

BYLAWS
OF
ONYX OWNERS ASSOCIATION, INC.

ARTICLE 1
SCOPE OF BYLAWS

1.1 **THE CORPORATION.** These bylaws will apply to ONYX Owners Association, Inc. (the "*Corporation*"), a Colorado nonprofit corporation, the Articles of Incorporation (the "*Articles*") for which were filed with the Colorado Secretary of State on February 23, 2009. The Corporation was established pursuant to the Colorado Revised Nonprofit Corporation Act (the "*Nonprofit Act*"), and shall operate thereunder and under the Colorado Common Interest Ownership Act, as amended ("*CIOA*")

1.2 **THE DECLARATION.** The Corporation is organized to manage and to perform functions on behalf of the common interest community subject to that certain Condominium Declaration of ONYX (the "*Declaration*"), dated as of February 22, 2009, and recorded in the office of the Clerk and Recorder of the County of Boulder, Colorado. In the event either the Articles or these bylaws conflict with the Declaration, the Declaration will control. In the event the Articles conflict with these bylaws, the Articles will control.

ARTICLE 2
OFFICES AND AGENT

2.1 **PRINCIPAL OFFICE.** The principal office and place of business of the Corporation in the State of Colorado will be designated from time to time by the board of directors. Initially, the principal office will be as set forth in the Articles.

2.2 **REGISTERED OFFICE.** The registered office of the Corporation will be maintained in Boulder, Colorado and may be, but need not be, the same as the principal office. The address of the registered office may be changed from time to time by the board of directors. Initially, the registered office will be as set forth in the Articles.

2.3 **REGISTERED AGENT.** The registered agent will be designated from time to time by the Corporation. Initially, the registered agent will be as set forth in the Articles.

ARTICLE 3
MEMBERSHIP

3.1 **CRITERIA AND PROCEDURES FOR MEMBERSHIP.** Members of the Corporation will be all record Owners of Units, whether or not such Owners explicitly consent to membership. Membership will be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit will be the sole qualification for membership. If fee simple title to a Unit is held by more than one person or entity, then such persons or entities will jointly appoint one person to exercise the rights and obligations of membership in the Corporation on behalf of such persons or entities. The membership of the Corporation at all times will consist exclusively of all Owners of Units.

3.2 **CONSIDERATION FOR MEMBERSHIP.** No consideration is required to become a member of the Corporation. Rather, as set forth above, membership will accrue automatically to all Owners of Units. Though no consideration is required to become a member, the Corporation may levy monetary assessments and fines on members as set forth in the Declaration and the documents promulgated by or for the Corporation thereunder.

3.3 **RIGHTS AND OBLIGATIONS OF MEMBERS.** The rights and obligations of members regarding voting, including those issues on which various Owners of Units may vote and the number of votes associated with a particular Unit, are as set forth in Section 9.3 of the Declaration, which will control the terms and conditions of voting by members in the Corporation.

3.4 **TRANSFER OF MEMBERSHIP.** Membership will be appurtenant to and may not be separated from ownership of any Unit. Membership may not be transferred other than by transfer of an interest in the Unit to which the membership is appurtenant, as set forth in the Declaration.

3.5 **RESIGNATION.** A member may not resign at any time.

3.6 **TERMINATION OR SUSPENSION.** A member will cease to be a member only when such member no longer owns a Unit. Such termination of membership does not relieve the member from any obligations the member may have to the Corporation as a result of obligations incurred or commitments made prior to termination. The board of directors may suspend the voting rights of a member as set forth in the Declaration so long as the provisions for notice and hearing as set forth in Article 13 below are satisfied. Any proceeding challenging a suspension (including a proceeding in which defective notice is alleged) must be commenced within one year after the effective date of the suspension. Suspension of voting rights in no way relieves a member from the obligation to pay any assessment properly imposed by the board of directors in accordance with the Declaration.

3.7 **LIMITATIONS ON USE OF MEMBERSHIP LIST.** Unless the board of directors gives its consent, the Corporation's membership list or any part thereof may not be: (a) obtained or used by any person for any purpose unrelated to the Corporation or the property subject to the Declaration; (b) used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election by the Corporation; or (c) sold to or purchased by any person.

