

**REVISED AND RESTATED BY-LAWS
OF
THE SUN GATE CONDOMINIUM ASSOCIATION, INC.
(A COLORADO NONPROFIT CORPORATION)
May 15, 2008**

ARTICLE I - INTRODUCTION

These are the Revised and Restated By-Laws of The Sun Gate Condominium Owners Association, Inc. (the "Association") which shall operate under the Colorado Revised Nonprofit Corporation Act, as amended, and the Colorado Common Interest Ownership Act, as amended ("CCIOA"). In the event of any conflict between these By-Laws and CCIOA, the latter shall take precedence and be controlling. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Association's "Declaration of Covenants, Conditions and Restrictions for The Sun Gate Condominiums" (the "Declaration") or in its Articles of Incorporation.

ARTICLE 2 - BOARD

Section 2.1 - Number and Qualification

- (a) The affairs of the Common Interest Community and the Association shall be governed by an Executive Board which shall consist initially of three (3) persons, all of whom shall be owners of one or more Units ("Unit Owners"). If any Unit is owned by a partnership or corporation, any officer, partner or employee of that Unit Owner shall be eligible to serve as a member of the Executive Board ("Director") and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. Directors shall be elected by the Members of the Association. At any meeting at which Directors are to be elected, the Members may, by resolution, adopt specific procedures which are not inconsistent with these By-Laws or the Colorado Revised Nonprofit Corporation Act as amended, for conducting the elections. A person shall automatically cease to be a Director at such time as he or she ceases to be an individual member or a partner, trustee, officer, director or shareholder of an institutional member.
- (b) Classification of the Directors shall be made by dividing them into three classes, consisting of one director each. The term of office of the Director of the first class shall expire at the first annual meeting of the members held after such classification; the term of office of the Director of the second class shall expire at the second annual meeting thereafter; and the term of office of the Director of the third class shall expire at the third annual meeting thereafter. At each annual meeting after such classification, one Director shall be elected to succeed the Director whose term expires at the time of such meeting and to hold office until the third succeeding annual meeting.

- (c) Except as otherwise provided by these by-laws, the Directors of the Executive Board shall be elected at the annual meeting of the Members.
- (d) The Executive Board shall elect the officers. The Directors and officers shall take office upon election

Section 2.2 - Powers and Duties The Executive Board may act in all instances on behalf of the Association, except as provided in the Master Association Documents, this Declaration, these By-Laws or CCIOA. The Executive Board shall have, subject to the limitations contained in the Declaration and CCIOA, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, including the following powers and duties:

- (a) Subject to Article 11 hereof, adopt and amend the By-Laws, Rules and Regulations, Policies, and Procedures of the Association ("Rules"); Adopt and amend By-Laws and Rules and Regulations of the Association ("Rules");
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) To fix, determine, levy and collect monthly and special assessments to be paid by each of the Owners to meet the common expenses as defined in the Declaration, and to create a contingency reserve therefore. The board may adjust the monthly assessment from time to time as may in the discretion of the board be deemed necessary or advisable. Special assessments may be levied whenever in the opinion of the board it is necessary or advisable to do so (i) to meet increased operating or maintenance expenses or costs, (ii) to provide for additional capital expenses, or (iii) because of emergencies; however, if the proposed additional capital expenses are in excess of 10 percent of the maximum replacement value of the buildings, as determined by the Association pursuant to the Declaration, such expenses may be incurred only after the members approve such expenses. All monthly or other assessments shall be in itemized statement form and shall set forth the detail of the various expenses for which the assessments are being made;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees, independent contractors and agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Association's Declaration, By-Laws or Rules in the Association's name, on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;

- (h) Regulate the use, maintenance, repair, replacement and modification or improvement of the Common Elements;
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to Section 312 of CCIOA;
- (k) 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 Elements;
- (l) Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections 202(l)(b) and (d) of CCIOA;
- (m) Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy a reasonable fine for a violation of the Declaration, By-Laws, Rules and Regulations of the Association;
- (n) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, the Condominium Map for the Common Interest Community or statements of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and the Executive Board and maintain Directors' and officers' liability insurance;
- (p) Exercise any other powers conferred by the Declaration, CCIOA, or the Colorado Revised Nonprofit Corporation Act, as amended;
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- (q) Exercise any other power necessary and proper for the governance and operation of the Association; and;
- (r) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within 45 days of publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Executive Board at its next regular meeting. At least one member of the committee shall be a board member. The other committee members must be owners.

