.
- (f) A fall meeting of the Members may be held during September of each year, or at such time of the year and date as determined by the Board of Directors.

Section 3.2 Special Meetings. Special meetings of the PHA may be called by the President, by a majority of the members of the Board of Directors or by the Secretary upon receipt of a petition signed by Members comprising at least 5% of the votes in the PHA. The form of notice, date, time and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the Secretary within 30 days after the date the written demand or demands are delivered to the Secretary, the person signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the terms of these Bylaws. Any meeting called under this Section shall be conducted by the President of the Board, or in his/her absence, a person chosen by a majority of the Board.

Section 3.3 Notice of Meetings.

- (a) Notice of each meeting of the Members shall be physically posted in the PHA office.

- (b) Written notice of each meeting of Members shall be given by or at the direction of the Secretary or person authorized to call the meeting, through the PHA newsletter and the PHA website at least 10 days before, but not more than 50 days before such meeting; and if the PHA desires, by also mailing a copy of such notice, postage prepaid, or by personal delivery, at least 10 days before, but not more than 50 days before such meeting, to each Member entitled to vote.
- (c) If the PHA has the ability to give electronic notice, the PHA shall email notice of the Members' meeting to any Member who requests, and who provides his or her email address to the PHA. Any such email notice shall be given at least 24 hours prior to the meeting. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Member Addresses for Notices. Unless a Member shall have notified the PHA by registered or certified mail of a different address, any notice required to be given, or otherwise given by the PHA under these Bylaws to any Member or any other written instrument to be given to any Member, may be mailed to such Member in a postage prepaid envelope and mailed by first-class, registered or certified mail to the address of the Lot or property shown upon the PHA's records as being owned by such Member. If more than one (1) Member owns a particular Lot, then any notice or other written instrument may be addressed to all of such Members and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given by the PHA in accordance with the foregoing will be deemed to have been given on the date that it is mailed.

Section 3.5 Place of Meetings. Meetings of the Members shall be held in the Community, or in the greater Douglas County area, and may be adjourned to a suitable place convenient to the Members, as may be designated by the Board of Directors or the President.

Section 3.6 Quorum of Members. The presence at a meeting of Members, in person or by proxy, of 40 Members in good standing shall constitute a quorum for any action except as otherwise provided in the Articles, Declarations and these Bylaws. If the required quorum is not present at a meeting, the Members who are present shall have power to adjourn the meeting from time to time (to a later date) without notice other than announcement at the meeting until a quorum shall be present or represented.

Section 3.7 Adjournment of the Meeting. By majority vote (as provided herein), any meeting of the Members may be adjourned to another time and place or to a time and place to be designated by notice.

Section 3.8 Member Voting. At all meetings of Members, each Member may vote one vote, in person or by proxy, for each Lot owned, with the Owner being required to be in good status, to the extent required by these Bylaws. If more than one of the Members is present, the vote allocated to the Lot or property may be cast only in accordance with the agreement of a majority of those Members. Majority agreement exists if any one of the Members casts the vote allocated to the Lot or property without protest being made promptly to the person presiding over

the meeting by another Member of the Lot. In the event of disagreement between or among co-Members and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted. The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Board of Directors or Bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Member is qualified to vote. Votes allocated to Lots owned by the PHA may not be cast.

Section 3.9 Proxies.

- (a) The vote allocated to a Lot or property may be cast under a proxy duly executed by a Member.
- (b) All proxies shall be in writing and filed with the Secretary or designee of the PHA.
- (c) If a Lot or property is owned by more than one person, each Member of the Lot or property may vote or register protest to the casting of the vote by the other Members of the Lot or property through a duly executed proxy. In the event of disagreement between or among co-Members and an attempt by two (2) or more of them to cast such vote or votes, such vote or votes shall not be counted.
- (d) A Member may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the PHA.
- (e) A proxy is void if it is not dated or purports to be revocable without notice.
- (f) A proxy terminates 11 months after its date, unless it specifies a shorter term or a specific purpose.
- (g) Proxies obtained through fraud or misrepresentations are invalid.

Section 3.10 Majority Vote. The vote of a majority of the votes present, in person or by proxy at a meeting at which a quorum is present, shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Declarations, Articles, these Bylaws or by law.

Section 3.11 Voting Procedures. Voting may be by voice, by show of hands, by consent, by mail, by electronic means, by proxy, by written ballot, or as otherwise determined by the Board of Directors prior to the meeting or by a majority of the Members present at a meeting. Secret ballots must be used in Board member elections and, upon the request of one or more Members, in any other matter in which Members are entitled to vote.