ARTICLE 4 MEMBERSHIP MEETINGS

4.1 **ANNUAL MEETING.** There will be an annual meeting of the members of the Corporation. The annual meeting of the members will be held at a time, date and place established by resolution of the board of directors each year for the purpose of electing members of the board of directors of the Corporation and for the transaction of such other business as may come before the meeting.

4.2 **REGULAR MEETINGS.** Regular membership meetings may be held at a time, date and place stated in or fixed in accordance with a resolution of the board of directors.

4.3 **SPECIAL MEETINGS.** Special meetings of the members may be called at any time by the President, the board of directors or by members holding at least twenty percent (20%) of all votes in the Corporation. When calling special meetings, members must make a written demand on the board of directors to notify the membership of the time, place and purpose of the special meeting. The purpose of

any special meeting of the members must be stated in the notice of the meeting to the membership. Only business within the purpose or purposes described in the notice of the meeting may be conducted at a special meeting of members. Special meetings will be held at such time and place as may be designated by the authority calling such meeting.

4.4 COURT ORDERED MEETINGS. A member may apply to the Colorado district court located in Boulder, Colorado, to seek an order that a membership meeting be held: (a) if an annual meeting was not held within six months after the close of the Corporation's most recently ended fiscal year or fifteen months after its last annual meeting, whichever is earlier; (b) if after such member participated in a proper demand on the board of directors for a special meeting, notice of the special meeting was not given within thirty days after the date of the demand; or (c) if after such member participated in a proper demand on the board of directors for a special meeting, the special meeting was not held in accordance with the demand.

4.5 PLACE OF MEETING. The entity calling for a meeting, whether the board of directors or a group of members, may designate any place in Boulder, Colorado, as the place for the meeting. If no designation of place is made in the notice thereof to the membership, the place of meeting will be the principal office of the Corporation.

4.6 NOTICE OF MEETINGS. Notice must be given to each member entitled to vote at a meeting in a fair and reasonable manner. The method of notice will be as set forth in Section 13.1 below. Notice must state the place, date and hour of the meeting and must be given not less than ten nor more than fifty days before the date of the meeting.

Notice of a special or regular meeting must include a description of the purpose or purposes of the meeting. Notice of an annual meeting need not include a description of the purpose or purposes of the meeting, except that the purpose or purposes must be stated with respect to: (a) any proposed amendment to or restatement of the Articles, these Bylaws or the Declaration; (b) any proposed merger of the Corporation with another entity; (c) any proposed sale, lease, or exchange of all or substantially all of the property of the Corporation; (d) any proposed dissolution of the Corporation; or (e) any other purpose for which a statement of purpose is required by the Nonprofit Act. When giving notice of an annual, regular or special meeting, the Corporation will provide notice of a matter a member intends to raise at the meeting if the board of directors receives notice of such intention at least ten days before the Corporation gives notice of the meeting.

4.7 ADJOURNMENT OF MEETING. At any meeting of the members, a vote of the majority of the members present may adjourn the meeting to another time. When a meeting is adjourned to another date, time or place, notice need not be given of the new date, time or place if the new date, time or place of such meeting is announced before adjournment of the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that may have been transacted at the original meeting.

4.8 WAIVER OF NOTICE. A member may waive notice of a meeting before or after the time and date of the meeting by a writing signed by such member. Such waiver should be delivered to the Corporation for filing with the corporate records, but this delivery and filing will not be conditions to the effectiveness of the waiver. Further, by attending a meeting either in person or by proxy, a member waives objection to lack of notice or defective notice of the meeting unless the member objects at the beginning of the meeting to the holding of the meeting or the transaction of business at the meeting because of lack of notice or defective notice. By attending the meeting, the member also waives any objection to consideration at the meeting of a particular matter not within the purpose of purposes

described in the meeting notice unless such member objects to considering the matter when it is presented.