Section 2.3 – Manager The Executive Board may employ a manager or managing agent or property manager (which may be a wholly-owned subsidiary of the Association as long as such fact shall be disclosed, it shall not be subject to 2.15) for the Common Interest Community, at a compensation established by the Executive Board, to perform duties and services authorized by the Executive Board. The Executive Board may delegate to the manager only the powers granted to the Executive Board by these By-Laws under Section 2.2, subdivisions (c), (e), (g) and (h). Licenses, concessions and contracts may be executed by the manager pursuant to specific resolutions of the Executive Board and to fulfill the requirements of the budget.

Section 2.4 - Removal of Directors The Unit Owners may remove any Director of the Executive Board, with or without cause, by the affirmative vote of at least two-thirds of the votes present and entitled to be cast at a meeting of the Members at which a quorum of Members is present. Upon such removal, the Unit Owners may at the same meeting elect a new Director for the remaining term of the Director so replaced under terms of a majority vote. If the Unit Owners do not so elect at such meeting, the vacancy shall be filled as set forth in Section 2.5 below.

Section 2.5 – Vacancies Vacancies in the Executive Board, caused by any reason other than the removal of a Director by a vote of the Unit Owners, may be filled at a special meeting of the Executive Board held for that purpose 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 in the following manner:

- (a) As to vacancies of Directors, by a majority of the remaining elected Directors constituting the Executive Board; and
- (b) Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

Section 2.6 - Regular Meetings The first regular meeting of the Executive Board following each annual meeting of the Unit Owners shall be held after the annual meeting or within 20 days after the annual meeting at a time and place to be set by the elected Directors of the Executive Board who are in attendance at the meeting, at which they shall have been elected. If all of the newly elected Directors are not in attendance at the meeting, notice shall be given to the newly elected Directors at least ten days prior to such meeting in order to legally constitute such meeting. The Executive Board may set a schedule of additional regular meetings by resolution and the schedule shall be sent to each director and Unit Owner after it is set and no further notice is necessary to constitute regular meetings.

Section 2.7 - Special Meetings Special meetings of the Executive Board may be called by the President or by a majority of the Directors on at least ten days' notice to each Director.

Section 2.8 - Notice of Board Meetings All Owners may attend Executive Board meetings. Subject to the Provisions of the Colorado Revised Nonprofit Act CCIOA and the Association Document, Notice to Owners and Board Members of Executive Board meetings shall be given by posting a tentative schedule of meetings on the Association's Web Site www.sungatefrisco.com as well as a specific notice by e-mail of the time, place and purpose of each board meeting at least 10 days prior to the meeting. Notice to Directors may also be hand delivered or mailed or sent by delivery service. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Executive 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 subject to ratification at the next regularly noticed board meeting.

Section 2.9 - Conduct of Board Meetings Roberts Rules of Order shall be used in conducting meetings. At Executive Board meetings, Owners may speak during the Board's discussion and deliberation only if expressly authorized by a majority vote of a quorum of the Executive Board subject to CCIOA. However, the Executive Board must allow an Owner to speak at an appropriate time prior to the Executive Board taking formal action on any item under discussion. Such opportunity to be heard shall be in addition to any other speaking opportunities provided by the Executive Board. The Executive Board, however, may reasonably limit the time persons are allowed to speak. The Board must provide for a reasonable number of persons to speak on each side of an issue. The conduct of meetings for Executive Board meetings shall apply to Executive Board committee meetings as well.

Section 2.10 - Quorum and Consent of Directors

- (a) At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.
- (b) If all the Directors or all Directors of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, that action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be subject to notice and ratification in accordance with Section 2.8,. The secretary shall file these consents with the minutes of the meetings of the Executive Board.

Section 2.11 - Telephone Communication in Lieu of Attendance A Director may attend a meeting of the Executive Board 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 Executive Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

Section 2.12 - Compensation of Directors The Executive Board serves without pay but is authorized to make provisions for reasonable compensation to its members for expenses incurred as a part of their duties.

Section 2.13 - Board Member Education The Executive Board may authorize, and account for as a common expense, reimbursement of Board of Directors for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of owners' associations. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of CCIOA. If first authorized by the Executive Board- for reimbursement- a Director must show proof of attendance and provide an agenda of the program.

Section 2.14 - Executive Board/Preservation of the Attorney-Client Privilege Once the Executive Board has resolved any matter for which they sought legal advice or considered litigation, the Executive Board has the discretion to decide whether to disclose such communication at an open meeting or to preserve its attorney-client privilege as a matter of law.

Section 2.15 - Conflicts of Interest As described in Colorado Revised Statutes §7-128-501, a "conflicting interest transaction" means: A contract, transaction, or other financial relationship between the Association and a director of the Association, or between the Association and a party related to a director, or between the Association and an entity in which a director of the Association is a director or officer or has a financial interest.

