

**SECOND AMENDED AND RESTATED BYLAWS  
OF MORNINGSIDE HOMEOWNERS  
ASSOCIATION, INC.**

Adopted April 25, 2013

<b>ARTICLE 1 – INTRODUCTION, PURPOSES AND DEFINITIONS.....</b>	<b>1</b>
Section 1.1 Introduction.....	1
Section 1.2 Purposes.....	1
Section 1.3 Definitions.....	1
<b>ARTICLE 2 – MEMBERSHIP .....</b>	<b>1</b>
Section 2.1 Membership.....	1
Section 2.2 Suspension of Member Rights.....	1
<b>ARTICLE 3 – MEETINGS OF MEMBERS .....</b>	<b>2</b>
Section 3.1 Annual Meetings.....	2
Section 3.2 Special Meetings.....	2
Section 3.3 Budget Meeting.....	2
Section 3.4 Notice of Meetings.....	2
Section 3.5 Owner Addresses for Notices.....	3
Section 3.6 Place of Meetings.....	3
Section 3.7 Quorum of Members.....	3
Section 3.8 Adjournment of the Meeting.....	3
Section 3.9 Voting.....	3
Section 3.10 Proxies.....	4
Section 3.11 Majority Vote.....	4
Section 3.12 Voting by Mail or Electronic Means.....	4
Section 3.13 Order of Business and Rules at Meeting.....	4
Section 3.14 Waiver of Notice.....	5
<b>ARTICLE 4 – BOARD OF DIRECTORS.....</b>	<b>5</b>
Section 4.1 Number, Qualification, and Term of Office.....	5
Section 4.2 Conflicts of Interest Requirements.....	5
Section 4.3 Election.....	6
Section 4.4 Removal of Directors.....	6
Section 4.5 Vacancies.....	6
Section 4.6 Compensation.....	6
<b>ARTICLE 5 – MEETINGS OF THE BOARD OF DIRECTORS.....</b>	<b>7</b>
Section 5.1 Regular Meetings.....	7
Section 5.2 Special Meetings.....	7
Section 5.3 Location of Meetings and Open Meetings.....	7
Section 5.4 Waiver of Notice.....	7
Section 5.5 Quorum.....	7

Section 5.6	Proxies.....	8
Section 5.7	Consent to Corporate Action.....	8
Section 5.8	Telephone Communication in Lieu of Attendance.....	8
Section 5.9	Unit Owner Participation.....	9
<b>ARTICLE 6 – POWERS AND DUTIES OF THE BOARD OF DIRECTORS .....</b>		<b>9</b>
Section 6.1	Powers and Duties.....	9
Section 6.2	Manager or Managing Agent.....	10
Section 6.3	No Waiver.....	11
<b>ARTICLE 7 – OFFICERS AND THEIR DUTIES .....</b>		<b>11</b>
Section 7.1	Enumeration of Offices.....	11
Section 7.2	Election of Officers.....	11
Section 7.3	Special Appointments.....	11
Section 7.4	Resignation and Removal.....	11
Section 7.5	Vacancies.....	11
Section 7.6	Duties.....	11
Section 7.7	Delegation.....	12
Section 7.8	Signing Agreements, Checks, and Other Instruments.....	12
Section 7.9	Compensation.....	12
<b>ARTICLE 8 – COMMITTEES.....</b>		<b>12</b>
Section 8.1	Committees.....	12
Section 8.2	Nominating Committee.....	13
Section 8.3	Vacancies.....	13
<b>ARTICLE 9 – BOOKS AND RECORDS .....</b>		<b>13</b>
Section 9.1	Association Records.....	13
Section 9.2	Minutes and Presumptions Under the Minutes.....	13
Section 9.3	Examination.....	13
<b>ARTICLE 10 - AMENDMENTS .....</b>		<b>14</b>
Section 10.1	Bylaw Amendments.....	14
<b>ARTICLE 11 - INDEMNIFICATION .....</b>		<b>14</b>
Section 11.1	Obligation to Indemnify.....	14
Section 11.2	Determination Required.....	14
Section 11.3	Payment in Advance of Final Disposition.....	15
Section 11.4	No Limitation of Rights.....	15
Section 11.5	Directors and Officers Insurance.....	15
<b>ARTICLE 12 - MISCELLANEOUS .....</b>		<b>15</b>
Section 12.1	Notices to the Association.....	15
Section 12.2	Waiver.....	16
Section 12.3	Office.....	16

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**ARTICLE 1 – INTRODUCTION, PURPOSES AND DEFINITIONS**

**Section 1.1 Introduction.**

These are the Bylaws of Morningside Homeowners Association, Inc. (the "Association"), which Association operates under the Colorado Revised Nonprofit Corporation Act, as amended, and applicable portions of the Colorado Common Interest Ownership Act, as amended (the "Act" or "CCIOA").