4.9 TYPES OF COMMUNICATION IN LIEU OF ATTENDANCE. Any or all of the members may participate in an annual, regular or special meeting by, or the meeting may be conducted through the use of, an electronic or telephonic communication method whereby the member may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the members; or by participating in “real time” e-mail communication in which all members are participating in this form of communication. The vote of such member shall be counted and the presence noted as if that member was present in person on that particular matter.

4.10 ACTION BY MEMBERS WITHOUT MEETING. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by members entitled to vote with respect to the subject matter thereof holding at least the requisite voting rights required for approval of that subject matter; provided, however, that if less than all members sign such consent, the non-signing members shall be given a copy of the written consent (along with materials that would be required to accompany a notice of a meeting at which the action would have been submitted to the members for action) within fifteen (15) days following execution thereof. Such consent will have the same force and effect as action taken at a meeting of members and may be stated as such in any document. Action taken under this Section is effective as of the date the last writing necessary to effect the action is received by the Corporation, unless all of the writings specify a different effective date, in which case such specified date will be the effective date for such action.

Any member who has signed a writing describing and consenting to action taken pursuant to this Section may revoke such consent by a writing signed by the member describing the action and stating the member’s prior consent is revoked, if such writing is received by the Corporation before the effectiveness of the action. All signed written instruments necessary under this provision will be filed with the minutes of the membership meetings.

4.11 FIXING OF RECORD DATE. For the purpose of: (a) determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof; or (b) making a determination of members for any other proper purpose, the board of directors may fix a future date as the record date for any such determination of members. Such date, in any case, may not be more than seventy days nor less than ten days prior to the date on which the particular action requiring such determination of members is to be taken. If no record date is fixed by the directors, the record date will be the day before the notice of the meeting or other action is given to members. When a determination of members entitled to vote at any meeting of members is made as provided in this Section, such determination will apply to any adjournment thereof unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting. Unless otherwise specified when the record date is fixed, the time of day for such determination will be as of the Corporation’s close of business on the record date.

Notwithstanding the above, the record date for determining the members entitled to action without a meeting or entitled to be given notice of action so taken will be the date a writing upon which the action is taken is first received by the Corporation. The record date for determining members entitled to demand a special meeting will be the date of the earliest of any of the demands pursuant to which the meeting is called.

ARTICLE 5
MEMBERSHIP AND MORTGAGEES VOTING

5.1 **VOTING ENTITLEMENT.** As set forth in the Declaration, certain action of the Corporation must be taken, and other action of the Corporation may be taken, by a vote of the members and, in some instances, of parties holding mortgages on Units. The allocation of voting rights to members and mortgagees, the matters on which a vote of members or mortgagees must or may be taken, and the number of votes required to constitute an affirmative vote or for action pursuant thereto to be taken will be as set forth herein and in the Declaration.

5.2 **VOTING LISTS.** After a record date is fixed for a membership meeting or for determining the members entitled to vote by written ballot, the board of directors will make, at the earlier of ten days before such meeting or two business days after notice of the meeting has been given, a complete list of the members entitled to be given notice of such meeting or any adjournment thereof. The list will be arranged in alphabetical order and will show the name and address of each member and number of votes to which each member is entitled. For the period beginning ten days prior to the meeting and continuing through the meeting and any adjournment thereof, this list will be kept on file at the principal office of the Corporation. Such list will be available for inspection on written demand by any member or the member's agent or attorney during regular business hours during the period available for inspection. Any member or the member's agent or attorney may copy the list during regular business hours, at its own expense, during the period it is available for inspection.

If the list is prepared in connection with a written ballot, the list will be available for inspection beginning on the date the first written ballot is delivered and continuing through the time when such written ballots must be received by the Corporation in order to be counted.

5.3 **QUORUM AND MANNER OF VOTING.** Except as otherwise provided in the Declaration or otherwise required by CIOA or the Nonprofit Act, fifty percent (50%) of the votes entitled to be cast on a matter will constitute a quorum for action on the matter. If, and only if, a quorum exists and is present, action on a matter will be approved if the votes cast by members favoring the action exceed the votes cast by members opposing the action, unless a greater number of votes is required by law, the Articles, the Declaration or these bylaws. Only members eligible to vote may cast proxies for other members and only members eligible to vote may be considered present. Votes for members of the board of directors shall be taken by secret ballot, and upon the request of one or more Owners, a vote on any other issue on which all Owners are entitled to vote shall be by secret ballot.