- (a) A "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or a party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.
- (b) No loans shall be made by the Association to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.
- (c) The following rules apply to approval of any transaction deemed to be a "conflicting interest transaction".
 - (1) The material facts as to the director's relationship or interest and as to the conflicting interest transaction shall be disclosed to the board of directors or the committee, and the board of directors or committee in good faith shall authorize, approve, or ratify the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

- (2) The material facts as to the director's relationship or interest and as to the conflicting interest transaction shall be disclosed to the members entitled to vote thereon, and the conflicting interest transaction shall be specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; and
- (3) The disinterested directors determine that the conflicting interest transaction is fair as to the Association.
- (d) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

ARTICLE 3 - UNIT OWNERS AND MEMBERS

Section 3.1 – Members Each person who holds fee simple title to a Unit (Unit Owners) shall be a Member of the Association and hold a membership interest in the Association as set forth in the Declaration and the Articles.

Section 3.2 - Annual Meeting Annual meetings of Members shall be held once per calendar year commencing in the year 2005 during the month of September at such date, time and place selected by the Executive Board and set forth in the Notice. At these meetings, the Directors shall be elected by ballot of the Members. Each Unit shall be entitled to vote one vote in all matters to be decided at the meeting. Cumulative voting shall not apply in election of the Executive Board or for any other purpose. The Members may transact other business as may properly come before them at these meetings.

Section 3.3 - Budget Meeting Meetings of Unit Owners to consider proposed budgets shall be called in accordance with CCIOA. The budget may be considered at Annual or Special Meetings called for other purposes as well.

Section 3.4 - Special Meetings Special meetings of the Association may be called by the president, by a majority of the members of the Executive Board or by Members representing twenty percent (20%) of the votes in the Association.

Section 3.5 - Place of Meetings Meetings of the Members shall be held at the principal office of the Association, Carlson, Carlson & Dunkelman, P.C., Frisco, Colorado, unless noticed otherwise or may be adjourned to a suitable place convenient to the Members, as may be designated by the Executive Board or the president.

Section 3.6 - Notice of Meetings The secretary or other officer specified in these By-Laws shall cause notice of meetings of the Members. Notice of Member meetings shall be posted on the Association Web Site, www.sungatefrisco.com in addition to electronic or mail notices. Notice of Member meetings shall also be physically posted in a conspicuous place on the entrances to the common interest community. Notice shall include the general nature of the meeting, and if applicable, any proposed amendment to the Declaration or Bylaws, any budget amendments, and any proposal to remove a member of the Executive Board.

The Association is encouraged to use electronic means to give notice of Member meetings and must use such method if the Member has submitted an email address and has acknowledged receipt. The secretary or other officer specified in the By-Laws shall cause notice of meetings of the Members to be hand-delivered, delivered by electronic mail with a return receipt or sent prepaid by United States mail or other delivery service to the mailing address designated in writing by the Unit Owner, or, if none so designated, to the mailing address of a Unit Owner not less than 10 nor more than 50 days in advance of a meeting. No action shall be adopted at a meeting except as stated in the notice.

Section 3.7 - 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.

Section 3.8 - Adjournment of Meeting At any meeting of Members, a Majority of the Members who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.9 - Order of Business The order of business at all meetings of the Members shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Executive Board (if required and noticed);
- (f) Election of inspectors of election (when required),
- (g) Election of Directors of the Executive Board (when required),
- (h) Ratification of budget (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

Roberts Rules of Order shall be used in conducting meetings. At the Unit Owner(Member) meetings, Unit Owners must be allowed to speak prior to formal action being taken on an item under consideration. The Association, however, may reasonably limit the time persons are allowed to speak. The Association must provide for a reasonable number of persons to speak on each side of an issue.

Section 3.10 - Voting

- (a) The voting rights of the Members shall be as set forth in the Association Declarations and in their By Laws consistent with the Colorado Common Interest Ownership Act. If a Unit is owned by more than one person, those persons shall agree among themselves how a vote for that Unit's membership is to be cast. Individual co-owners may not cast fractional votes. If the co-owners or joint owners of a Unit cannot agree as to how to cast the one vote for such Unit, said Unit shall not be entitled to vote. The Association may reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if such rejection is done in good faith and has reasonable basis for doubt about its validity. Such rejection may not be made with malice, intent to defraud, or take unfair advantage. The Association and individuals acting for the Association in accepting or rejecting one of the above documents will not be liable for any damages if the acceptance or rejection is done in good faith. Any Association action based on the acceptance or rejection of one of the above documents is valid unless a court determines otherwise.
- (b) The vote allocated to a Unit may be cast under a proxy duly executed by any Unit Owner or its attorney-in-fact, duly authorized in writing. In the event of a conflict (either in person or by proxy) among or between the Owners of fractional interests in a Unit, the vote of such Unit shall not be counted. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter or longer term.
- (c) The vote of a corporation, limited liability company, limited partnership or business trust may be cast by any officer, manager or general partner of that entity in the absence of express notice of the designation of a specific person by the Executive Board of directors, operating agreement, partnership agreement or bylaws of the owning entity. The vote of a general 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, limited liability company, partnership or business trust owner be qualified to vote.
- (d) Votes allocated to a Unit owned by the Association may not be cast.
- (e) In the event of any contested election for a Director, or for any other proposal, upon the request of twenty percent of the Unit Owners voting shall be by secret ballot in accordance with Section 310 of CCIOA.

