

**BY-LAWS OF  
FAIRWAY THREE TOWNHOMES ASSOCIATION**

**Table of Contents**

**Page**

<b>Article I - General</b>	<b>1</b>
1.1 Purpose	1
1.2 Binding Effect	1
<b>Article II - Membership and Voting Rights</b>	
2.1 Membership	1
2.2 Voting Rights	1
2.3 Designation of Voting Member	1
2.4 Additional Sites	2
2.5 Cumulative Voting	2
2.6 Majority Vote	2
2.7 Quorum	2
2.8 Proxies	3
<b>Article III - Administration</b>	<b>3</b>
3.1 Place of Meetings	3
3.2 Annual Meetings	3
3.3 Special Meetings	3
3.4 Attendance	3
3.5 Notice of Meetings	3
3.6 Adjournment	4
3.7 Action Without Meeting	4
3.8 Order of Business	4
3.9 Waiver	4
3.10 Minutes	5
<b>Article IV - Board of Managers</b>	<b>5</b>
4.1 Managers	5
4.2 General Powers	5
4.3 Specific Powers	6
4.4 Election of Managers	8
4.5 Terms of Office	8
4.6 Vacancies	8
4.7 Removal	8
4.8 Board Meetings	9
4.9 Special Board Meetings	9
4.10 Waiver of Notice	9
4.11 Quorum	9
4.12 Consent by Managers	10
4.13 Committees	10

<b>Article V - Officers</b>	<b>10</b>
5.1 Officers	10
5.2 Removal	10
5.3 Compensation	10
5.4 President	10
5.5 Vice President	11
5.6 Secretary	11
5.7 Treasurer	11
<b>Article VI - Fiscal Management</b>	<b>12</b>
6.1 Assessments	12
6.2 Assessment Roll	12
6.3 Statement of Assessments	12
6.4 Budget	12
6.5 Fiscal Year	13
6.6 Notice of Mortgagee	14
<b>Article VII - Miscellaneous</b>	<b>14</b>
7.1 Indemnification	14
7.2 Conflicts Null and Void	14
7.3 Amendment	15
7.4 Copy of By-Laws	15
7.5 Limitation of Liability	15
7.6 Severability	15
7.7 Interpretation	16
7.8 Implied Consent	16

BY-LAWS OF

FAIRWAY THREE TOWNHOMES ASSOCIATION

ARTICLE I

GENERAL

1.1 Purpose. Fairway Three Townhomes Association, a nonprofit corporation herein referred to as the "Association," is formed to own, govern, operate and maintain the property located in Pitkin County, Colorado, which is otherwise known as Fairway Three Townhomes. The applicable property will be submitted to the Declaration for Fairway Three Townhomes, to be recorded in the office of the Clerk and Recorder, Pitkin County, Colorado (the "Declaration"). Terms which are defined in the Declaration shall have the same meaning when used in these By-Laws, unless the context clearly requires otherwise.

1.2 Binding Effect. All present and future Owners, Lessees and Occupants are subject to the regulations set forth in these By-Laws. The mere acquisition, rental or occupancy of any Unit or the use of the Common Elements will signify that these By-Laws are accepted, ratified and will be complied with.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. All Owners are automatically members of the Association. Such membership shall automatically cease upon termination of an ownership interest in a Site. Membership is appurtenant to a Site and may not be separately conveyed, encumbered, or abandoned.

2.2 Voting Rights. The Association shall have one (1) class of voting membership, which shall include all Owners, including Declarant. Except as specified in the Association's Articles of Incorporation, each Site shall be entitled to one (1) vote, regardless of the number of Owners of such Site.

2.3 Designation of Voting Member.

(a) If a Site has only one (1) Owner, that person or entity shall have the right to vote with respect to such Site, subject to the following qualification if the Owner is a legal entity: The entity must designate a voting agent and

register the agent's name with the secretary. Otherwise, the vote may be cast by any person present at a meeting of the members who purports to be the agent of the entity or, if there is more than one (1) such person, the vote must be cast in accordance with their unanimous agreement. There is unanimous agreement if either of the agents casts a vote without prompt protest to the presiding officer by the other agent(s). With respect to mail-in votes, if no designated agent has been registered with the Secretary, the Association is entitled to mail all voting materials, in care of the entity, to the address determined under Subsection 13.5 (b) of the Declaration, and may accept whatever voting materials are returned by the entity.