5.4 **PROXIES.** Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a member. If a Unit is owned by more than one person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy filed with the board of directors of the Corporation before or at the time of the meeting. A member may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Corporation. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date, unless it specifies a shorter term.

The death or incapacity of the member appointing a proxy does not affect the right of the Corporation to accept the proxy's authority unless notice of the death or incapacity is received by the board of directors or an agent authorized to tabulate votes before the proxy exercises its authority under the appointment.

The Corporation will not be required to recognize an appointment made irrevocable if it has received a writing revoking the appointment signed by the member either personally or by the member's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the member to another person not to revoke the appointment.

5.5 CORPORATION'S ACCEPTANCE OF VOTES. If the name signed on a vote, consent, waiver, proxy appointment or proxy appointment revocation corresponds to the name of a member, the Corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, proxy appointment or proxy appointment revocation and give it effect as the act of the member. If the name signed on a vote, consent, waiver, proxy appointment or proxy appointment revocation does not correspond to the name of the member, the Corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment or proxy appointment revocation and to give it effect as the act of the member if: (a) the member is an entity and the name signed purports to be that of an officer or agent of the entity; (b) the name signed purports to be that of an administrator, executor, guardian or conservator representing the member and, if the Corporation requests, evidence of fiduciary status acceptable to the Corporation has been presented with respect to the vote, consent, waiver, proxy appointment or proxy appointment revocation; (c) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the Corporation requests, evidence of this status acceptable to the Corporation has been presented with respect to the vote, consent, waiver, proxy appointment or proxy appointment revocation; (d) the name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the member, and if the Corporation requests, evidence acceptable to the Corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, proxy appointment or proxy appointment revocation; or, (e) the acceptance of the vote, consent, waiver, proxy appointment or proxy appointment revocation is otherwise proper under rules established by the Corporation that are not inconsistent with this Section.

The Corporation is entitled to reject a vote, consent, waiver, proxy appointment or proxy appointment revocation if the board of directors or an agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

Neither the Corporation, the board of directors, nor any agent who accepts or rejects a vote, consent, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of this Section is liable in damages for the consequences of the acceptance or rejection.

5.6 ACTION BY WRITTEN BALLOT. Any action, except removal of a director as set forth in Section 6.8 hereof, that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter. "Delivery" of a ballot to a member and the return of the completed ballot shall be made by the same methods available for providing notice to a member as set forth in Section 4.6 above. The written ballot must: (a) set forth each proposed action; and (b) provide an opportunity to vote for or against the proposed action. Approval by written ballot will only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot must: (w) indicate the number of responses necessary to meet the quorum requirements; (x) state the percentage of approvals necessary to approve each matter other than election of directors; (y) specify the time by which the ballot must be received by the Corporation in order to be counted; and (z) be accompanied by written information sufficient to permit each person voting to reach an informed decision. Written ballots may not be revoked, unless the member casting the ballot appears in person at a meeting convened to consider any one or more of the matters on the ballot.

ARTICLE 6
BOARD OF DIRECTORS

6.1 QUALIFICATIONS; ELECTION; TENURE.

(a) Except as set forth in Section 6.3 of the Declaration, all members of the board of directors of the Corporation must be natural persons and members of the Corporation. The directors, who need not be residents of the state of Colorado, will manage the affairs of the Corporation. The initial number of directors will be as set forth in Section 6.3 of the Declaration. In the case where, through removal or resignation, the total number of board members is less than three, the board will be considered properly constituted until such vacancies are filled. Subject to compliance with applicable provisions of CIOA, the number of directors may be increased or decreased by amendment of these bylaws; provided, however, that (other than during the Period of Declarant Control (as defined in the Declaration)) the number must be an odd number.