Section 3.11 – Quorum Except as otherwise provided in these By-Laws, the Members present in person or by proxy at any meeting of Members, but no less than the number of Unit Owners representing twenty percent (20%) of the votes of the members, shall constitute a quorum at that meeting.

Section 3.12 - Majority Vote The Vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, these By-Laws or by law, including CCIOA or the Colorado Revised Nonprofit Corporation Act.

Section 3.13 - Voting By Mail or E-Mail The Executive Board may decide that voting of the members shall be by U. S. Mail or E-Mail with respect to any properly noticed matter or to any particular election of managers or with respect to adoption of any proposed amendment to the Articles of Incorporation, or adoption of a proposed plan of merger, consolidation or dissolution. If E-Mail is utilized instead of U. S. Mail, a return E-Mail receipt of any notice shall be required and retained in the meeting minutes. If no E-Mail response is received, a timely notice shall be sent by registered mail to the individual not responding. In case of election of Directors by U. S. Mail or E-Mail, the existing Executive Board shall nominate candidates and shall advise the Secretary in writing of the names of nominated Directors sufficient to constitute a full Executive Board and of a date at least thirty (30) days after such advice is given by which all votes are to be received. The Secretary, within five days after such advice is given, shall give written notice of the number of Directors to be elected and of the names of the nominees to all Owners or co-owners of each membership. The notice shall state that any such Owner or co-owner may nominate an additional candidate or candidates, not to exceed the number of Directors to be elected, by notice in writing to the Secretary at the specified address of the principal office of the Corporation, to be received on or before a specified date fifteen (15) days from the date the notice is given by the Secretary. Within five (5) days after such specified date, the Secretary shall give written notice to all Owners or co-owners of a membership, stating the number of Directors to be elected, stating the names of all persons nominated by the Executive Board and by the members on or before said specified date, stating that each Owner or co-owner may cast a vote by mail and stating the date established by the Executive Board by which such votes must be received by the Secretary at the address of the principal office of the Corporation, which shall be specified in the notice. Votes received after that date shall not be effective. The Directors shall be elected by the vote of a plurality of the votes cast by the said specified date. With regard to any other proposal, the secretary shall give notice to Owners of the proposal to be voted on in the same manner with a specific date at least thirty (30) days after such notice by which all votes must be received. Any such proposal shall be adopted if approved by the affirmative vote of not less than sixty-six and two-thirds percent (66-2/3%) of the votes entitled to be cast on such question. Delivery of a vote in writing to the principal office of the Corporation shall be equivalent to receipt of a vote by mail at such address for the purpose of this Section 3.13

Section 3.14 - Owner Education The Association shall provide, or cause to be provided, education to owners at no cost on at least an annual basis as to the general operations of the Association and the Rights and Responsibilities of Owners, The Association, and it's Executive Board under Colorado Law. The criteria for compliance shall be determined by the Board.

ARTICLE 4 - OFFICERS

Section 4.1 – Designation The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer, any of whom shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. The president and vice president, but no other officers, need to be Directors. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant.

Section 4.2 - Election of Officers The officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board. They shall hold office at the pleasure of the Executive Board.

Section 4.3 - Removal of Officers Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose.

Section 4.4 – President The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Unit Owners and of the Executive Board. The president shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to the power to appoint committees from among the Unit Owners from time to time as the president may decide is appropriate to assist in the conduct of the affairs of the Association. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration and these By-Laws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.5 - 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 Executive Board 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 Executive Board or by the president.

Section 4.6 – Secretary The secretary shall keep the minutes of all meetings of the Unit Owners and the Executive Board. The secretary shall have charge of the Association's books and papers as the Executive Board may direct 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 Declaration and the By-Laws on behalf of the Association, following authorization or approval of the particular amendment as applicable. The Secretary may hire transcribers, court stenographic reporter, court recorders, or other professionals to draft minutes.

Section 4.7 – Treasurer The treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board 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 Association, 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 Association in banks designated by the Executive Board. Except for reserve funds described below, the treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Executive Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the Board.