(b) If a Site has more than one Owner, the Owners must designate a voting agent and register the voting agent's name with the Secretary. If no such registration is made, the vote may be cast by any Owner present at a meeting of the members or, if more than one of the Owners is present, the vote must be cast in accordance with their unanimous agreement. There is unanimous agreement if any one (1) of the multiple Owners casts his Unit's vote without protest being made promptly to the presiding officer by any other multiple Owner. Votes by mail may be cast only through a representative selected by the Owner and registered with the Association. If no representative is registered with the Association the Board may send all voting materials to any one (1) Owner, who is then entitled to vote on behalf of the Unit.

2.4 Additional Sites. If additional Sites are created under the power reserved in the Declaration, the Owner of each additional Site shall automatically be a member of the Association and shall be subject to all obligations and shall enjoy all rights of a member.

2.5 Cumulative Voting. There shall be cumulative voting for the election of Managers.

2.6 Majority Vote Unless otherwise expressly provided in these By-Laws or the Declaration, any action which may be taken by the Association may be taken by a majority vote of a quorum. The voting rights of Owners set forth in these By-Laws, the Articles of Incorporation and the Declaration may only be amended as provided in Subsection 7.3 (b) of these By-Laws and provided the consent is obtained by holders of fifty-one percent (51%) of the First Priority Mortgagees.

2.7 Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of members representing at least twenty-five percent (25%) of the total votes of the Association then entitled to be cast, shall constitute a quorum. Members present at a duly called and held meeting at which a quorum is present may continue to do business

until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.8 Proxies. Votes may be cast in person or by proxy. All proxies shall be in writing and must be filed with the Secretary before the appointed time of each meeting. Each proxy shall be revocable and shall automatically cease to be effective on the earlier of one (1) year from the date of the proxy, or if applicable, after completion of the particular meeting for which the proxy was filed, or upon conveyance by the member of title to his Site.

### ARTICLE III

#### ADMINISTRATION

3.1 Place of Meetings. Meetings of the members shall be held at such suitable place in Pitkin County, Colorado as may be designated by the Board of Managers.

3.2 Annual Meetings. The annual meetings of the members shall be held at a time designated by the Board of Managers on the last Saturday in the month of December in each year, for the purpose of electing Managers and for the transaction of such other business as may come before the meeting. The first annual meeting shall be December 28, 1991.

3.3 Special Meetings. It shall be the duty of the President to call a special meeting of the members, as directed by resolution of the Board of Managers or upon a petition stating the purpose for the meeting signed by members having twenty-five percent (25%) of the votes of the Association, and presented to the Secretary.

3.4 Attendance. Each First Priority Mortgagee of a Site or of Association Property which is real property may designate a representative who may attend all special and regular meetings of members. Meetings shall be open to attendance by all members, any persons holding currently valid voting proxies of members, and the designated representatives of the First Priority Mortgagees.

3.5 Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting to each member of record and to each First Priority Mortgagee of a Site if such Mortgagee has filed a written request for such notice together with a current address with the Secretary at least ten (10) days prior to any such meeting. The notice shall state the purpose of the proposed meeting or that it is a regular meeting, as well as the day, hour and place where it is to be

held. Each notice must be sent by first class mail, postage prepaid, at least ten (10) days prior to the date of the proposed meeting, in accordance with the procedures set forth in Section 13.5 of the Declaration. The notice may set forth time limits for speakers and nominating procedures for the meeting. No business shall be transacted at a special meeting except as stated in the notice, unless by consent of members present, either by person or by proxy, representing at least fifty percent (50%) of the votes of the Association.

3.6 Adjournment. If any meeting cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is obtained. Adjourned meetings may be reconvened only upon the giving of further notice as above provided.

