

BYLAWS
OF
FOUNTAIN MESA VILLAGE HOMEOWNERS ASSOCIATION, INC.
a Colorado nonprofit corporation

These Bylaws have been adopted by the Incorporator of the Fountain Mesa Village Homeowners Association, Inc. (the "Association"), a corporation duly organized under the Colorado Revised Nonprofit Corporation Act for the purpose of serving as the owners association described in the Declaration of Covenants, Conditions and Restrictions of Fountain Mesa Village, recorded or to be recorded in the records of El Paso County, Colorado, as may be amended (the "Declaration"). Capitalized terms used in these Bylaws that are not otherwise defined shall have the meaning given them in the Declaration.

ARTICLE I
OFFICES

Section 1.1 **Business Office.** The principal office of Fountain Mesa Village Homeowners Association, a Colorado nonprofit corporation (the "Association"), shall be located in El Paso County, Colorado.

Section 1.2 **Registered Office.** The registered office of the Association required by the Colorado Revised Nonprofit Corporation Act to be maintained in Colorado may be, but need not be, the same as the principal office, and the address of the registered office may be changed from time to time by the Board of Directors or by the officers of the Association.

ARTICLE II
MEMBERSHIP

Section 2.1 **Eligibility and Voting.** Each Owner of a Lot, by virtue of the ownership of a Lot, shall be a member of the Association. Each Owner of a Lot shall be entitled to vote on the basis of one vote for each Lot then existing on the Property. When there is more than one Owner of a Lot, the Owners shall determine which of them is to act as member of the Association and exercise the privileges of membership for that Lot in accordance with the Declaration. If the joint Owners are unable to determine how to cast the one vote allocated to their Lot, then the Owners shall be deemed to have abstained. No Owner may cast a vote with respect to a Lot until the Owner has commenced paying Assessments for that Lot in accordance with the Declaration. Declarant is otherwise entitled to vote as a member with respect to the Lots owned by it in accordance with the provisions set forth above as to each Owner of a Lot.

Section 2.2 **Suspension and Termination of Membership.** The Association will suspend the voting rights of an Owner who fails to pay any Assessment or other amount owed to the Association within ten (10) days after such Assessment was due. Such Owner will be automatically suspended from membership until all such dues and assessments are fully paid, at which time the Owner shall be automatically reinstated. During any period of suspension, an Owner shall not be entitled to exercise the rights and privileges of membership.

Section 2.3 **Transfer of Membership.** Membership in the Association is nontransferable except in connection with the transfer of a Lot owned by the Owner. Owners shall have no ownership rights or beneficial interests of any kind in the assets, if any, of the Association, except as may be expressly provided in the Declaration.

ARTICLE III
MEETINGS OF OWNERS

Section 3.1 **Annual Meeting.** The Association shall hold at least one meeting of the Owners annually for the transaction of Association business, to include the review of the annual budget summary and the election of directors, if applicable. The annual meeting will be held on or about the 1st day of September of each year, or on such other date as the Board of Directors may determine by resolution and as specified in the notice of the meeting. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association or invalidate any action taken by the Board of Directors or officers of the Association.

Section 3.2 **Special Meetings.** Special meetings of the Owners may be called by the President, by a majority of the Board of Directors or by Owners holding at least ten percent (10%) of the total number of votes of the Owners.

Section 3.3 **Notice of Meeting.** Written notice of a meeting stating the place, day and hour of the meeting, and the purpose of the meeting, shall be delivered to each Owner personally, by U. S. Mail, postage prepaid, or by electronic mail (if an Owner has requested that notice be provided by electronic mail and an electronic mail address has been given to the Association) not less than 10 nor more than 60 days before the date of the meeting. To the extent feasible, written notice of the meeting will also be posted in a conspicuous place. Written notice of the meeting may also be posted on an Internet website of the Association.

Section 3.4 **Waiver of Notice of Meeting.** A waiver of notice in writing signed by an Owner entitled to notice whether before or after the time stated in the notice shall be equivalent to the giving of the notice. Attendance at a meeting shall constitute waiver of notice, unless solely for the express purpose of objecting to the transaction of business because the meeting is not properly called or convened.