Section 4.8 - Agreements, Contracts, Deeds, Checks, etc. Except as provided in Sections 4.4, 4.6, 4.7, and 4.9 of these By-Laws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person, persons or entity designated by the Executive Board.

Section 4.9--Statements of Unpaid Assessments The treasurer, assistant treasurer, a manager employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments, in accordance with Section 316 of CCIOA. The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

ARTICLE 5 – ENFORCEMENT

Section 5.1 - Abatement and Enjoinment of Violations by Unit Owners The violation of any of the Rules adopted by the Executive Board or the breach of any provision of the Documents shall give the Executive Board the right, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these By-Laws:

- (a) To enter the Unit or Limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Documents. The Executive Board shall not be deemed liable for any manner of trespass by this action; or

- (b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

ARTICLE 6 - INDEMNIFICATION

To the fullest extent provided by the Colorado Revised Nonprofit Corporation Act, as amended, the Directors and officers of the Association shall not be liable to the Association or the Unit Owners for monetary damages or breach of fiduciary duty. The Association shall indemnify the Directors and officers of the Association to the fullest extent provided by CCIOA and the Colorado Revised Nonprofit Corporation Act, as amended.

ARTICLE 7 - RECORDS

Section 7.1 - Records and Audits The Association shall maintain financial records as required by CCIOA, the Colorado Revised Nonprofit Corporation Act, the Internal Revenue Service, other applicable statutes and the Association Documents. The cost of any audit shall be a Common Expense unless otherwise provided by CCIOA or the Declarations.

Section 7.2 – Examination All current records maintained by the Association or the manager shall be available for examination and copying by any Unit Owner, any holder of a mortgage or deed of trust in a Unit or its insurer or guarantor, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice. The Association shall make all financial and other records available during normal business hours, on notice of five business days, for examination and copying by any Unit Owner if the following conditions are all met: 1) the request was made in good faith and for a proper purpose, and not in vexation, to be frivolous, nor for a pecuniary gain; and 2) the request describes with reasonable detail the records sought and why; and 3) the records are relevant to the purpose of the request and apply to the matter in question.

The Association shall charge “actual costs” for copying records, which includes personnel and equipment used for the search, retrieval, and copying of the records. The Association may make some or all required records available on a website accessible to members and the general public.

Section 7.3 - Records

7.3.1 The Association shall maintain a copy of each of the following records at its principal office, or managing agent’s principal office:

- (a) Its Articles of Incorporation or other applicable organizational documents;
- (b) The Declaration;
- (c) Any Covenants, Rules and Regulations, or Policies and Procedures;

- (d) Its By Laws;
- (e) Resolutions adopted by the Executive Board that affect Unit Owners;
- (f) The minutes of all Executive Board and Unit Owner's meetings and records of actions taken by the Executive Board without a meeting for the past three years;
- (g) All written communications within the past three years to Unit Owners;
- (h) A list of the names and business or home addresses of its current Directors and Officers, if any
- (i) Its most recent annual report, if any;
- (j) All financial audits or reviews conducted during the preceding three years.

7.3.2 The Association shall also maintain the following records:

- (a) An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage or deed of trust on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account and the balance due;
- (b) An account for each Unit Owner showing any other fees payable by the Unit Owner;
- (c) A record of any capital expenditures approved by the Executive Board for the current and next two succeeding fiscal years;
- (d) A record of the amount and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project;
- (e) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;
- (f) The current operating budget adopted pursuant to Section 315(l) of CCIOA and ratified pursuant to the procedures of Section 303(4) of CCIOA;
- (g) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;
- (h) A record of insurance coverage provided for the benefit of Unit Owners and the Association;

- (i) A record of any alterations or improvements to Units or Limited Common Elements which violate any provisions of the Declaration of which the Executive Board has knowledge;
- (j) A record of any violations, with respect to any portion of the Common Interest Community, of health, safety, fire or building codes or laws, ordinances, or regulations of which the Executive Board has knowledge;
- (k) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements;
- (l) Balance sheets and other records required by local corporate law;
- (m) Tax returns for state and federal income taxation;
- (n) Minutes of proceedings of incorporators, Unit Owners, Directors, committees of Directors and waivers of notice; and
- (o) A copy of the most current versions of the Declaration, By-Laws, Rules, and resolutions of the Executive Board, along with their exhibits and schedules;
- (p) An annual accounting for Association funds and a financial statement must be prepared and presented to the Association by the managing agent, a public accountant, or a certified public accountant;
- (q) The Association shall charge Members "actual costs" for copying records, which includes personnel and equipment used for the search, retrieval, and copying of the records. The Association may make some or all required records available on a website accessible to members and the general public.