**Section 1.2 Purposes.**

The purposes for which the Association was formed are to preserve and enhance the value of the properties of Members and to operate, govern, manage, supervise, and care for the Common Interest Community and the Common Elements of "Morningside Condominiums," a Condominium Community (the "Community" or "Morningside"), situated in the City and County of Denver, State of Colorado, as the Community was created pursuant to the Declaration and Map.

**Section 1.3 Definitions.**

Terms used herein shall have the meanings set forth in the Amended, Restated and Consolidated Declaration of the Morningside Condominiums ("Declaration") and are incorporated herein by reference, unless expressly defined herein.

**ARTICLE 2 – MEMBERSHIP**

**Section 2.1 Membership.**

Every person or entity who is a record owner of a Unit which is subject to the Declaration is a "Member" of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Member shall be allocated votes pursuant to the Declaration and the Association's Articles of Incorporation ("Articles").

**Section 2.2 Suspension of Member Rights.**

During any period in which a Member shall be in default in the payment of any Common Expense Assessment levied by the Association, the voting rights and right to use any recreational facilities of the Community by such Member shall be deemed suspended by the Board of Directors (as hereinafter defined), without notice or hearing, until such assessment has been paid. Such rights of a Member may also be suspended, after notice or hearing, during any period of violation of any other provision of the Declaration, Articles, these Bylaws, or rules and regulations established by the Board of Directors.

## ARTICLE 3 – MEETINGS OF MEMBERS

### Section 3.1 Annual Meetings.

An annual meeting of the Members shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Board of Directors and set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Members, in accordance with the provisions of these Bylaws, the Declaration and Articles. The Members may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association.

### Section 3.2 Special Meetings.

Special meetings of the Association may be called by the President, by a majority of the members of the Board of Directors, or by the Board after receiving a petition signed by Unit Owners comprising twenty percent (20%) of the votes in the Association. Any meeting called under this Section shall be conducted by the president of the Board, or in his/her absence, a person chosen by a majority of the Board.

### Section 3.3 Budget Meeting.

Meetings of unit Owners to consider proposed budgets shall be called and held in accordance CCIOA. The "CCIOA budget process" allows a majority of the Unit Owners (or a higher percentage, if set in the Declaration) to veto a budget adopted by the Board of Directors. CCIOA's budget process to be followed is as follows: The Association is to prepare and approve a budget at least annually. Each budget is to first be prepared and approved by the Board of Directors as a "proposed" budget. Then, within thirty (30) days after the Board of Directors' adoption of the proposed budget, the Board of Directors must mail or deliver a summary of the proposed budget to all Unit Owners and set a date for a special or annual meeting of the Unit Owners for ratification of the proposed budget. The budget meeting may be combined with the annual meeting. Notice for the meeting at which a proposed budget will be considered by Unit Owners must be mailed not less than fourteen (14) days nor more than sixty (60) days before the meeting. At the meeting, unless a majority of the Unit Owners reject the proposed budget, the budget is ratified and becomes the approved budget of the Association. CCIOA does not require that a quorum of owners be present at the meeting, if the meeting is just a budget meeting, but does require a quorum if the meeting is also an annual or special meeting. In the event a proposed budget is rejected by a majority of Unit Owners, the budget last ratified by the Unit Owners is continued until such time as the owners ratify a subsequent budget proposed by the Board of Directors.

### Section 3.4 Notice of Meetings.

Notice of each meeting of the Members shall be physically posted in a conspicuous place if feasible and practicable at least 24 hours prior to any meeting of the Members. Written notice of each meeting of Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, or by personal delivery, at least 10 days before, but not more than 50 days before the meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by a Member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No

matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

**Section 3.5 Owner Addresses for Notices.**

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

**Section 3.6 Place of Meetings.**

Meetings of the Members shall be held in the Morningside Community, or in the greater Metropolitan Denver area, and may be adjourned to a suitable place convenient to the Members, as may be designated by the Board of Directors or the President.