Section 3.12 Voting by Mail or Electronic Means. Voting by mail or electronic means shall be acceptable, if available through or to the reasonable satisfaction of the Board or the PHA Business Office, in all instances in the Governing Documents requiring the vote of Members at a meeting. In case of a vote by mail or electronic means in lieu of a meeting, the secretary shall mail or deliver written notice to all Members at each Member's address as it appears in the records of the PHA given for notice purposes. The notice shall include: (a) a proposed written resolution setting forth a description of the proposed action, (b) a statement that Members are entitled to vote by mail or electronic means for or against such proposal, (c) a date at least 10 days after the date such notice shall have been given on or before which all votes must be received at the office of the PHA at the address designated in the notice, and (d) the number of votes which must be received to meet the quorum requirement and the percentage of votes received needed to carry the vote.

Section 3.13 Order of Business and Rules at Meeting.

- (a) The Board of Directors may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Board of Directors and Members.
- (b) At meetings of the Members, the Board of Directors may order the business of the meeting as follows:
 - (i) Sign in;
 - (ii) Reading of Minutes of preceding meeting;
 - (iii) Reports;
 - (iv) Establish number and term of memberships of the at large Board of Directors (if required and noticed);
 - (v) Selection of inspectors/tellers to count ballots;
 - (vi) Election of Directors of the at large Board of Directors (when required);
 - (vii) Unfinished business; and
 - (viii) New business.
- (c) Failure to strictly follow Robert's Rules of Order shall not invalidate any action taken at a meeting of the Board or Members.

Section 3.14 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice, in which case, such objection must be raised before the business of which proper notice as not given is put to a vote.

Section 3.15 Acceptance or Rejection of Vote. The PHA has the right to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation when it has a reasonable, good faith basis to doubt the signature's validity or the signatory's authority to sign for the unit Member. The PHA and its officer or agent who accepts or rejects any of the above in good faith is not liable for any damages that may result from the acceptance or rejection. Unless a court decides otherwise, any action taken on the acceptance or rejection of any of the above will be deemed valid.

ARTICLE 4 -- BOARD OF DIRECTORS

Section 4.1 Number and Term of Office. The affairs of the Community and the PHA shall be governed by a Board of Directors which shall consist of 7 Members, elected or appointed as provided below ("**Board of Directors**"). The terms of office of Directors shall be 2 years or until such time as a successor is elected.

Section 4.2 Qualifications. The Board of Directors shall consist of and be subject to the following qualifications:

- (a) 3 Members shall be "At-Large," elected directly by the PHA Membership;
- (b) 2 Members shall be appointed from the Architectural Review Committee (ARC) [Note: all members of the ARC are elected directly by the PHA Membership];
- (c) 2 Members shall be appointed from the Community Services Committee (CSC) [Note: all members of the CSC are elected directly by the PHA Membership];
- (d) Only Members, eligible to vote, current in the payment of Annual dues, charges agreed to be paid by an Owner or charges or assessments the PHA is authorized to collect, and otherwise in good standing, may be elected to, or appointed to fill a vacancy on the Board.
- (e) Any Director who has un-excused absences from three consecutive Board meetings shall not be qualified to serve on the Board. In that event, a majority of the Board of Directors may deem the Director's position to be vacant.
- (f) Once elected or appointed each director may attend at least one educational program per year related to the management, operation or law of community associations. The director shall be entitled to reimbursement of any actual or necessary expenses incurred in attending such educational program(s), as long as approved, in advance, by the Board of Directors. Any such expenses shall be treated as a Common Expense.

Section 4.3 Election of Directors by Secret Written Ballot.

- (a) At Large Directors shall be elected by the Members by secret written ballot, if

required by state law.

- (b) Ballots shall be counted by a neutral third party, or by a non-candidate Member, present at the meeting, and selected at random from a pool of two or more non-candidate Members, or by a committee, if allowed by state law.
- (c) The persons receiving the largest number of votes shall be elected.
- (d) Cumulative voting is not permitted. (For example, if a Member owns two Lots and two at large Board positions are up for election, then the Member cannot cumulate three or four votes and cast three or four votes for one candidate. The Member can vote just two votes for either candidate. Members cannot cast more votes for a candidate than the number of Lots owned, or proxies held.)

Section 4.4 Resignation of Directors. Any Director may resign at any time by giving written notice to the President, to the Secretary or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

Section 4.5 Removal of Directors.

- (a) One or more Directors, including Directors appointed by the ARC or CSC, and/or the entire Board of Directors may be removed at any meeting of the Members called pursuant to these Bylaws, with or without cause, by the same vote of Members that it would take to elect an at large Board Member or Board Members. Notice of a meeting of the Members to remove Directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the PHA, including the Directors sought to be removed, as provided in these Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken.
- (b) In the event of removal of one or more Directors, that removed Director shall also be removed from any position they hold on the ACC or the CSC, and a successor to the Board position removed, and any ACC or CSC position so removed, who must meet the qualifications to serve as a member of the Board and/or the ACC or CSC, shall be elected by the Members at the meeting to serve for the unexpired term of his or her predecessor.