ARTICLE 8. HANDLING OF OWNER COMPLAINTS

Section 8.1 – Procedure The following procedures shall be followed when the Association enforces the Association Documents as a result of complaints regarding Owners or occupants made to the Board by an Owner, occupant or management company.

- (a) **Complaint.** All complaints, whether by an Owner, occupant or by the manager shall be in writing and submitted to the Board. The complaint shall state the specific provision(s) of the Association Documents alleged to have been violated and as many specifics as are available as to the date, time, location and persons involved ("Respondent(s)"). The complaint shall also state the name of the complainant. The Board may also initiate a complaint.

- (b) Investigation. Upon receipt of a complaint, the Board shall determine whether the allegations in the complaint are sufficient to constitute a violation of the Association Documents and whether action by the Association is warranted. The Board may, in its sole discretion, appoint an individual or committee to investigate the matter.
- (c) Association Action. If the Board determines that the allegations in the complaint are sufficient to constitute a violation of the Association Documents and that action is warranted or, the Board shall send a notice ("Demand for Abatement") to the Respondent, by certified mail, return receipt requested, addressed to the mailing address of the Respondent of file in the records of the Association at the time of such mailing. The Demand for Abatement shall advise the Respondent of (1) the alleged violation, (2) the action required to abate the violation and (3) a time period of not less than ten (10) calendar days during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any additional similar violations may result in the imposition of a sanction after notice and hearing, if the violation is not continuing. This subsection "(c)" shall also apply to any complaint(s) initiated by the Board.
- (d) Notice of Hearing. If the Respondent does not comply with the Demand for Abatement, within the time allotted by the Demand for Abatement or if the same violation occurs within eighteen (18) months from the date of the Demand for Abatement, the Board shall mail the Respondent a written notice of hearing ("Notice of Hearing") to be held by the Board. The Notice of hearing shall contain (1) the nature of the alleged violation, (2) the time and place of the hearing, which time shall not be less than ten (10) calendar days from the date of the Notice of Hearing, (3) an invitation to attend the hearing and produce statements, evidence and witnesses on Respondent's behalf, or provide a written response prior to the date of hearing, and (4) the proposed sanction to be imposed, which sanctions shall be consistent with the Association Documents including these Rules.
- (e) Hearing. The hearing shall be held pursuant to the Notice of Hearing affording the Respondent a reasonable opportunity to be heard. Prior to imposing any sanction, proof that the Notice of Hearing was duly given to the Respondent shall be included in the minutes of the hearing. Such proof shall be deemed adequate if a copy of the Notice of Hearing, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the Respondent appears at the hearing. The Board may: (a) exercise its discretion as to the specific manner in which a hearing shall be conducted, (b) question witnesses and review evidence and (c) act as it may deem appropriate or desirable to permit the Board to reach a just decision. Each hearing shall be open to attendance by all members of the Association. At the Board's discretion a hearing may be held using electronic or telephone communication which satisfies the other requirements of this subsection "(e)".

- (f) Decision. If the Respondent appears at the hearing or provides a written response after all testimony and other evidence has been presented to the Board at a hearing, the Board shall render its decision(s), taking into consideration all of the relevant facts and circumstances. The decision of the Board shall be final and shall be effective on the date specified by the Board. If the Board does not inform the Respondent of its decision at the time of the hearing, the Board will provide a written decision to the Respondent's address of record, via first class mail, within five (5) calendar days after the date of hearing. The minutes of the hearing shall contain a written statement of the results of the hearing and sanction, if any, imposed.
- (g) Enforcement, Attorney's Fees and Fines/Sanctions. The provisions of this policy shall not limit, or be a condition precedent to, the Association's right to enforce the Association Documents by any means available, including but not limited to, commencement of a legal procedure to force compliance or seeking injunctive relief or damages. The Association shall be entitled to reimbursement of all reasonable attorneys' fees and costs incurred by the Association in connection with any enforcement action, including any proceeding under this policy. If a violation involves damages to Association property, the violator shall pay the costs of repair or replacement. The procedures set forth in this policy shall not be necessary in order to impose any sanction or penalty for nonpayment of a delinquent assessment.
- (h) Violations of Offenses that Constitute a Present Danger. If, in its sole discretion, the Board deems that any violation is or may be an immediate or substantial threat to the health, safety or welfare of the Common Interest Community unit's occupants, the Board may impose any appropriate sanction as necessary to abate the threat to health safety or welfare of the Sun Gate condominium community or individuals or units without prior compliance with subsections "(a)" through "(g)" above.
- (i) Business Judgment Rule. The decision of the Board to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and not to be arbitrary or capricious in taking enforcement action, without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further actions: (ii) the covenant, rule, regulation or restriction being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interest, based on hardship, expense or other reasonable criteria, to pursue the enforcement action.