3.7 Action Without Meeting. Any action which, under the provisions of the Colorado Nonprofit Corporation Act, may be taken at a meeting of the members, may be taken without a meeting if such action is authorized by a writing signed by all of the members who would be entitled to vote at a meeting and filed with the Secretary or as otherwise provided in the Colorado Nonprofit Corporation Act.

3.8 Order of Business. The order of business at all meetings of the members shall be as follows:

- (a) Roll call;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading of minutes of the preceding meeting;
- (d) report of officers;
- (e) report of committees;
- (f) election of Managers;
- (g) unfinished business; and
- (h) new business.

Meetings of the members shall be conducted by the officers of the Association.

3.9 Waiver. The transaction of business at any regular or special meeting of the members, however called and noticed, shall be valid as though transacted at a meeting duly

held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the members not present in person or by proxy signs a written waiver of notice, a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made apart of the minutes of the meeting.

3.10 Minutes. Minutes or a similar record of the proceedings of meetings of members, when signed by the President or Secretary, shall be presumed to truthfully evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

#### ARTICLE IV

##### BOARD OF MANAGERS

4.1 Managers. The affairs of the Association shall be governed by a Board of Managers, which shall be composed of five persons, all of whom, at the time of their election or appointment, either must be members or agents of a member which is a corporation, partnership, trust, or other legal entity. After the first annual meeting the Board may increase, by resolution, the authorized number of Managers to a number greater than five, but only members (including Declarant if it owns any Site at the time of the election) shall have the right to elect the new Managers. Managers shall not receive any salary for their services as Managers, but any Manager may serve the Association in some other capacity and receive compensation therefor, and any Manager may be reimbursed for his actual expenses incurred in the performance of his duties as a Manager.

4.2 General Powers. The Board has the powers and duties necessary for the administration of the affairs of the Association and may do all acts which are not by law, the Declaration, or these By-Laws directed to be exercised exclusively by the members. The Board shall not enter into any service contract for a term exceeding three years without the approval of the members, except for (a) any contract with a public utility company which requires a term in excess of three years, (b) any maintenance contract with the seller or entity related to the seller of an asset which the Association has purchased or leased, or (c) a management contract with Declarant which may be for a term of five years and may provide for automatic five year renewals, provided that the Association shall have the right to terminate such management contract, without penalty or reason, on not more than ninety (90) days prior written notice.

4.3 Specific Powers. Without limitation on the general powers stated in Section 4.2, the Board is vested with, and responsible for, the following powers and duties:

(a) To select, appoint, and remove all officers, agents, and employees of the Association; to prescribe such powers and duties for them as may be consistent with law, the Articles of Incorporation, the Declaration, and these By-Laws; to fix their compensation; and to require from them security for faithful service when and in the amount deemed advisable by the Board;

(b) to conduct the business of the Association;

(c) to change the principal office for the transaction of the business of the Association from one location to another within Pitkin County, Colorado, to designate any place within Pitkin County, Colorado for the holding of any annual or special meeting of members, and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board in its sole judgment may deem best and in compliance with the provisions of law;

(d) to borrow money and to incur indebtedness for the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities;

(e) to prepare, adopt, and modify from time to time, the Association's annual budget, to fix and levy from time to time assessments upon the Owners as provided in the Declaration, to determine and fix the due date for the payment of installments of such assessments and the date upon which the same shall become delinquent, and to hold all funds collected by reason of such assessments for the Owners and in accordance with the purpose for which the assessments were collected;

(f) to establish a working capital reserve fund as set forth in the Declaration;

(g) to enforce the provisions of the Declaration, these By-Laws, its rules, deed restrictions and covenants, or other agreements of the Association;

(h) to contract and pay the premiums for insurance coverage in accordance with provisions of the Declaration and to review, not less frequently than annually, all insurance policies and bonds obtained by the Board;