**Section 3.7 Quorum of Members.**

The presence at the meeting of Members, in person or by proxy, entitled to cast twenty percent (20%) of all the votes shall constitute a quorum for any action except as otherwise provided in the Articles, Declaration, and these Bylaws. There are 434 Units, and one vote per unit; a quorum requires 87 Units. If the required quorum is not present at a meeting, the Members who are present shall have power to adjourn the meeting to another time.

**Section 3.8 Adjournment of the Meeting.**

At any meeting of Owners, by Majority Vote (as provided herein), the meeting may be adjourned to another time and place or to a time and place to be designated by notice.

**Section 3.9 Voting.**

There is one vote per Unit. If only one of several Owners of a Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Unit. If more than one of the Owners is present, the vote allocated to the Unit may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit. The vote of a corporation or business trust may be cast by any Officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Board of Directors or Bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Unit Owner is qualified to vote. Votes allocated to Units owned by the Association may not be cast.

### **Section 3.10 Proxies.**

The one vote allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. All proxies shall be in writing and filed with the Secretary or designee of the Association. If a Unit is owned by more than one person, each Unit Owner of the Unit may vote or register protest to the casting of the vote by the other Owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only by delivering written notice of revocation to the person presiding over a meeting of the Association or attending the meeting. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it specifies a different term or a specific purpose.

### **Section 3.11 Majority Vote.**

The vote of a majority of the votes present in person or by proxy at a meeting at which a quorum is present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, the Articles of Incorporation or by law.

### **Section 3.12 Voting by Mail or Electronic Means.**

(a) In case of a vote by mail or electronic means in lieu of a meeting, the secretary shall mail or deliver written notice to all Members at each Member's address as it appears in the records of the Association given for notice purposes. The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that Members are entitled to vote by mail or electronic means for or against such proposal, (iii) a date at least 10 days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the address designated in the notice, and (iv) the number of votes which must be received to meet the quorum requirement and the percentage of votes received needed to carry the vote. Voting by mail or electronic means shall be acceptable in all instances in the Governing Documents requiring the vote of Members at a meeting.

(b) The Association may conduct elections of directors by mail or electronic means, in its sole discretion, and pursuant to procedures adopted by it; *provided however*, that any procedures adopted shall provide for notice to Members of the opportunity to run for a vacant position and/or nominate any Member of the Association for a vacant position, subject to the nominated Member's consent.

### **Section 3.13 Order of Business and Rules at Meeting.**

The Board of Directors may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Board of Directors and Unit Owners. At meetings of the Members, the Board of Directors may, but is not required to, order the business of the meeting as follows:

- (a) Check-in procedure;
- (b) Proof of notice of meeting and Certification of Quorum;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Board of Directors (if required and noticed);

- (f) Election of inspectors of election (when required);
- (g) Election of Directors of the Board of Directors (when required);
- (h) Ratification of budget (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

**Section 3.14 Waiver of Notice.**

A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice. Further, a Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

**ARTICLE 4 – BOARD OF DIRECTORS**

**Section 4.1 Number, Qualification, and Term of Office.**

The affairs of the Community and the Association shall be governed by a Board of Directors ("Board of Directors" or "Board"), which shall consist of five (5) Members, each of whom shall be a resident in good standing at the time of his election and during his term. The Directors shall be elected or appointed as provided below. The terms of office of Directors shall be three (3) years or until such time as a successor is elected, and the terms of at least one-third (1/3) of the Directors shall expire annually. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Colorado Revised Nonprofit Corporation Act for conducting the elections.

**Section 4.2 Conflicts of Interest Requirements.**

The Association, Board of Directors, and the Owners desire to avoid self-dealing, actual or apparent, in the administration of the Morningside Condominium Community. Accordingly, the following requirements apply to each Board member:

- (a) Restriction on Managing Agent. No member of the Board, no Owner, and no spouse or child of an Owner shall serve as the Association's Managing Agent.
- (b) Requirements upon all members of the Board of Directors. All Board members shall exercise their powers and duties in good faith and in the interest of, and with utmost loyalty to, the Association and owners. All members of the Board of Directors, shall comply with all lawful provisions of the Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations.
- (c) Conflicts of Interest. "Conflicting interest transaction" means a contract, transaction, or other financial relationship between the Association and a Director, 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. Any conflict of interest on the part of any member of the Board shall be disclosed to the other Directors at the first meeting of the Board at which the interested Director is present after the conflict of interest is or should be discovered.