- (j) No Waiver. Failure by the Board to enforce any covenant, restriction, rule or regulation, or any other provision of any of the Association Documents shall in no event be deemed a waiver of the right to do so thereafter or preclude the Association from enforcing any other covenant, restriction, rule or regulation or provision of the Association Documents.
- (k) Owner's Right to Enforcement. Action taken by the Association in accordance with this policy, or a decision to not take action, shall not affect an Owner's right to bring his own enforcement action pursuant to the Association Documents or Colorado law.
- (l) Alternative to Complaint Procedures. Notwithstanding the procedures set forth in this Article 8, the Board, in its discretion, may elect at any time and in lieu hereof to proceed on behalf of the Association pursuant to Article 9 of the By-Laws "Dispute Resolution and Litigation." The Board may also at any time while the procedures set forth in this Article 8 are being followed, terminate same and proceed in accordance with Article 9, with notice to other affected persons or parties.
- (m) Abatement of Article 9 "Dispute Resolution Litigation" When the procedures set forth in this Article 8 are being utilized by the Board on behalf of the Association and until the completion or termination thereof, the provisions of Article 9 shall be held in abeyance.
- (n) Effect of Decision. Any proceeding which proceeds to a "Decision" under subsection "(f)" above shall be deemed to have satisfied the "Negotiation and Mediation" requirements of Article 9.4(b) of these By-Laws and any "Bound Parties" as defined in Section 9.2 of these By-Laws may proceed to arbitration and shall be governed by the provisions (including but not limited to the time deadlines) of Section 9.4(c) "Final and Binding Arbitration." In such event the date of such decision by the Board plus five (5) calendar days shall be deemed to be the date of "Termination of Mediation" as set forth in Section 9.4(c) of these By-Laws.

ARTICLE 9 - DISPUTE RESOLUTION AND LITIGATION

Section 9.1 – Litigation The Association shall not commence a judicial or administrative proceeding, including without limitation any proceeding required under Section 9.4 below, without the approval of at least 66 2/3% of the Members. This Section 9.1 shall not apply, however, to: (i) actions brought by the Association to enforce the provisions of the Declaration, the Bylaws or the Rules and Regulations (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem property taxation; (iv) counterclaims brought by the Association in proceedings instituted against it.

Section 9.2 - Alternative Method for Resolving Disputes The Association, its officers, directors, and committee members; any Unit Owner, all Persons subject to the Declaration; and any Person not otherwise subject to the Declaration who agrees to submit to this Section 9.2 (each such entity being referred to as a "Bound Party") agree to the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 9.3 of the By Laws (collectively, "Claims"), to the procedures set forth in Section 9.4 of the By Laws.

Section 9.3 – Claims Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Declaration, or the rights, obligations and duties of any Bound Party under the Declaration, shall be subject to the provisions of Section 9.4 of the By Laws. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 9.4 of the By Laws:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article V of the Declaration (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Articles V and VII of the Declaration;
- (c) any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of the Declaration;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations, has expired or would expire within 180 days of giving the Notice required by subsection 9.4(a) of these By-Laws.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 8.4.

Section 9.4 - Mandatory Procedures

- (a) **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent are hereinafter referred to individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

- (i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (ii) If the Parties do not resolve the Claim within 30 calendar days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional calendar days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in Colorado.
- (iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 calendar days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.
- (v) Within 5 calendar days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or a "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

- (i) If the Parties do not agree in writing to a settlement of the Claim within 15 calendar days of the Termination of Mediation, the Claimant shall have 15 additional calendar days to submit the Claim to arbitration in accordance with the Uniform Arbitration Act (CRS §13-22-201. et seq. as incorporated by CCIOA §124(3)). If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

- (ii) This subsection 9.4 (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.
- (d) Allocation of Costs of Resolving Claims.
 - (i) Each Party, including, without limitation, any Owner and the Association, shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs"). Under no circumstances shall either Party be entitled to recover its Post Mediation Costs, including any attorneys' fees (except as specifically provided under Section 123 of CCIOA), from the other party. AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT TO THE EXTENT PERMITTED BY SECTION 123 OF CCIOA SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS FEES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 8.4 (d).
 - (ii) Subject to the requirements of Section 123 of CCIOA, any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs. With respect to any Award which is less favorable to Claimant than Claimant's Settlement Demand yet more favorable to Claimant than Respondent's Settlement Offer, each party shall bear its own Post Mediation Costs.
- (e) Limitation on Damages. No party, including, without limitation, any Owner and the Association, shall be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such party's actual damages, and the Association and any Owner shall be deemed to have waived their right to receive any damages in a Dispute other than actual damages, including, without limitation, attorneys' fees (except as specifically provided under Section 123 of CCIOA), special damages, consequential damages, and punitive or exemplary damages. AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 8.4 (c), THE RIGHT, TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR

UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

- (f) Multiple Party Disputes. Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the "Arbitrator" may: (i) consolidate in a single arbitration preceding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.
- (g) Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 8.4 (b) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 8.4. In such event, the Party taking action

to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 123 of the Act.