Section 3.5 **Action without a Meeting.** Any action which may be taken at an Owners' meeting may be taken without a meeting if a consent in writing setting forth the action taken is signed by all of the Owners entitled to vote with respect to the subject matter of the action. Written consent may be given in the form of an electronically transmitted facsimile or other form of wire or wireless communication, provided the Association receives a complete copy of the document, including an Owner's signature. The consent of all Owners must be filed with the minutes of the meeting.

Section 3.6 **Proxies.** An Owner may vote in person or by written, revocable proxy executed by the Owner or a duly authorized attorney-in-fact and submitted to the Association prior to the vote to which the proxy is given. Proxies shall expire eleven months after the date of execution unless an earlier expiration date is stated in the proxy.

Section 3.7 **Quorum.** Holders of at least ten percent (10%) of all the votes of the Owners shall constitute a quorum. If a quorum is present in person or by proxy, a majority of the votes entitled to be cast by the Owners present or represented by proxy shall be the act of the Owners, except as otherwise provided by the Articles of Incorporation, Declaration or these Bylaws.

Section 3.8 **Written Ballot.** Owners may vote by written ballot in lieu of holding a meeting. The written ballot must be provided to every Owner entitled to vote on the proposed action, and must state: 1) the proposed action requiring a vote; 2) the Owner's right to vote for or against the proposed action; 3) the number of responses needed to meet the quorum requirement; 4) the percentage of approvals needed to approve the action; 5) the deadline for returning the ballot to the Association; and 6) information sufficient to allow the Owners to make an informed vote on the proposed action. Amendment of the Articles of Incorporation or adoption of a plan of merger, consolidation or liquidation by written ballot shall require the affirmative vote of at least 67% of the votes which all Owners are entitled to cast on such question.

ARTICLE IV **BOARD OF DIRECTORS**

Section 4.1 **Qualifications.** A director shall be an Owner, except that a director appointed by Declarant need not be an Owner.

Section 4.2 **Number.** The number of directors of the Association shall be not less than three (3) nor more than seven (7), with the exact number to be set by the Board. Directors shall be appointed by Declarant or elected, as applicable, at a regular meeting of the Owners. Except for the directors of the initial board, the directors shall serve for a term of three years from their date of election. The terms of the members of the initial elected board shall be staggered, such that at least one director's term will be for one year, and at least one director's term will be for two years.

Section 4.3 **Election and Removal.** Election of a director, when applicable, shall be by a vote of a majority of the Owners. Removal of a director shall be by a vote of 67% of the Owners. A director appointed by the Declarant may not be removed by a vote of the Owners.

Section 4.4 **Holding Over.** A director will continue in office after the expiration of his or her term until a successor is elected or appointed in accordance with these Bylaws.

Section 4.5 **Resignation.** A director may resign his or her office by written resignation, which shall become effective without acceptance upon delivery to any officer of the Association.

Section 4.6 **Vacancy.** If a vacancy occurs on the Board for any reason, a majority of the Board then in office may appoint a new director to complete the unexpired term.

Section 4.7 **Powers.** The business and affairs of the Association shall be managed by its Board of Directors, which may exercise all powers of the Association and do all such acts as are not prohibited by law, the Declaration or these Bylaws.

Section 4.8 **Delegation of Powers to Manager or Others.** The Board of Directors may engage the services of managers, managing agents, consultants, employees and/or others, and may delegate to a manager, managing agent, employee or others any or all of the powers, duties and functions granted to the Board of Directors except the Board's responsibilities to exercise general supervision over the affairs of the Association.

Section 4.9 **Delegation of Duties Relating to Association Funds.** The Board of Directors may delegate to a manager or other persons its powers relating to the collection, deposit, transfer and/or disbursement of Association funds. The person to whom such powers are delegated must comply with the following: a) maintain fidelity insurance coverage or a bond in an amount established by the Board, if required by Colorado law and the Board; b) maintain all Association funds and accounts separate from

other funds, and maintain a reserve account separate from operational accounts of the Association; and c) provide the Association with an annual accounting and financial statement of Association funds.