Such disclosure shall be made a matter of record in the minutes of the Board meeting at which the disclosure of the conflict of interest is made. Any Director having a duality of interest or possible conflict of interest on any matter shall not vote or use his or her personal influence on the matter, and shall not be counted in determining the quorum for the meeting. The minutes of the meeting shall reflect that a disclosure was made, the abstention from voting, and the effect, if any, on the presence of quorum.

The foregoing requirements shall not be construed as preventing the Director from briefly stating his or her position on the matter nor from answering pertinent questions of the Board members since his or her knowledge maybe of great assistance.

- (d) New Directors. Any new member of the Board shall be deemed advised of the foregoing upon entering on the duties of his or her office.

#### **Section 4.3 Election.**

Subject to a nomination process, the Board of Directors shall be elected by the Members at the Annual Meeting. The Members may adopt specific procedures which are not inconsistent with these Bylaws or the Act for conducting the elections by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting, a system of voting allowing a person to concentrate the whole number of votes for one or more nominees to the Board of Directors, is not permitted. Notwithstanding anything above, any contested election must be conducted through use of a secret ballot. A “contested election” shall be defined as an election in which more individuals are running for Board positions than the total positions available.

#### **Section 4.4 Removal of Directors.**

(a) One or more directors or the entire Board of Directors may be removed at a Special Meeting of Members called pursuant to these Bylaws, with or without cause, by a vote of a majority of all Members. Notice of a Special Meeting of the Members to remove directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the Association, including the directors sought to be removed, as provided in these Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken.

(b) In the event of removal of one or more directors, a successor shall be elected by the Members at the meeting to serve for the unexpired term of his or her predecessor.

#### **Section 4.5 Vacancies.**

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

#### **Section 4.6 Compensation.**

No Director shall receive any compensation from the Association for acting as such unless approved by a majority of the votes in the Association at a regular or special meeting of the Association. Any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association



from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested Director.

## **ARTICLE 5 – MEETINGS OF THE BOARD OF DIRECTORS**

### **Section 5.1 Regular Meetings.**

Regular meetings of the Board of Directors shall be held at least twice per year at such place and hour as may be fixed by the Board. The Board may set a schedule of regular meetings by resolution, and no further notice is necessary to constitute such scheduled regular meetings.

### **Section 5.2 Special Meetings.**

Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director. The notice shall be delivered in a manner whereby confirmation of receipt of the notice is received, and shall state the time, place and purpose of the meeting.

### **Section 5.3 Location of Meetings and Open Meetings.**

(a) All meetings of the Board of Directors shall be open to attendance by Members, as provided by applicable Colorado law.

(b) All meetings of the Board of Directors shall be held in the Community or in the Denver metropolitan or Denver metropolitan area, unless all directors consent in writing to another location.

(c) All meetings of the Board of Directors may be conducted in person, via conference call, via electronic means, or via any other method permitted by applicable Colorado law.

(d) Rules and Regulations may be adopted in open meetings of the Board, and may not be adopted in closed or executive sessions of the Board.

(e) For any executive session or closed Board meeting, minutes kept for that part of the meeting should only indicate that an executive session was held and the general subject of the executive session.

### **Section 5.4 Waiver of Notice.**

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

### **Section 5.5 Quorum.**

At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business. No meeting shall be conducted unless a quorum is present (3 Directors), and any decisions require three (3) affirmative votes.

**Section 5.6 Proxies.**

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

**Section 5.7 Consent to Corporate Action.**

The directors shall have the right to take any action, except the adopting of a rule or regulation, in the absence of a meeting, which they could otherwise have taken at a meeting, by:

(a) Obtaining the unanimous verbal vote of all directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at that time; or

(b) Providing written notice to each director of a proposed action to be taken. Such notice shall include the date and time by which the directors must respond to the proposed action and shall state that failure to respond by the time stated in the notice will have the same effect as abstaining in writing to a proposed action and failing to demand in writing that action not be taken without a meeting. Upon receiving written notice of a proposed action, each director, by the date and time provided for in such notice, may: (i) vote in writing for such action; (ii) vote in writing against such action; (iii) abstain in writing from voting; (iv) fail to respond or vote; or (v) demand in writing that action not be taken without a meeting.