Section 4.6 Vacancies. Vacancies in the Board of Directors caused by any reason (other than removal) may be filled by the Board of Directors at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made by a majority of the remaining elected Directors constituting the Board of Directors. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

Section 4.7 Compensation. No Director shall receive any compensation from the PHA for any service they may render as a Director, or for acting as such, unless approved by a majority of the votes in the PHA at a regular or special meeting of the PHA. However, any Director may be reimbursed for actual expenses incurred in the performance of PHA duties on behalf of the PHA upon approval of a majority of the other Directors. Nothing herein shall prohibit the PHA from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the PHA in a capacity other than as a Director pursuant to a contract or agreement with the PHA, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested Director.

ARTICLE 5 -- MEETINGS OF THE BOARD OF DIRECTORS

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

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

Section 5.3 Notice of Board Meetings. Except as set forth in Section 5.1 above, written notice of each meeting of the Board shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least three days before such meeting, or by any other means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Board member entitled to vote, addressed to the Board member's address last appearing on the books of the PHA, or supplied by such Board member to the PHA for the purpose of notice. Such notice shall specify the place, day and hour of the meeting.

Section 5.4 Locations of Meetings and Open Meetings.

- (a) All meetings of the Board of Directors shall be open to attendance by Members, as provided by applicable Colorado law.
- (b) All meetings of the Board of Directors shall be held in the Community, by conference call, electronic means or within the Douglas County or greater Denver metropolitan area, unless all Directors consent in writing to another location.
- (c) Closed or executive session meetings may be held as allowed by state law, including the following:

- (i) Matters pertaining to employees of the association or the managing agent's contract, or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
- (ii) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- (iii) Investigative proceedings concerning possible or actual criminal misconduct;
- (iv) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- (v) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; and
- (vi) Review of or discussion relating to any written or oral communication from legal counsel.

Section 5.5 Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

Section 5.6 Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, unless there are less than three Directors, in which case, all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are less than three Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 5.7 Proxies for Board Meetings. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that particular proposal, a Director may execute, in writing, a proxy, to be held by another Director. The proxy shall specify either a yes, no or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present or as a vote on the particular proposal before the Board.

Section 5.8 Consent to Corporate Action. The Directors shall have the right to take any action in the absence of a meeting, which they could otherwise have taken at a meeting, by:

- (a) Obtaining the written vote of all of the Directors, with at least a majority of the Directors approving the action, provided that those Directors who vote “no” or abstain from voting have waived notice of a meeting in writing. The Secretary shall file the written votes with the minutes of the meetings of the Board of Directors;
- (b) Obtaining the unanimous verbal vote of all Directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at such time; or
- (c) Ratification at a subsequent meeting.

Section 5.9 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Board of Directors by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Board of Directors. The Director's vote shall be counted and his or her presence noted as if that Director were present in person on that particular matter.

Section 5.10 Member Participation at Board Meetings. Members must be allowed to speak at all Board meetings (during a Members forum section) only if expressly authorized by a majority of the Board. Members must be allowed to speak before the Board takes formal action on any item under Board discussion. The Board shall allow a reasonable number of persons to speak on each side of the item. The Board may place reasonable restrictions on the time allowed for each Member to speak.

ARTICLE 6 -- POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers and Duties. The Board of Directors may act in all instances on behalf of the PHA, except as provided in the Declarations, Articles, these Bylaws or the Act. The Board of Directors shall have, subject to the limitations contained in the Declarations, Articles and the Act, the powers and duties necessary for the administration of the affairs of the PHA and of the Community, and for the operation and maintenance of the Community in the manner that the Pinery has operated in the past, with additional services as the Members may request and allow for under the budget process set forth in these Bylaws. Superficially, the PHA shall have the following powers and duties:

- (a) Exercise any powers conferred by the Declarations, Bylaws or Articles of Incorporation;
- (b) Adopt and amend Rules and Regulations, including penalties for infraction thereof;
- (c) Adopt and amend policies and procedures, to complying with state statutes, including Senate Bill 2005-100 and Senate Bill 2006-89; provided however, the PHA's collection policies, as adopted, may not be changed with the affirmative vote and approval of at least 100 voting Members;