Section 4.10 Method of Adopting Rules and Regulations. The Board of Directors may by resolution establish and amend administrative rules and regulations governing the matters affecting the Association, which rules and regulations and amendments thereto shall be effective upon delivery of a copy to each Owner.

Section 4.11 Penalties for Infractions. The rules and regulations established by the Board of Directors may provide for the levy and collection of fines and/or the suspension of rights of membership while Owners are in violation of the Declaration, these Bylaws or the rules and regulations.

Section 4.12 Executive and Other Committees. By one or more resolutions adopted by a majority of the directors, the Board may, by resolution, establish from among its members an executive committee and one or more other committees, each of which may exercise all of the authority of the Board delegated to it, except as prohibited by law. The delegation of authority to any committee shall not operate to relieve the Board or any director from any responsibility imposed by law. Rules governing procedures for meetings of any committee of the Board shall be as established by the Board of Directors, or in the absence thereof, by the committee itself.

Section 4.13 Duties of Directors. It shall be the responsibility of the Board to:

- (a) cause to be kept a record of its material acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners, or at any special meeting called for the purpose of reviewing such statement;
- (b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, cause the levy and collection of Assessments against Lots;
- (d) issue upon written request by any person authorized to receive such information, a certificate setting forth the status of any Assessment affecting a Lot. A reasonable charge may be made by the Board for the issuance of such certificates;
- (e) procure and maintain insurance on behalf of the Association as may be provided in the Declaration and as determined by the Board;
- (f) cause officers or employees having fiscal responsibilities to be bonded or insured, as the Board may deem appropriate; and
- (g) exercise all other duties and responsibilities of the Board set forth in the Declaration.

ARTICLE V **BOARD OF DIRECTORS' MEETINGS**

Section 5.1 Regular Meetings. Regular meetings of the Board will be held at such regular times as set by Board resolution, but not less than once per year.

Section 5.2 **Special Meetings.** Special meetings of the Board will be held when called by the President or by any two directors, after not less than three days' notice to each director.

Section 5.3 **Action without a Meeting.** Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the directors entitled to vote with respect to the subject matter of the action and filed with the minutes of the meeting. Written consent may be given in the form of an electronically transmitted facsimile or other form of wire or wireless communication, provided the Association receives a complete copy of the document, including the director's signature. The consent of all directors must be filed with the minutes of the meeting

Section 5.4 **Waiver of Notice of Meeting.** A waiver of notice in writing signed by a director entitled to the notice whether before or after the time stated in the notice shall be equivalent to the giving of the notice. Attendance at a meeting shall constitute waiver of notice, unless solely for the express purpose of objecting to the transaction of business because the meeting is not properly called or convened.

Section 5.5 **Quorum.** A majority of the directors constitutes a quorum. If there is a quorum, the act of the majority of the directors present at the meeting shall be the act of the directors.

Section 5.6 **Actions Binding on Directors.** Every action taken or decision made by a majority of directors present at a duly held meeting at which a quorum is present will be regarded as the act of the Board.

Section 5.7 **Meetings by Telephone.** The Board or any Board committee may participate in a meeting by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

ARTICLE VI OFFICERS

Section 6.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board of Directors. Officers shall be elected at the first meeting of the Board following the annual meeting of the Owners and shall hold office until their respective successors have been elected and shall have qualified. Any two or more offices may be held by the same person.

Section 6.2 **President.** The President shall preside over meetings of the Board of Directors and meetings of the Owners. The President shall have general supervisory authority over the officers, employees and agents of the Association. The President is empowered to sign contracts, deeds, conveyances, debt instruments, security instruments and reports, to execute, certify and record any amendments to the Declaration, and shall perform all other acts incident to the office of President or that may be required by the Bylaws or by the Board of Directors. The President may delegate and subdelegate management functions from time to time.