(i) to contract and pay for Maintenance, gardening, snow removal, utilities, materials and supplies, and services relating to the Common Elements; to employ personnel necessary for the operation of the Property, including legal and accounting services; to contract and pay for alterations, improvements, and Maintenance; to procure bids from at least two (2) firms for any work estimated to cost in excess of five thousand dollars (\$5,000) and to submit work estimated to cost in excess of sixty thousand dollars (\$60,000) to the members for their consideration at a regular or special meeting;

(j) to adopt these By-Laws;

(k) to delegate its powers according to law and subject to the approval of the Members;

(l) to grant, for the Association on behalf of itself and as attorney-in-fact for the Owners, easements to and over the Common Elements;

(m) to take and hold by purchase, gift, or otherwise, real and personal property for the Association, to exercise all of the rights, powers and privileges of ownership to the same, and to use, manage, mortgage, sell, transfer, lease, license, or otherwise dispose of any such property or any interest therein, provided that the Board procures bids from at least two (2) firms for any contract which will likely produce more than five thousand dollars (\$5,000) revenue annually to the Association;

(n) to adopt such rules consistent with the Declaration, the Articles of Incorporation, and these By-Laws as the Board may deem necessary for the management and operation of the Property, which rules and regulations shall be appropriately published;

(o) to engage the services and set the compensation of a Managing Agent to perform such duties and services as the Board shall authorize, including but not limited to the duties listed in Section 4.3 other than this subparagraph (o), and to contract jointly with other associations governing property in Pitkin County, Colorado for any services or functions;

(p) to establish orderly procedures for giving notice and an impartial hearing to any Owner who is alleged to be in default in paying his assessments or the installments therefore to have violated the Declaration, Articles of Incorporation, these By-Laws, or the Association's rules; and

(q) to obtain a fidelity bond or fidelity insurance on behalf of the Board.

4.4 Election of Managers. There shall be cumulative voting for the election of Managers. The election of Managers shall be carried out in the following manner:

(a) At the first annual meeting of the Association, and thereafter at each regular meeting of the members, new Managers shall be elected by secret written ballot, the candidates receiving the highest number of votes cast being elected.

(b) Any member serving as Manager may be reelected, and there shall be no limitation on the number of terms which he may serve. Any person desiring to be a candidate for Manager shall submit a written statement to that effect to the Secretary, signed by the candidate, or be nominated orally by another member at the meeting at which voting is to occur.

#### 4.5 Terms of Office

(a) Of the initial Board of Managers specified in the Association's Articles of Incorporation, the first named person shall serve a one-year term, the second and third named persons shall serve a two-year term, and the remaining two (2) persons shall serve a three-year term.

(b) Each of their successors thereafter shall hold the serve for a three-year term, or until the election and qualification of his successor.

4.6 Vacancies. A vacancy shall be deemed to exist in the case of death, resignation, an adjudication of the incompetence of any Manager, or in case the members fail to elect the full number of authorized Managers at any meeting at which such election is to take place. A vacancy in a Manager's seat, caused by any reason other than the removal of a Manager by a vote of the members, shall be filled by a vote of the majority of the remaining Managers, even though they may constitute less than a quorum. Each person so elected shall be a Manager until a successor is elected at the next annual meeting of the members or at a special meeting of the members called for that purpose.

4.7 Removal. At any annual or special meeting of the members duly called, if the prior notice of the meeting states this as one of its purposes, any one or more of the Managers may be removed with or without cause, by the members. A successor or successors may then and there be elected to fill the vacancy thus created, provided that if the Manager being removed for cause is one of the initial Board of Managers, then Declarant may appoint the successor or successors. Any such successor shall serve for the unexpired term of his or her predecessor in office. Any Manager whose removal has been proposed by any member

shall be given an opportunity to be heard at the meeting, if he or she is present.

4.8 Board Meetings. The first meeting of the newly elected Board shall be held as soon as practicable following the meeting at which the Board is elected. Other regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a resolution adopted by the majority of the Managers, but at least one (1) such meeting shall be held during each fiscal year. Notice of regular meetings of the Board (other than the first meeting of the newly elected Board) shall be given by the Secretary to each Manager, personally or by mail, telephone, or telegraph, at least two (2) days prior to the date set for such meeting.