Section 9.5 - Legal Proceedings Subject to the provisions of the Declaration, the Association shall have the right, but not the obligation, to institute legal proceedings to enforce all rights under the Declaration, the Bylaws and the Rules and Regulations. The decision to institute legal proceedings shall be in the sole discretion of the Board and shall be governed by Section 8.1, rights of the Association. Failure to commence such legal proceedings shall not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THE DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT LIMITATION, ARTICLES III, V AND VII SHALL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THESE BY-LAWS.

ARTICLE 10 - MISCELLANEOUS

Section 10.1 – Notices All notices to the Association or the Executive Board shall be delivered to the office of the manager or, if there is no manager, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Unit Owners and to

all holders of a mortgage or deed of trust in the Units who have notified the Association that they hold a mortgage or deed of trust in a Unit. Except as otherwise provided in Section 3.13 for notices by E-Mail, all notices to any Unit Owner shall be sent to the Unit Owner's address as it appears in the records of the Association. All notices to holders of Security Interests in the Units shall be sent, except where a different manner of notice is specified elsewhere in the Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 10.2 - Fiscal Year The fiscal year of the Association shall commence on 1st of each calendar year or such other date as may be determined by the Executive Board.

Section 10.3 – Waiver No restriction, condition, obligation or provision contained in these By-Laws 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 10.4 – Office The principal office of the Association shall be at the offices of Carlson, Carlson & Dunkelman, Frisco, Colorado, or at such other place as the Executive Board may from time to time designate.

Section 10.5 – Reserves As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements defined in the Declaration that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Element improvements.

Section 10.6 - Additional Reports For so long as the Association consists of 30 or more dwelling Units and the collection, deposit, transfer or disbursement of Association funds are delegated to a managing agent or entity, or to a third person or entity, the following shall apply:

- (a) The other persons or managing agent shall maintain fidelity insurance coverage or a bond in an amount not less than Fifty Thousand Dollars (\$50,000.00) or such higher amount as the Executive Board may require;
- (b) The other persons or managing agent shall maintain funds and account of the Association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the Association;
- (c) That an annual accounting for Association funds and a financial statement be prepared and presented to the Association by the managing agent, a public accountant, or a certified public accountant.

Section 10.7 - Investment of Funds Funds of the Association shall be invested only in Banks insured by the Federal Deposit Insurance Corporation

Section 10.8 – Services Attached hereto at Schedule "A" is a list of Services Provided by the Association and Paid for out of the Regular Assessment.

ARTICLE 11 - AMENDMENTS TO BY-LAWS

Section 11.1 – Procedure The By-Laws may be amended by vote of sixty-six and two-thirds percent (66 2/3%) of the Executive Board or a majority of the Unit Owners, following notice and comment to all Unit Owners, at any meeting duly called for such purpose. The notice of such meeting shall contain a summary of the proposed changes or a copy of the proposed changes.

Section 11.2 – Exceptions No amendment of the By-Laws of this Association shall be adopted which would affect or impair the validity or priority of any mortgage or deed of trust covering any Unit, be inconsistent with the Declarations and By-Laws of the Master Association, or which would change the provisions of the By-Laws with respect to institutional mortgagees of record.

ATTEST: Certified to be the Amended and Restated By-Laws adopted by The Sun Gate Condominium Association, Inc. at a meeting held on May ____ 2008.

_____, Secretary

**THE SUN GATE
CONDOMINIUM ASSOCIATION, INC.
(A COLORADO NONPROFIT CORPORATION SCHEDULE A**

**Services Provided by the Association and Paid for out of the Periodic Assessments
Described in Article VII and VIII of the Declarations**

1. Common utility service, including water, sewer, and lighting.
2. Trash removal (If not provided by the Master Association).
3. Insurance, more fully described in Article VII of the Declaration.
4. Normal repair, maintenance and operation of the Subsidiary Common Elements and Subsidiary Limited Common Elements.
5. Common Internet Service if desired.
6. Common Communication/Cable Television facilities.
7. Any other facilities common to more than one unit.
8. Snow removal and Driveway Maintenance (If not provided by the Master Association)
9. Master Association Dues and Special Assessments.

Services Provided by the Association and Paid for Monthly at Actual Cost

1. Heating System separately for each Building