(1) In the event a sufficient number of affirmative votes for the proposed action, pursuant to these Bylaws, are cast in writing and not revoked by the time stated in the notice for such proposed action, the Board may take such action unless one or more directors demands that the action not be taken without a meeting. In the event action is taken pursuant to this provision, the action shall be noted in the minutes of the next meeting of the Board and ratified at that time.

(2) Any director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Section may revoke such vote, abstention, or demand in writing; provided such revocation is received by the Association by the time and date stated in the notice for such proposed action. A director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the Association receives such demand from the director in writing by the time stated in the notice for such proposed action and such demand has not been revoked.

(c) Any action taken under subsections (a) and (b)(1) above shall have the same effect as though taken at a meeting of the directors and shall be effective at the end of the time stated in the notice for such proposed action.

**Section 5.8 Telephone Communication in Lieu of Attendance.**

A Director may attend a meeting of the Board of Directors by using an electronic or telephonic communication method whereby the Director may be heard by the other Directors and may hear the deliberations of the other Directors on any matter properly brought before the Board of

Directors. The Director's vote shall be counted and his or her presence noted as if that Director were present in person on that particular matter.

**Section 5.9 Unit Owner Participation.**

Owners must be allowed to speak before the Board votes on any issue under discussion. The Board shall allow a reasonable number of persons to speak on each side of the issue, but the Board may place reasonable restrictions on the time allowed for each Owner to speak. Owners may also be allowed to speak at such other times as the Board, in its sole discretion, deems appropriate.

**ARTICLE 6 – POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 6.1 Powers and Duties.**

The Board of Directors may act in all instances on behalf of the Association, except as provided in the Declaration, the Articles, these Bylaws, or the Act. The Board of Directors shall have, subject to the limitations contained in the Declaration, the Articles of Incorporation, and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Community, and for the operation and maintenance of the Community as a first class property, including the following powers and duties:

- (a) Adopt and amend Bylaws and rules and regulations, including responsible governance policies and procedures as required by the Act;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves (subject to the budget being distributed to the Owners and not vetoed by the Owners at a meeting of the Owners, as that procedure is set forth in the Declaration, the Act, and in these Bylaws);
- (c) As a part of the adoption of the regular budget the Board of Directors shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those improvements that it is obligated to maintain, based upon age, remaining life, quantity and replacement cost;
- (d) Collect assessments for Common Expenses from Owners;
- (e) Hire and discharge managing agents, provided that any agreement for professional management of the Community may not exceed one (1) year. Any such agreement must provide for the termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days written notice;
- (f) Hire and discharge independent contractors;
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, Bylaws, or rules in the Association's name, on behalf of the Association or two (2) or more Owners on matters affecting the Community;
- (h) Make contracts and incur liabilities;
- (i) Regulate the use, maintenance, repair, replacement, and modifications of Common Elements;
- (j) Cause additional improvements to be made as a part of the Common Elements;

- (k) Acquire, hold, encumber, and convey, in the Association's name and in the ordinary course of business, any right, title, or interest to real estate, pursuant to the consent requirements set forth in the Governing Documents, if any;
- (l) Grant easements for any period of time, including permanent easements, and grant leases, licenses, and concessions, through or over the Common Elements;
- (m) 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(1)(b) and (d) of the Act;
- (n) Impose a reasonable charge for late payment of assessments and after notice and hearing, levy reasonable fines or assessments provided for or allowed in the Declaration, Bylaws, and Rules and Regulations of the Association;
- (o) Keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Association;
- (p) Borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefor;
- (q) Provide for the indemnification of the Association's Officers and the Board of Directors and maintain Directors' and officers' liability insurance;
- (r) Procure and maintain adequate liability and hazard insurance on property owned by the Association and as further set forth in the Declaration;
- (s) Cause all Directors, Officers, employees, or agents having fiscal responsibilities to be insured, as it may deem appropriate and in such amounts as it may deem appropriate;
- (t) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (u) Exercise for the Association all powers, duties, rights, and obligations in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, the Declaration or the Act; and
- (v) Exercise any other powers conferred by the Declaration, these Bylaws, or the Articles of Incorporation.