4.9 Special Board Meetings. Special meetings of the Board may be called by the President or, if the President is absent or refuses to act, by the Vice President or by any two (2) Managers. At least two (2) days' notice shall be given by the Secretary to each Manager, personally or by mail, telephone, or telegraph. Such notice shall state the time, place, and purpose of the meeting. If service is by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. of the second day after it is deposited in a regular depository of the United States mail. Whenever any Manager has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be presumptive evidence that due notice of such meeting was given to such Manager.

4.10 Waiver of Notice. Before, at, or after any meeting of the Board of Managers, any Manager may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving and receipt of such notice. Attendance by a Manager at any meeting of the Board shall be a waiver of notice by that Manager of the time and place thereof. If all the Managers are present at a meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

4.11 Quorum. At all meetings of the Board, a majority of the Managers shall constitute a quorum for the transaction of business, and the acts of the majority of the Managers present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there is less than a quorum, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, which shall be reconvened only upon the giving of notice as above provided, any business which might have been transacted at the meeting as originally called may be transacted.

4.12 Consent by Managers. The Managers shall have the right to take any action without a meeting which they could have taken at a meeting by obtaining the vote or written consent of all the Managers or as otherwise provided in the Colorado Nonprofit Corporation Act, as amended from time to time. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.13 Committees. The Board may, by resolution, from time to time designate such committees as it shall desire and may establish the purposes and powers of each such committee created. The resolution establishing the committee shall provide for the appointment of its members, as well as a chairman, shall state the purposes of the committee, and shall provide for such reports, termination, and other administrative matters as the Board deems appropriate.

## ARTICLE V

### OFFICERS

5.1 Officers. The Association shall have a President, one or more Vice Presidents, a Secretary, and a Treasurer (who may be the Secretary). All such officers shall be elected by the Board and hold office at its pleasure. Only the President need be a Manager, although other officers may be Managers.

5.2 Removal. Upon an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and his or her successor elected. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary, such resignation taking effect at the date of receipt of the notice or at any later time specified therein, and unless otherwise specified in the notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

5.3 Compensation. Officers, agents, and employees may receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent, or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee.

5.4 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of the President of a

corporation, including but not limited to the power to appoint committees from among the members from time to time as he or she may deem appropriate to assist in the conduct of the affairs of the Association. The President shall be ex officio a member of all standing committees and shall have such other powers and duties as may be prescribed by the Board or these By-Laws.

5.5 Vice President. The Vice President (in order of designation at the time of appointment, if more than one) shall take the place of the President and perform the President's duties whenever the President shall be absent, disabled, unwilling, or unable to act. If neither the President nor any Vice President is able to act, the Board shall appoint some member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board or these By-Laws.

5.6 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the principal office of the Association or at such other place as the Board may order. The Secretary shall perform all other duties given to the Secretary by the Board or these By-Laws. The Secretary shall keep the seal of the Association, shall have charge of such books and papers as the Board of Managers may direct, shall give or cause to be given notices of meetings of the members and of the Board, shall maintain a book of record members listing the names, addresses, and telephone numbers of the members as furnished to the Association, and shall ascertain, certify, record, and publicize the outcome of all votes taken by the Managers or the members, as the case may be. The Secretary shall also be responsible for all filings required by law, except tax returns.

5.7 Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records, and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements, and books belonging to the Association. The Treasurer's books and records shall be open to inspection by all Owners, the Declarant and First Priority Mortgagees at convenient weekday business hours. The Treasurer shall make a report, at least once annually, to the Board containing the Association's balance sheet as of the end of the fiscal period covered by the report and a statement of the Association's income and expenses for the same period. Any First Priority Mortgagee, at its own expense, may have prepared an audited financial statement of the Association with respect to any prior fiscal year. The Board shall cause a summary of the Treasurer's Report to be transmitted to each member. The Treasurer shall co-sign with another person designated by the Board all checks and promissory notes on behalf of the

Association. The Treasurer shall be responsible for keeping the assessment roll required in the fiscal management of the Association and for filing tax returns as required by law. The Treasurer shall be responsible for submitting to the Declarant each proposed budget, proposed assessment role and other fiscal matters and for consulting with Declarant regarding the same.