(b) Members of the board of directors will be elected by vote of the members in accordance with their respective votes in the Corporation (as determined under Sections 6.3 and 9.3 of the Declaration). Cumulative voting shall be allowed for the purpose of electing members of the board of directors as provided in the Declaration. Upon termination of the Period of Declarant Control, the terms of the members of the board elected by the members shall be staggered so that one Director shall be elected to serve a one-year term, and the remainder shall be elected to serve two-year terms. At the expiration of the initial term of office for each respective member of the board, his or her successor shall be elected to serve a term of two years. Directors may be elected for successive terms. A decrease in the number of directors or in the term of office does not shorten an incumbent director's term. Each director shall hold office until the election and qualification of his or her successor.

6.2 ANNUAL MEETING. The annual meeting of the board of directors will be held immediately following and in the same place as the annual meeting of the members, or on such other date and at such time and at such place in Boulder, Colorado, as a majority of the board of directors will determine. The annual meeting of the board of directors will be for the purpose of electing officers of the Corporation and for the transaction of such other business as may come before the meeting.

6.3 REGULAR MEETINGS. Regular meetings of the board of directors will be held. The board of directors may provide by resolution the time and place, in Boulder, Colorado, for the holding of regular meetings.

6.4 SPECIAL MEETINGS. Special meetings of the board of directors may be called by or at the request of any director. Special meetings will be held at the date, time and place, in Boulder, Colorado, as may be designated by the authority calling such meeting.

6.5 QUORUM; VOTING.

(a) A quorum at all meetings of the board of directors will consist of a majority of the directors holding office. Less than a quorum may adjourn from time to time without further notice until a quorum is secured. The act of a majority of the directors present at a meeting at which a quorum is present will be the act of the board of directors.

(b) A director who is present at a meeting of the board of directors is deemed to have assented to all action taken unless: (i) the director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken; (ii) the director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes; or (iii) the director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment or by the Corporation promptly after adjournment. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

6.6 **VACANCIES.** Except in the case of removal of a director pursuant to Section 6.8 below and as otherwise set forth in the Declaration, any vacancy in the board of directors will be filled by the majority vote of the remaining directors. A director elected or appointed to fill a vacancy will serve for the unexpired term of such person's predecessor in office and until such person's successor is duly elected and qualified. Any position on the board of directors to be filled by reason of an increase in the number of directors should be filled as soon as practicable after the time such increase is authorized.

6.7 **RESIGNATION.** A director may resign at anytime by giving written notice of resignation to the Corporation. The resignation is effective when the notice is received by the Corporation unless the notice specifies a later effective date. A director who resigns may deliver a statement to that effect to the Colorado Secretary of State.

6.8 **REMOVAL.** Sixty-seven percent (67%) of Owners present and entitled to vote at any meeting of Owners may remove any Director, with or without cause, other than a director appointed by the Declarant; provided, however, that (i) notice that removal of one or more directors must be given in the notice for the meeting, and (ii) the director who is subject to removal at such a meeting must be given an opportunity to be heard. Written ballots given pursuant to Section 5.6 hereof shall not be utilized for this meeting. For purposes of this meeting a quorum of fifty percent (50%) of the Owners of the Units shall be required. Any director appointed by the Declarant during the Period of Declarant Control may only be removed by the Declarant. Any provision herein to the contrary notwithstanding, directors elected through cumulative voting may not be removed if the number of votes cast against such removal would be sufficient to elect such director if voted cumulatively at an election for such director.

6.9 **ACTION WITHOUT A MEETING.** If a majority of the directors or members of a committee established for such purpose, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Corporation, and the number of directors or of the committee constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the directors or the committee, as the case may be. Any such writings may be received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document, including a copy of the signature. Actions so taken will be effective when the last writing necessary to effect the action is received by the Corporation unless the writings set forth a different date. Any director who has signed a writing may revoke it by a writing signed, dated and stating the prior vote is revoked. However, such writing must be received by the Corporation before the last writing necessary to effect the action is received. All such actions will have the same effect as action taken at a meeting, and shall be filed with the minutes of the meetings of the board of directors.