**Section 6.2 Manager or Managing Agent.**

The Board of Directors may employ or engage a manager or managing agent, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the manager or managing agent pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. Regardless of any delegation to a manager or managing agent, the members of the Board shall not be relieved of responsibilities under the Declaration, the Articles, these Bylaws, or Colorado law.

**Section 6.3 No Waiver.**

The omission or failure of the Association or Owner to enforce the covenants, conditions, easements, uses, limitations, obligations, or other provisions of the Governing Documents shall not constitute or be deemed a waiver, modification, or release thereof, and the Board or the managing agent shall have the right to enforce the same at any time.

**ARTICLE 7 – OFFICERS AND THEIR DUTIES**

**Section 7.1 Enumeration of Offices.**

The officers of this Association shall be a President, Vice-President, Secretary, and Treasurer, and such other Officers as the Board of Directors may from time to time create by resolution. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to authority in these Bylaws. Any Director who does not hold an office specified or provided for in this Article 7 may be known as a “Director at Large.”

**Section 7.2 Election of Officers.**

The officers shall be elected by the Board of Directors at the organizational meeting of each new Board of Directors.

**Section 7.3 Special Appointments.**

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

**Section 7.4 Resignation and Removal.**

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

**Section 7.5 Vacancies.**

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

**Section 7.6 Duties.**

The Duties of the Officers are as follows:

**Section 7.6.1 President.**

The President shall have all of the general powers and duties which are incident to the office of president of a Colorado nonprofit corporation including, but not limited to, the following: preside at all meetings of the Board of Directors; appoint committees; and see that orders and Resolutions of the Board of Directors are carried out. The President may cause to be prepared and may execute amendments, attested by the secretary, to the

Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable.

**Section 7.6.2 Vice President.**

The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Board of Directors or by the President.

**Section 7.6.3 Secretary.**

The Secretary shall have charge or shall keep the Minutes of all meetings of the Owners and proceedings of the Board of Directors. The Secretary shall have charge of the Association's books and papers and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment, as applicable. All such records shall be maintained at the office of the Managing Agent, which for this purpose shall be the principal office of the Association.

**Section 7.6.4 Treasurer.**

The treasurer shall be responsible for Association funds and 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. However, when a managing Agent has been delegated the responsibility of collecting and disbursing funds, the Treasurer's responsibility shall be to review the accounts of the Managing Agent not less often than monthly.

**Section 7.7 Delegation.**

The duties of any officer may be delegated to the Managing Agent or another Board of Directors member; provided, however, the officer shall not be relieved of any responsibility under these Bylaws or under Colorado law.

**Section 7.8 Signing Agreements, Checks, and Other Instruments.**

Except as provided in these Bylaws, 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 or persons designated by the Board of Directors.

**Section 7.9 Compensation.**

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

## **ARTICLE 8 – COMMITTEES**

**Section 8.1 Committees.**

The Board may create committees and appoint such committee members as deemed appropriate in carrying out its purposes, including an Architectural Review Committee. Committee chair

persons must meet the same qualifications to serve as Board members must meet to serve on the Board, as set forth in these Bylaws. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Board. The Board shall also have the power to remove any and all committee members with or without cause and to terminate any such committee.

**Section 8.2 Nominating Committee.**

In ample time before the annual meeting, the Board shall appoint a committee of three Members who shall nominate candidates for the Board. The names of the candidates shall be submitted on or before thirty-five (35) days before the election. Members may submit names of candidates other than those submitted by the nominating committee at least thirty (30) days prior to the election. Unless such names are submitted, either by the nominating committee or by the members, no person shall be elected whose name is not so submitted unless no nominations are made, in which event the names of the candidates shall be submitted at the election by the Members.

**Section 8.3 Vacancies.**

A vacancy in any committee shall be filled through the appointment of a new member by the Board of Directors.

**Section 8.4 Open Committee Meetings.**

All committee meetings shall be open to attendance by Members, as provided by applicable law.

**ARTICLE 9 – BOOKS AND RECORDS**

**Section 9.1 Association Records.**

The Association records will be available for production to Owners in accordance with statutory requirements, which may be clarified further in a policy adopted by the Board of Directors.

**Section 9.2 Minutes and Presumptions Under the Minutes.**

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

**Section 9.3 Examination.**

The Association records shall at all times, during normal business hours and after at least ten days written notice, or at the next scheduled Board meeting if within 30 days of written request, be subject to inspection and copying by any Member, at his or her expense, except documents determined by the Board to be withheld under the inspection of records policy of the Association in accordance with the Act. Any Owner's request to inspect and copy Association records must describe with reasonable particularity what records are requested. The Association may charge the actual costs for copying of the records, as clarified further in its inspection of records policy.