## ARTICLE VI

### FISCAL MANAGEMENT

6.1 Assessments. Assessments shall be in amounts sufficient to pay for the estimated Common Expenses. Assessments shall be in an amount at least sufficient to pay, out of the Common Expense fund, for the following services and expenses on a normal basis: grounds maintenance (including gardening and snow removal), upkeep of any and all facilities, insurance, trash removal, service and leasing contracts (including water, utilities and sewage) for the Association and the Common Elements, management fees, debt service, debt retirement, printing supplies and postage, employees' compensation, and taxes paid by the Association.

6.2 Assessment Roll. The Treasurer shall maintain an assessment roll which shall include a separate account for each Site. Such account shall designate the name and address of the Owner, the amount of each assessment against the Owner, the due dates of all assessment installments, the amounts paid by the Owner, and all unpaid assessments.

6.3 Statement of Assessments. Upon written request of any Owner, Mortgagee or prospective Mortgagee, or purchaser of any Site to the Treasurer, and payment of a reasonable service fee established by the Association, the Treasurer shall issue a written statement of the unpaid assessment receivable or other charges due and owing from the Owner for the Site involved, and such statement shall be conclusive upon the Association if the person to whom it is given relies upon it in good faith. If the statement is not given within ten (10) days of the making of an authorized request for it, the person making the request shall, as against the Association, be entitled to assume that no assessments or other charges are unpaid, unless the lien securing the same shall have been recorded in the land records in Pitkin County, Colorado or unless the person making the request has actual notice that assessments or other charges are unpaid.

6.4 Budget. It shall be the responsibility of the Board to establish and adopt a budget.

6.5 Fiscal Year. As soon as practicable, the Board, by resolution, shall fix a suitable fiscal year. This shall be the Association's budgeting and accounting period. The assessments against Owners shall be prepared, levied, and collected at such times and in such manner as to insure that sufficient funds are available for budgeted expenditures and operations when needed.

6.6 Notice of Mortgagee. Every Owner who mortgages his Site must notify the Association through the managing agent or the Secretary, of the name and address of his Mortgagee. The Secretary shall maintain such information in records established for that purpose. Any such Owner shall notify the Association in the same manner of the release or discharge of any such Mortgagee.

## ARTICLE VII

### MISCELLANEOUS

7.1 Indemnification. Any person who is or was a Manager, officer, employee, fiduciary, or agent of the Association or is or was serving at the request of the Association as a director, manager, officer, employee, fiduciary, or agent of another corporation, partnership, joint venture, trust, or other enterprise and who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was serving in such capacity, may be indemnified by the Association to the extent and in the manner described herein. The indemnification authorized by this Section shall continue as to any person who has ceased to be a Manager, officer, employee, fiduciary, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

(a) The Association shall indemnify such person who has been successful on the merits in defense of any such proceeding against expenses, including attorney's fees, actually and reasonably incurred by that person in connection therewith.

(b) The Association shall indemnify such person against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person in such proceeding (other than an action brought by or in the right of the Association) if the person acted in good faith and in a manner that person reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

(c) In any threatened, pending or completed action by or in the right of the Association to procure a judgment in its favor against such person, the Association shall indemnify such person against expenses, including attorney's fees, actually and reasonably incurred by such person in connection with the defense or settlement of such action, if the person acted in good faith and in a manner that person reasonably believed to be in the best interests of the Association. The Association shall not indemnify such person if that person shall have been adjudged to be liable for negligence or misconduct in the performance of that person's duty to the Association unless and only to the extent that the court in which such action was brought determines upon application that such person is fairly and reasonably entitled to such indemnity for such expenses as the court shall deem proper.