- (d) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the PHA;
- (e) As a part of the adoption of the regular budget the Board of Directors may include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those Improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost and a reserve or contingency for services provided by the PHA;
- (f) Allocate, assess and collect from each Member their proportionate share of the annual dues imposed by the PHA;
- (g) Hire and discharge a managing agent and/or employees of the PHA, provided that any agreement for professional management of the Community may not exceed 3 years. Any such agreement with a third party contractor as a managing agent must provide for the termination by either party without cause and without payment of a termination fee or penalty upon 30 days written notice;
- (h) Hire and discharge employees, independent contractors and agents and prescribe their duties;
- (i) Represent the PHA, the PHA Membership and the greater "Pinery" community of interests before federal, state and local governmental agencies. This advocacy of the PHA has been a hallmark of the PHA in the past and is expressly authorized to be continued;
- (j) Act for and on behalf of the Members in all matters deemed necessary and proper for the protection, maintenance and improvement of the lands and improvements owned by the Members and the PHA;
- (k) Oversee the Architectural Review Committee (the "ARC") of the PHA to provide for administration, maintenance, preservation, improvement and architectural review as contained in the applicable Declarations;
- (l) Oversee the Community Services Committee (the "CSC") of the PHA to provide for maintenance of real estate owned or controlled by the PHA, coordination of civic and social functions relating to The Pinery and enhancement of the quality of life of Members;
- (m) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents in the PHA's name, on behalf of the PHA or two or more Members on matters affecting the Community;
- (n) Make contracts, administer financial accounts and incur liabilities in the name of the PHA;
- (o) Regulate the use, maintenance, repair, replacement and modifications of Common Area;
- (p) Cause additional improvements to be made as a part of the Common Area;
- (q) Acquire, hold, encumber and convey, in the PHA's name and in the ordinary

course of business, any right, title or interest to real estate or personal property, but Common Area may be conveyed or subjected to a security interest only by a super majority vote of two-thirds of the Board;

- (r) Borrow funds and secure loans with an interest in future sums payable to the PHA in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declarations, these Bylaws and allowed under Colorado law and under law applicable to entities that are qualified as a 501(c)(4) tax exempt organization; and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefore subject to the requirements set forth in the Declarations;
- (s) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Area;
- (t) Impose and receive a payment, fee or charge for services provided to Members and for the use, rental or operation of all or any part of the Common Area;
- (u) Impose a reasonable charge for late payment of sums due the PHA;
- (v) After notice and hearing, levy reasonable fines or other charges provided for by applicable law, these Bylaws or allowed in the Declarations, Rules and Regulations of the PHA;
- (w) Impose a reasonable charge for the preparation and recording of amendments to the Declarations, liens or statements of unpaid Assessment;
- (x) Provide for the indemnification of the PHA's Officers and the Board of Directors and maintain Directors' and Officers' liability insurance;
- (y) Procure and maintain adequate liability and hazard insurance on property owned by the PHA;
- (z) Cause all Directors, Officers, employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate;
- (aa) Exercise for the PHA all powers, duties, rights and obligations in or delegated to the PHA and not reserved to the membership by other provisions of the Declarations, Articles, these Bylaws or the Act;
- (bb) Adopt and amend responsible governance policies, procedures and rules and regulations as required by the Act;
- (cc) Provide education to Members on an annual basis; and
- (dd) Provide PHA disclosures required by, and pursuant to, the Act.

Section 6.2 The PHA Business Office. The purpose of the PHA Business Office is to serve as a focal point for the Membership and to coordinate day-to-day operations of the PHA. The PHA Business Office will be directed by the PHA Office Manager appointed by the

President of the Executive Board and guided by these Bylaws.

Section 6.3 Manager/Management. The Board of Directors may employ a managing agent and such other staff for the PHA Business Office, at a compensation established by the Board, to perform duties and services authorized by the Board. The Board shall have the authority to delegate any of the powers and duties set forth in this Article to a managing agent. Regardless of any delegation to a managing agent, the members of the Board shall not be relieved of responsibilities under the Declarations, Articles, these Bylaws or Colorado law.

ARTICLE 7 -- OFFICERS AND THEIR DUTIES

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

Section 7.2 Appointment of Officers. The Officers shall be appointed by the Board of Directors at the organizational meeting of each new Board of Directors. The Officers shall hold office at the pleasure of the Board of Directors. Thereafter, the Officers shall be elected for a one year term at the first meeting of the Board of Directors following each annual or general meeting of the Members at which at large Board members are elected.

Section 7.3 Special Appointments. The Board of Directors may elect such other officers as the affairs of the PHA may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

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

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

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

- (a) President. The President shall have all of the general powers and duties which are incident to the office of president of a Colorado nonprofit corporation including, but not limited to, the following: preside at all meetings of the Board of Directors, appoint committees, and see that orders and resolutions of the Board of

Directors are carried out; sign contracts, leases and other written instruments; direct, supervise, coordinate and have general control over the day to day affairs. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declarations and these Bylaws on behalf of the PHA, following authorization or approval of the particular amendment, as applicable.