## ARTICLE 10 - AMENDMENTS

### Section 10.1 Bylaw Amendments.

These Bylaws may be amended by majority vote of the Members present at any duly constituted annual or special meeting of the membership for such purpose; provided, however, that no amendment shall conflict with or minimize the intended effect of the provisions of the Articles of Incorporation or the Declaration.

## ARTICLE 11 - INDEMNIFICATION

### Section 11.1 Obligation to Indemnify.

(a) The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative; by reason of the fact that the person is or was a director, officer or committee member of the Association; provided the person is or was serving at the request of the Association in such capacity; and provided that the person:

- (i) acted in good faith, and;
- (ii) in a manner that the person reasonably believed to be in the best interests of the Association, and;
- (iii) with respect to any claimed criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

The determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

(b) Notwithstanding anything in subsection (a) above, unless a court of competent jurisdiction determines that, in view of all circumstances of the case, the person is fairly and reasonably entitled to expenses, no indemnification shall be made:

- (i) In connection with a proceeding by or in the right of the Association, where the person has been adjudged to be liable to the Association; or
- (ii) In connection with any other proceeding charging that the person received an improper personal benefit, whether or not involving action in an official capacity, the person has been adjudged liable on the basis the person received an improper personal benefit.

(c) To the extent that the person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the person shall be indemnified against actual and reasonable expenses (including expert witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.

### Section 11.2 Determination Required.

(a) The Board of Directors shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination



shall be made by the Board of Directors by a majority vote of a quorum consisting of those members of the Board of Directors who were not parties to the action suit or proceeding.

(b) If a quorum cannot be obtained as contemplated above or if a quorum has been obtained and the Board so directs, a determination may be made, at the discretion of the Board, by:

- (i) independent legal counsel selected by a majority of the full Board; or
- (ii) by the voting members, but voting members who are also at the same time seeking indemnification may not vote on the determination.

### **Section 11.3 Payment in Advance of Final Disposition.**

The Association shall pay for or reimburse the reasonable expenses incurred by a former or current Director or Officer who is a party to a proceeding in advance of final disposition of the proceeding if the Director or Officer furnishes to the Association a written affirmation of the Director's good faith belief that he or she has met the standard of conduct described in the first two sections of this Article, the Director or Officer furnishes to the Association a written understanding, executed personally or on the Director's or Officer's behalf, to repay the advance if it is ultimately determined that the Director or Officer did not meet the standard of conduct and a determination is made that the facts then known to those making the determination would not preclude indemnification under this article. The undertaking required in this paragraph shall be an unlimited general obligation of the Director or Officer but need not be selected and may be accepted without reference to financial ability to make repayment.

### **Section 11.4 No Limitation of Rights.**

The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3101, et seq., and the Colorado Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

### **Section 11.5 Directors and Officers Insurance.**

The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors or an Officer of the Association against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article.

## **ARTICLE 12 - MISCELLANEOUS**

### **Section 12.1 Notices to the Association.**

All notices to the Association or the Board of Directors shall be delivered to the office of the manager or managing agent, or, if there is no manager or managing agent, to the office of the Association, or to such other address as the Board of Directors may designate by written notice to all Unit Owners.

**Section 12.2 Waiver.**

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

**Section 12.3 Office.**

The principal office of the Association shall be within the Condominium Community or at such other place as the Board of Directors may from time to time designate.

**Section 12.4 Conflicts**

In the case of any conflicts between the Declaration and these Bylaws or the Articles of Incorporation, the terms of the Declaration shall control. In the case of any conflicts between the Articles of Incorporation and these Bylaws, the terms of the Articles of Incorporation shall control.

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the Secretary of the Morningside Homeowners Association, Inc. a Colorado nonprofit corporation, and that the foregoing Bylaws were duly adopted on April 25, 2013, by a majority of members, present in person or by proxy, at a duly constituted meeting at which a quorum of members were present.

**MORNINGSIDE HOMEOWNERS ASSOCIATION,  
INC., a Colorado nonprofit corporation,**

By: *Savannah Kacey*  
Secretary

Date: 4/25/13