(d) Any indemnification authorized under subparagraphs (b) and (c) (unless ordered by a court) shall be made only upon a determination that such person has met the standard of conduct set forth in such subparagraphs. Such determination shall be made by a majority of a quorum of disinterested Managers, or if a disinterested quorum is not available, or even if obtainable, if a quorum of disinterested Managers so directs, by independent legal counsel chosen by the Board in a written opinion, or by vote of the members.

(e) Expenses (including attorney's fees) incurred in defending such proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized in subparagraph (d) upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association.

The Association shall also have the power to purchase and maintain insurance on behalf of any person who is or was a Manager, officer, employee, fiduciary, or agent of the Association or is serving at the request of the Association in said capacity or a similar capacity of another Association against any liability asserted against that person and incurred by that person in any such capacity or arising out of that person's status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Section.

Rights of indemnification under this Section shall be in addition to rights which such person may otherwise be lawfully entitled.

7.2 Conflicts Null and Void. In case any of these By-Laws conflict with any provisions of the laws of the State of Colorado, the Articles of Incorporation, or the Declaration, such



conflicting By-Laws shall be null and void, but all other By-Laws shall remain in full force and effect.

### 7.3 Amendment.

(a) By Managers. Except as committed to action by the members or as otherwise limited by law, the Articles of Incorporation, the Declaration or these By-Laws, the Board of Managers shall have the power to make, amend and repeal the By-Laws of the Association at any regular meeting of the Board or at any special meeting called for that purpose at which a quorum is present. However, if the members shall make, amend and repeal any By-Law, the Managers shall not thereafter amend the same in such manner as to defeat or impair the object of the members in taking such action.

(b) By Members. These By-Laws may be amended by a vote therefor by sixty-seven percent (67%) or more of the members present in person or by proxy in a duly constituted meeting of members for such purpose.

(c) References to by-Laws. From and after any amendment of these By-Laws, any references to "the By-Laws" shall be deemed to include any such amendments, unless otherwise stated.

7.4 Copy of By-Laws. This Association shall keep in its office for the transaction of business the original or a copy of these By-Laws, as amended from time to time, certified by the Secretary, which shall be open to inspection by the members and First Priority Mortgagees at reasonable times during office hours.

7.5 Limitation of Liability. The Board shall not be liable for any failure of any service to be obtained and paid for by the Board hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person, or resulting from electricity, water or rain which may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, from any other place, unless caused by gross negligence of the Board. The Board shall not be liable for any damage, breakage or injury from golf balls from the adjacent golf course being hit onto the Property and striking the Property or an Occupant. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Board to comply with any law, ordinance, or order of a governmental authority.

7.6 Severability. The provisions hereof shall be deemed independent and severable, and invalidity or partial

invalidity or unenforceability of any provision or portion hereof shall not affect the validity or unenforceability of any other provision hereof.

7.7 Interpretation. The provisions of these By-Laws shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a planned unit development property. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce such provision or any other provision hereof.

7.8 Implied Consent. Whenever in these By-Laws, the Articles of Incorporation or the Declaration the consent or approval of First Priority Mortgagees is required, such consent or approval is presumed conclusively as to such First Priority Mortgagees that fail to respond to a written proposal, amendment or other request for response, sent by registered or certified mail, return receipt requested, within thirty (30) days of such request.

The foregoing By-Laws of Fairway Three Townhomes Association were adopted by its Board of Managers with the approval and consent of Declarant on the 28<sup>th</sup> day of November, 1990.

BOARD MEMBERS

Jessie

Harry Tomsett 1/14/91

Saul Barnett

W. H. Merrill

\_\_\_\_\_

ATTEST:

[Signature]

DECLARANT:

Aspen/Pitkin County Housing Authority, a multi-jurisdictional housing authority

By William C. Coops, Chairman

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Fairway Three Townhomes Association, a Colorado nonprofit corporation; and

2. The foregoing By-Laws constitute the By-Laws of the corporation duly adopted by unanimous written consent in lieu of a meeting of the Board of Managers, as of November 28, 1992.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the corporation this 28 day of November, 1992.

  
\_\_\_\_\_  
Secretary

[SEAL]