- (b) Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Board of Directors or by the President.
- (c) Secretary. The Secretary shall have charge or shall keep the Minutes of all meetings of the Members and proceedings of the Board of Directors and the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members' names and addresses; and facilitate the elections of At Large Directors. The Secretary shall have charge of the PHA's books and papers and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declarations and the Bylaws on behalf of the PHA, following authorization or approval of the particular amendment, as applicable.
- (d) Treasurer. The Treasurer shall be responsible for PHA funds; for keeping full and accurate financial records and books of account showing all receipts and disbursements; for the preparation of all required financial data; and for the preparation of an annual operating budget and a reserve funds budget. This Officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board of Directors and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The Treasurer may endorse on behalf of the PHA, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the PHA in banks designated by the PHA.

The Treasurer shall also be responsible for obtaining an annual "review" of the PHA financial statements and books from an independent CPA for each full fiscal year that occurs after these Bylaws are adopted, and, if a majority of a quorum of Members vote to require an "audit" by an independent CPA, the Treasurer shall also obtain an audit.

Section 7.7 Delegation. The duties of any Officer may be delegated to the manager or another Board of Directors member; *provided, however*, the Officer shall not be relieved of any

responsibility under these Bylaws or under Colorado law.

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

Section 7.9 Statements of Unpaid Sums due the PHA. The Treasurer, assistant treasurer, a managing agent employed by the PHA, if any, or, in their absence, any Officer having access to the books and records of the PHA may prepare, certify, and execute statements of unpaid Assessment in accordance with Section 316 of the Act. The PHA may charge a reasonable fee for preparing statements of unpaid Assessment. The amount of this fee and the time of payment shall be established by resolution of the Board of Directors. Any unpaid fees may be assessed as a Common Expense against the Lot or property for which the certificate or statement is furnished.

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

ARTICLE 8 -- COMMITTEES

Section 8.1 Architectural Review Committee (the "ARC"). The Board of Directors has delegated its covenant enforcement duties to the PHA's *Architectural Review Committee*. Protective covenant enforcement litigation and other enforcement actions may be brought by the ARC in the name of the PHA or by the PHA, in the name of the PHA and the ARC. The ARC is a standing committee which operates as a semi-autonomous, decision-making body under authority delegated to the ARC by the PHA Board of Directors.

- (a) Purpose of ARC. The purpose of the ARC is to fulfill the obligations and duties of the PHA and the "Architectural Review Committee" as established by the applicable Declarations recorded in the Real Property Records of Douglas County pertaining to the real estate subdivision known as "The Pinery", and as set forth in these Bylaws. The ARC also shall perform such other functions incident to the implementation and enforcement of such applicable Declarations as may be necessary or desirable including, without limitation:
 - (i) Review of all construction plans and specifications for any building which is to be erected, placed or altered on any lot in any subdivision of the Pinery in accordance with the applicable Declarations of record;
 - (ii) Enforcement through legal action, if necessary, of all such applicable Declarations provided that before initiating any legal action, the ARC first:
 1. Obtains the advice of legal counsel concerning the merits and potential risks of the proposed enforcement action; and

2. Receives the prior approval of the PHA Board of Directors.
- (iii) Limited Service Area. In no event shall the ARC provide services as authorized herein beyond the geographical area designated as The Pinery Suburban Urbanized Area (SUA) as defined by the Douglas County Master Plan.
 - (iv) Meetings of the ARC. Monthly regular meetings are open to the Membership. Notice of each regular meeting's date, time and place shall be given in advance by posting on the PHA website and on the public message board at the PHA Business Office. Notice also may also be published in the PHA Newsletter.
 - (v) Special Meetings of the ARC. Special meetings may also be held by the ARC as determined by the ARC. Notice of each special meeting's date, time, place and purpose shall be given to ARC Committee Members at least three (3) days in advance by posting on the PHA website and on the public message board at the PHA Business Office.
 - (vi) Conduct of ARC Meetings. ARC meeting procedures shall be the same as for the Board of Directors, as set forth in these Bylaws.
 - (vii) Election of ARC Members. The ARC shall consist of a minimum of five (5) Members of the PHA elected directly by and from the PHA Membership at one of the PHA's Annual or general meetings, to serve staggered, two-year terms unless resigned or removed in accordance with procedures established under these Bylaws. ARC Members may serve a maximum of three (3) consecutive terms (or any fraction thereof) and, after reaching such maximum, may serve again provided that at least a two-year period elapses between service periods. ARC Members must maintain their status as Members of the PHA in order to hold their seat and shall promptly resign and be disqualified from office if they no longer meet the requirements for Membership in the PHA.
 - (viii) ARC Officers. The elected members of the ARC shall choose and maintain officers from among its number with responsibilities as follows:
 1. ARC President shall call and preside over monthly and special meetings to carry out the purpose and function of the ARC.
 2. ARC Vice President shall assume the duties of the ARC President in the absence of the ARC President and shall perform such other duties as the ARC President may assign.