Section 6.3 **Vice President.** The Vice President shall have the power and may perform the duties of the President in the event of the President's absence or disability, shall assist the President and shall perform such other duties as may be prescribed from time to time by the Board.

Section 6.4 **Secretary.** The Secretary shall keep the minutes of meetings of the Board and meetings of the Owners, shall be custodian of the corporate seal, if any, shall attest the corporate seal and shall perform all other duties incident to the office of Secretary and as prescribed from time to time by the Board.

Section 6.5 **Treasurer.** The Treasurer shall keep the Association's financial records and books of account and may act through delegates including, but not limited to, any manager or managing agent designated by the Board. The Treasurer shall perform all other duties incident to the office of Treasurer and as prescribed from time to time by the Board.

Section 6.6 **Removal; Vacancy.** The Board of Directors may remove an officer, and fill the unexpired term of such officer, upon a majority vote of the directors then in office.

ARTICLE VII RECORDS AND ACCOUNTS

Section 7.1 **Records Maintained by the Association.** The Association shall keep a copy of the following records at its principal office: the Articles of Incorporation; the Declaration; Bylaws; Board resolutions; minutes of meetings of the Owners and the Board; all general written communication to Owners for the past 3 years; a list of names and addresses of current members of the Board of Directors and officers; a record of the names and addresses of the Owners entitled to vote; the most recent annual report of the Association, and annual accounting and financial statements prepared for the previous 3 years.

Section 7.2 **Inspection of Records.** Owners may inspect, during reasonable business hours and upon reasonable advance written notice, the Association records described in Section 7.1. The Board may make all or a portion of the Association records available for inspection by Owners through an Internet website.

Section 7.3 **Statement of Accounts.** Upon payment of a reasonable fee sufficient to compensate for the work involved and on advance written notice to the Board or its delegate, an Owner shall be furnished a statement of account setting forth the amount of any unpaid Assessments or other charges due from such Owner.

Section 7.4 **First Mortgagees.** The Association will maintain a record of each first mortgagee of any Lot who has filed with the Association a written notice of its lien, including the name and address of the first mortgagee.

Section 7.5 **Annual Accounting and Financial Statement.** The Association will prepare an annual accounting and financial statement showing in reasonable detail the Association's receipts and disbursements since the last statement, and its cash, bank accounts and indebtedness as of the date of the statement. The statement will be made available to Owners upon reasonable advance written notice.

ARTICLE VIII ASSOCIATION ACTIVITIES

Section 8.1 **Services.** As directed by the Board, the Association will, either itself or through a manager, managing agent, employees or contractors, provide for the operation of the Association and for the enforcement of covenants contained in the Declaration. The Association may provide other services and perform other functions for the individual benefit of Owners and charge fees for such individual services and functions as determined from time to time by the Board of Directors.

Section 8.2 **Income Tax Election.** The Board of Directors, on behalf of the Association, may elect to have Section 528 of the Internal Revenue Code apply for each taxable year of the Association and in connection therewith, if the election is made, shall see to it that all conditions to filing under Section 528 have been satisfied including, by way of example, that:

- (a) at least sixty percent of the gross income of the Association for each taxable year consists solely of amounts received from membership dues, fees or Assessments from Owners of Lots; and
- (b) at least ninety percent of the expenditures of the Association for each taxable year are for the operation of the Association.

Section 8.3 **Source of Funds.** The Association shall obtain the funds required for its activities by Assessments against the Lots and their Owners, as provided in the Declaration; from fees charged for services and functions; and from such other sources as may be provided for in the Declaration, Articles of Incorporation or these Bylaws. Upon a vote of a majority of the directors then in office, the Association may borrow funds and grant a security interest in its right to receive revenue from Assessments.

ARTICLE IX **COVENANT ENFORCEMENT**

The Association is one party having a right (but not an obligation) to enforce the covenants and other provisions of the Declaration. The Association's expenses of such enforcement shall be a proper item for fines imposed solely on an Owner in violation of the Declaration, Articles of Incorporation, rules and regulations or these Bylaws.