6.10 **COMPENSATION.** No member of the board of directors may receive any compensation for serving in such office, provided that the Corporation may reimburse any member of the board of directors for reasonable expenses incurred in connection with service on the board upon approval of a majority of the other directors. Nothing herein shall prohibit the Corporation from compensating a

director or any entity with which a director is affiliated for services or supplies furnished to the Corporation in a capacity other than as a director pursuant to a contract or agreement with the Corporation, 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 directors, excluding the interested director.

6.11 **NOTICE.** Notice of the date, time and place of any special meeting must be given to each director at least three days prior to the meeting by written notice either personally delivered or mailed to each director at the director's business. Notice will be deemed given and effective when personally delivered or, if mailed, on the earlier of: (a) three business days after such notice is deposited in the United States mail, properly addressed, with first class postage prepaid; or (b) the date shown on the return receipt, if mailed by registered or certified mail return receipt requested, provided that the return receipt is signed by the director to whom the notice is addressed.

6.12 **WAIVER OF NOTICE.** A director may waive notice of a meeting before or after the time and date of the meeting by a writing signed by such director. Such waiver should be delivered to the Corporation for filing with the corporate records, but such delivery and filing will not be conditions to the effectiveness of the waiver. Further, a director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless at the beginning of the meeting, or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. If all directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

6.13 **TYPES OF COMMUNICATION IN LIEU OF ATTENDANCE.** Any or all of the directors may participate in an annual, regular or special meeting by, or the meeting may be conducted through the use of, 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 members; or by participating in "real time" e-mail communication in which all members are participating in this form of communication. The vote of such member shall be counted and the presence noted as if that member was present in person on that particular matter.

6.14 **STANDARD OF CONDUCT FOR DIRECTORS.** Each director must perform his duties as a director in good faith, in a manner the director reasonably believes to be in the best interests of the Corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In the performance of his duties, a director will be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by the persons designated below. However, a director will not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director will not be liable to the Corporation or its members for any action the director takes or omits to take as a director if, in connection with such action or omission, the director performs his duties in compliance with this Section. A director will not be deemed to be a trustee with respect to the Corporation or with respect to any property held or administered by the Corporation.

The designated persons on whom a director is entitled to rely are: (i) one or more employees of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented; or (ii) legal counsel, a public accountant, or other person as to matters that the director reasonably believes to be within such person's professional or expert competence.

ARTICLE 7
OFFICERS AND AGENTS AND EMPLOYEES

7.1 **GENERAL.** The initial officers of the Corporation will be a President, a Secretary and a Treasurer. The officers will be appointed by the directors and will initially be comprised of members of the board of directors. In addition, the board of directors may by resolution delegate any or all of its powers to a managing agent, provided that such delegation will not relieve the board of directors or the Corporation of any liabilities or obligations of the board or the Corporation, including any liabilities or obligations arising under the Declaration, the Articles, these bylaws, the Rules and Regulations, if any, or CIOA. The board of directors may also appoint such additional officers, assistant officers, committees and agents, including Vice Presidents, Assistant Secretaries and Assistant Treasurers, as they may consider necessary or advisable, who need not be members of the board of directors and who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the board of directors. One person may hold two offices, except that no person may simultaneously hold the offices of President and Secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the board of directors, such officer, agent or employee will follow the orders and instructions of the President. The board may also engage other employees as it deems necessary.

7.2 **ELECTION.** The officers of the Corporation shall be elected annually by the board of directors at the organizational meeting of each new board.

7.3 **RESIGNATION AND REMOVAL OF OFFICERS.** Upon an affirmative vote of a majority of the directors, any officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose. Any officer may resign at any time by giving written notice to the President or Secretary.

7.4 **VACANCIES.** A vacancy in any office, however occurring, may be filled by an affirmative vote of a majority of the directors for the unexpired portion of the term.

7.5 **PRESIDENT.** The President will be the chief executive officer of the Corporation. He or she will preside at all meetings of the members of the Corporation and of the board of directors. He or she will have all of the general powers and duties that are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado. In addition, if required by the Declaration, following approval of Owners holding at least a majority of the votes in the Corporation and all of the First Mortgagees holding First Mortgages covering or affecting each Unit within the Project, the President may prepare, execute, certify and record amendments to the Declaration on behalf of the Corporation.