3. ARC Secretary shall ensure that all ARC meeting minutes are kept and are provided promptly to the PHA Board of Directors, which all written correspondence is recorded and that official actions are communicated to the PHA Board of Directors for the PHA Annual Report. The ARC Secretary also shall sign any official documents, as required.
- (ix) Resignation by an ARC Member. An ARC Member may resign at any time by giving written notice to the PHA Board of Directors or the ARC President. Such resignation shall take effect on the date of receipt of the notice, or at a later time if specified in such notice of resignation. Unless the notice of resignation specifies, the acceptance of the resignation shall not be necessary to make it effective.
 - (x) Vacancy of an ARC Member Seat. Vacancies shall be filled by appointment made by the PHA Board of Directors to serve the remaining balance of the two-year term.
 - (xi) Appointment of ARC Representatives to the PHA Board of Directors. The ARC shall, by majority vote of its Members, appoint two of its Members to serve as liaisons to the PHA Board of Directors in the capacity of PHA Board of Directors Members. Such appointments shall be made whenever necessary to maintain occupancy of each PHA Board of Directors seat having a two-year term that is allocated to ARC Representatives under these Bylaws.
 - (xii) Replacement of ARC Representatives to the PHA Board of Directors. The ARC may replace an ARC representative to the PHA Board of Directors at any time by a majority vote of the ARC Members provided that every ARC Member is polled during the vote and that the minutes record the vote of each ARC Member. Following a vote to replace an ARC Representative, the ARC Secretary shall promptly notify the PHA Board of Directors in writing of the action.

Section 8.2 Community Services Committee (the "CSC"). The Board of Directors has delegated certain portions of its Maintenance of Common Lands, Provision of Regular Community Services, and coordination of Social Functions to the PHA's CSC. The CSC is a standing committee, which serves the PHA Board of Directors primarily in advisory and servile capacities concerning these functions.

- (a) Purpose of the CSC. The purpose of this committee is to plan and execute functions to serve the community as defined in the Articles of Incorporation, namely:
 - (i) Maintaining and, if authorized, developing real estate owned or controlled

- by the PHA, (e.g. North Pinery Parkway entrance, Lakeshore Park, etc.) for the benefit of the Members;
- (ii) Managing the day-to-day operations services provided by the PHA to the Members, (e.g., Trash and Recycling program, RV Lot program, participation in the Pinery Security Coalition, etc.)
 - (iii) Coordinating Civic and Social activities relating to “The Pinery” for the Members, e.g., the Annual Pinery Picnic, Pinery Art Show, Pinery Garage Sale, etc.
- (b) Meetings of the CSC. Monthly regular meetings are open to the Membership. Notice of each regular meeting’s date, time and place shall be given in advance by posting on the PHA website and on the public message board at the PHA Business Office. Notice also may also be published in the PHA Newsletter.
- (c) Special meetings may also be held by the CSC as determined by the CSC. Notice of each special meeting’s date, time, place and purpose shall be given to CSC Committee Members at least three (3) days in advance by posting on the PHA website and on the public message board at the PHA Business Office.
- (d) Conduct of CSC Meetings. CSC meeting procedures shall be the same as for the Board of Directors, as set forth in these Bylaws.
- (e) Election of CSC Members. The CSC shall consist of a minimum of five (5) Members of the PHA elected directly by and from the PHA Membership at one of the PHA’s Annual or general Meetings, to serve staggered, two-year terms unless resigned or removed in accordance with procedures established under these Bylaws. CSC Members may serve a maximum of three (3) consecutive terms (or any fraction thereof) and, after reaching such maximum, may serve again provided that at least a two-year period elapses between service periods. CSC Members must maintain their status as Members of the PHA in order to hold their seat and shall promptly resign and be disqualified from office if they no longer meet the requirements for Membership in the PHA.
- (f) CSC Officers. The elected members of the CSC shall choose and maintain officers from among its number with responsibilities as follows:
- 1. CSC President shall call and preside over monthly and special meetings to carry out the purpose and function of the CSC.
 - 2. CSC Vice President shall assume the duties of the CSC President in the absence of the CSC President and shall perform such other duties as the CSC President may assign.
 - 3. CSC Secretary shall ensure that all CSC meeting minutes are kept and are provided promptly to the PHA Board of Directors and those official

actions are communicated to the PHA Board of Directors for the PHA Annual Report.