ARTICLE X **INDEMNIFICATION**

The Association shall indemnify any director or officer against expenses actually and necessarily incurred by such director or officer in connection with the defense of any action, suit or proceeding in which the director or officer is made a party by reason of being or having been such director or officer, except in relation to matters as to which the director or officer shall be adjudged in such action, suit or proceeding to be liable for willful and wanton acts or omissions in the performance of a duty. The Association may also reimburse any director or officer for the reasonable costs of settlement of any such action, suit or proceeding, if it shall be found by a majority of the directors not involved in the controversy (whether or not a quorum) that it was in the best interest of the Association that such settlement be made and that such director or officer was not guilty of a willful and wanton act or omission. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other right which such director or officer may have under applicable law. In the discretion of the Board, the Association may carry officers and directors liability insurance and the cost thereof shall be a proper item for Assessments.

ARTICLE XI **RESTRICTIONS ON OFFICERS AND DIRECTORS**

Section 11.1 **Conflicts of Interest.** If any action taken by the Board would financially benefit a director or any person who is a parent, grandparent, spouse, child or sibling (each, a "Relative") of the director, or a parent or spouse of such Relative, the director must disclose prior to the Board

discussion on the action that the director has a conflict of interest and such director may participate in the discussion but may not vote on the action. Except as expressly limited by the previous sentence, an officer or director may act for the Association although associated with or interested in another party which is involved in the transaction; provided, however, that such officer or director has disclosed such interest to the Association and no other officer or director has made known any objection.

Section 11.2 **Loans.** The Association shall not make any loan to any director or officer.

Section 11.3 **Compensation.** The Association shall not pay any compensation to the officers or directors for their services, but may reimburse them for their actual out-of-pocket expenses incurred on behalf of the Association.

ARTICLE XII
FISCAL YEAR

The Association's fiscal year shall be the calendar year, beginning on January 1 and ending on the following December 31, except that the first fiscal year will begin on the date of incorporation.

ARTICLE XIII
CORPORATE SEAL

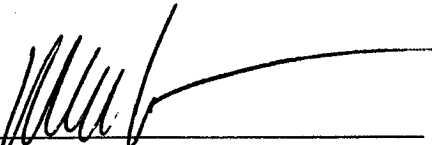
The Association may have a corporate seal which will be circular in form and will contain the name of the Association, the year of its organization and the words "Corporate Seal" and "Colorado."

ARTICLE XIV
AMENDMENT; CONFLICTS

Section 14.1 **Amendment.** These Bylaws may be amended by a vote of a majority of the directors in office.

Section 14.2 **Conflicts.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration, the Articles of Incorporation and these Bylaws, the Declaration shall control.

Adopted as the Initial Bylaws of the
Fountain Mesa Village Homeowners Association, Inc.,
effective as of December 22, 2005.



Robert C. Irwin, Incorporator

**FIRST AMENDMENT OF THE
BYLAWS
OF**

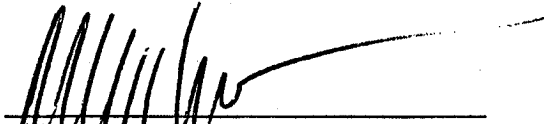
FOUNTAIN MESA VILLAGE HOMEOWNERS ASSOCIATION, INC.

a Colorado nonprofit corporation.

For purposes of correcting a typographical error and reconciling the Declarations of Conditions, Covenants, and Restriction of Fountain Mesa Village, Section 4.2 of the original Bylaws shall be deleted in its entirety and replaced with the following:

Section 4.2 **Number.** The number of directors of the Association shall be not less than one (1) nor more than five (5), with the exact number to be set by the Board. Directors shall be appointed by Declarant or elected, as applicable, at a regular meeting of the Owners. Except for the directors of the initial board, the directors shall serve for a term of three years from their date of election. The terms of the members of the initial elected board shall be staggered, such that at least one director's term will be for one year, and at least one director's term will be for two years.

Adopted and effective this Twenty-second day of December 2005.



Robert C. Irwin, Incorporator