- (g) Resignation by a CSC Member. A CSC Member may resign at any time by giving written notice to the PHA Board of Directors or the CSC President. Such resignation shall take effect on the date of receipt of the notice, or at a later time if specified in such notice of resignation. Unless the notice of resignation specifies, the acceptance of the resignation shall not be necessary to make it effective.
- (h) Vacancy of a CSC Member Seat. Vacancies shall be filled by appointment made by the PHA Board of Directors to serve the remaining balance of the two-year term.
- (i) Appointment of CSC Representatives to the PHA Board of Directors. The CSC shall, by majority vote of its Members, appoint two of its Members to serve as liaisons to the PHA Board of Directors in the capacity of PHA Board of Directors Members. Such appointments shall be made whenever necessary to maintain occupancy of each PHA Board of Directors seat having a two-year term that is allocated to CSC Representatives under these Bylaws.
- (j) Replacement of CSC Representatives to the PHA Board of Directors. The CSC may replace a CSC Representative to the PHA Board of Directors at any time by a majority vote of the CSC Members provided that every CSC Member is polled during the vote and that the minutes record the vote of each CSC Member. Following a vote to replace a CSC Representative, the CSC Secretary shall promptly notify the PHA Board of Directors in writing of the action.

Section 8.3 Formation of Task Forces or Ad Hoc Committees. The PHA Board of Directors may form task forces or temporary committees to study issues, report findings and make recommendations to the PHA Board of Directors. When the PHA Board of Directors deems it necessary, it shall form a task force or an ad hoc committee by resolution. Such resolution may include the name of the task force committee or a written description and statement of purpose for the task force committee and the name of the person who shall serve as President. The President may be responsible for at least all of the following:

- (a) Preparing a budget for each year, or fraction thereof, that the committee will operate and submitting the same to the Treasurer.
- (b) Maintaining records of the membership of the committee, any committee meetings held and any assignment of duties to other committee members.
- (c) Preparing annual and final summary reports of the committee's accomplishments and submitting the same to the Secretary for inclusion in the PHA Annual Report.

ARTICLE 9 -- ENFORCEMENT

Section 9.1 Abatement and Enjoinment of Violations by Members. The violation of any of the Rules and Regulations adopted by the Board of Directors or the breach of any provision of the Governing Documents shall give the Board of Directors enforcement rights, as allowed under applicable law.

Section 9.2 Fines for Violation. By action of the Board of Directors, following notice and hearing, the Board of Directors may levy reasonable fines for a violation of the Governing Documents or rules.

ARTICLE 10 -- BOOKS AND RECORDS

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

- (a) Minutes of all Board and Member meetings;
- (b) All actions taken by the Board or Members by written ballot instead of holding a meeting;
- (c) All actions taken by a committee on the behalf of the Board instead of the Board acting on behalf of the PHA;
- (d) All waivers of the notice requirements for Member meetings, Board member meetings, or committee meetings; and
- (e) Copies of deeds to property owned by the PHA.

Section 10.2 General Records. The PHA or its managing agent, if any, shall keep the following records at its principal office.

- (a) An account for each Lot (which shall designate the name and address of each Member, the amount of each annual dues, charges agreed to be paid by an Owner or charges or assessments the PHA is authorized to collect, the dates on which each such sum comes due, any other fees payable by the Member, the amounts paid on the account and the balance due);
- (b) An account for each Member showing any other fees payable by the Member;
- (c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the PHA;
- (d) The current operating budget and reserve fund budget;

- (e) A record of any unsatisfied judgments against the PHA and the existence of any pending suits in which the PHA is a defendant;
- (f) A record of insurance coverage provided for the benefit of Members and the PHA;
- (g) Tax returns for state and federal income taxation;
- (h) Minutes of meetings of the Members, directors, committees and waivers of notice, if any;
- (i) Copies of at least the three most recent years' correspondence between the PHA and Members;
- (j) Copies of the most current versions of the Governing Documents, along with their exhibits and schedules;
- (k) Board resolutions affecting Members;
- (l) Minutes of all Member meeting and records of any actions taken by Members without a meeting in the past three years;
- (m) A list of the names and business or home addresses of current Board and its officers; and
- (n) All financial audits or review conducted pursuant to the Act (in the last three years).

Section 10.3 Record of Members and Allocation of Votes. The PHA or its managing agent, if any, must maintain a record of all Members that allows preparation of a list of the names and addresses of all Members as well as number of votes allocated to each Member.

Section 10.4 Minutes and Presumptions Under the Minutes. Minutes or any similar record of the meetings of Members, or of the Board of Directors, when signed by the secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

Section 10.5 Examination. The books, records and papers of the PHA shall at all times, during normal business hours and after at least five days written notice, be subject to inspection and copying by any Member, at their expense, except documents determined by the Board to be confidential pursuant to a written policy or applicable law. Any Member's request to inspect and copy PHA records must be made in good faith, for a proper purpose, and describe with reasonable detail what records are requested and why. Requested documents must be relevant to the stated purpose for the request. The PHA may charge a fee for copying of the records, not to exceed the actual cost of copying.

ARTICLE 11 -- INDEMNIFICATION

Section 11.1 Obligation to Indemnify.

- (a) The PHA shall indemnify any person:
 - (i) Who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the PHA);
 - (ii) By reason of the fact that that person is or was a Director, Officer, committee member or volunteer of or to the PHA;
 - (iii) Provided that the person is or was serving at the request of the PHA in such capacity;
 - (iv) But no indemnification shall be made where the person has been adjudged to be liable for negligence or misconduct in the performance of his or her duties to the PHA, unless a court determines that, despite the adjudication of liability, but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses if the court deems proper.
- (b) The PHA's obligation for indemnification shall include: (i) Actual and reasonable expenses (including expert witness fees, attorney fees and costs); (ii) Judgments and fines; and (iii) Reasonable amounts paid in settlement.
- (c) The PHA shall indemnify when the person identified in subsection (a) of this Section:
 - (i) Acted in good faith, and;
 - (ii) In a manner which the person reasonably believed to be in the best interests of the PHA, and;
 - (iii) With respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful;
 - (iv) To the extent that the person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the person shall be indemnified against actual and

reasonable expenses (including expert witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.

Section 11.2 Determination Required.

- (a) The Board of Directors shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by the Board of Directors:
 - (i) By majority vote of a quorum consisting of those members of the Board of Directors who were not parties to the action, suit or proceeding, or;
 - (ii) By independent legal counsel in a written opinion if a majority of those members of the Board of Directors who were not parties to the action, suit or proceeding so directs, or;
 - (iii) Additionally, the determination may be made by a vote of the Members if a majority of those members of the Board of Directors who were not parties to the action, suit or proceeding so directs.
- (b) Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the PHA and, with respect to any criminal action or proceeding, had reasonable cause to believe the conduct was unlawful.

Section 11.3 Payment in Advance of Final Disposition. The PHA shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Board of Directors with:

- (a) A written affirmation of that person's good faith belief that he or she has met the standard of conduct described above and;
- (b) A written statement that such person shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described above.

Section 11.4 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3-101, *et seq.*, and the Colorado Revised Nonprofit Corporation Act, as those

statutes may be amended from time to time.

Section 11.5 Directors and Officers Insurance. The PHA may purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against such person by virtue of such person's actions on behalf of the PHA or at the direction of the Board, whether or not the PHA would have the power to indemnify such person against such liability under provisions of this Article.

ARTICLE 12 – MISCELLANEOUS

Section 12.1 Notices to the PHA. All notices to the PHA or the Board of Directors shall be delivered to the office of the PHA, or to such other address as the Board of Directors may designate by written notice to all Members. Except as otherwise provided, all notices to any Member shall be mailed to the Member's address as it appears in the records of the PHA. All notices shall be deemed to have been given when mailed or transmitted, except notices of changes of address, which shall be deemed to have been given when received.

Section 12.2 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 12.3 Office. The principal office of the PHA shall be within the Community or at such other place as the Board of Directors may from time to time designate.

ARTICLE 13 -- AMENDMENTS

Section 13.1 Bylaw Amendments/Vote of the Members. These Bylaws may be amended only by the affirmative vote of at least two-thirds of 100 voting Members, provided that notice has been sent to the Members pursuant to these Bylaws, and such notice sets forth that the meeting is being conducted for the purpose of amendment.

Section 13.2 Restrictions on Amendments. No amendment of the Bylaws of this PHA shall be adopted which would affect or impair the validity or priority of any security interest covering any Lot, or which would materially change the provisions of the Bylaws with respect to a first lien security interest or the interest of an institutional mortgagees of record.

CERTIFICATION

By signature below, the undersigned certifies these Amended and Restated Bylaws received the approval in writing by at least a two-thirds vote of at least 100 voting Members (the standard for any subsequent amendment to these Bylaws, and the standard by which these Bylaws must have been approved), after at least two weeks notice in writing to each Member of the PHA in the newsletter of the PHA and via the PHA's website), setting forth the proposed amendment, alteration, or change, together with the place and hour of the meeting at which the approval vote of at least a two-thirds vote of 100 voting Members was cast.

THE PINERY HOMEOWNERS' ASSOCIATION, INC.,
a Colorado nonprofit corporation

Joe Stanacci 12/5/07
President Date

Tom Kimball 12/7/07
Vice President Date

Susan L. Arnold 12/12/07
Secretary Date

Terry Hall 12-12-07
Treasurer Date

Don R. Rescove 12-7-07
Director Date

Julia L. Jones 12/12/07
Director Date

R. M. Eude 12/12/07
Director Date