7.6 **VICE PRESIDENTS.** The Vice Presidents, if any, will assist the President and will perform such duties as may be assigned to them by the President or by the board of directors. In the absence of the President, the Vice President designated by the board of directors or if there is no such designation, designated in writing by the President, will have the powers and perform the duties of the President. If no such designation has been made, all Vice Presidents may exercise such powers and perform such duties.

7.7 **SECRETARY.** The Secretary will keep the minutes of the proceedings of the Members and the board of directors. He or she will see that all notices are duly given in accordance with the

provisions of these Bylaws, the Declaration and as required by law. He or she will be custodian of the corporate records and of the seal of the Corporation and affix the seal to all documents when authorized by the board of directors. He or she will keep at its registered office or principal place of business within or outside Colorado a record containing the names and registered addresses of all Members, the designation of the Unit owned by each Member, and the name and address of each First Mortgagee. He or she will, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the board of directors. Assistant Secretaries, if any, will have the same duties and powers, subject to supervision by the Secretary.

7.8 **TREASURER.** The Treasurer will be the principal financial officer of the Corporation and will have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Corporation and will deposit the same in accordance with the instructions of the board of directors. He or she will receive and give receipts for monies paid in on account of the Corporation, and will pay out of the funds on hand all bills, payrolls and other just debts of the Corporation of whatever nature upon maturity. He or she will perform all other duties incident to the office of the Treasurer and, upon request of the board of directors, will make such reports to it as may be required at any time. He or she will, if required by the board of directors or by law, give the Corporation a bond in such sums and with such sureties as may be satisfactory to the board of directors, conditioned upon the faithful performance of his or her duties and for the restoration to the Corporation of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation. He or she will have such other powers and perform such other duties as may be from time to time prescribed by the board of directors or the President. Assistant Treasurers, if any, will have the same powers and duties, subject to the supervision of the Treasurer.

ARTICLE 8 CORPORATE DOCUMENTS AND RECORDS

8.1 **CORPORATE RECORDS.** The Corporation must keep as permanent records current copies of the Articles and these bylaws and the books, records and financial statements of the Corporation as required by the Nonprofit Act and CIOA.

8.2 **INSPECTION AND COPYING OF CORPORATE RECORDS.** The Corporation will make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners of Units and to their mortgagees, any such records. The Corporation may charge a reasonable fee for copying such materials.

8.3 **AUDITS.** The Corporation shall maintain financial records as required by CIOA. The cost of any audit or review shall be a Common Expense unless otherwise provided in the Declaration.

8.4 **STATEMENTS OF UNPAID ASSESSMENTS.** The treasurer, assistant treasurer, a manager employed by the Corporation or, in their absence, any officer having access to the books and records of the Corporation may prepare, certify and execute statements of unpaid Assessments in accordance with Section 316 of CIOA. The amount of the fee for preparing statements of unpaid Assessments and the time of payment shall be established by resolution of the board of directors. Any unpaid fees may be assessed as a Default Assessment against the Unit for which the certificate or statement is furnished.

ARTICLE 9
CONTRACTS, LOAN, DEPOSITS AND INVESTMENTS

9.1 **CONTRACTS.** So long as consistent herewith and with the Declaration, the board of directors may enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation. The board of directors may delegate this authority to a managing agent, and such authority may be general or confined to specific instances.

9.2 **LOANS.** No loans will be contracted for on behalf of the Corporation and no evidence of indebtedness may be issued in the name of the Corporation unless authorized by a resolution of the board of directors. No loan will be made to any director of the Corporation.

9.3 **DEPOSITS.** All funds of the Corporation not otherwise employed will be deposited from time to time to the credit of the Corporation in such banks, financial institutions, or other custodians as the board of directors may select.

9.4 **INVESTMENT MANAGERS.** The board of directors will have the authority to designate any bank, trust company, brokerage firm, or investment advisor to manage the assets and the investment of the assets of the Corporation.

ARTICLE 10
INDEMNIFICATION

10.1 **ACTIONS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION.** The Corporation 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 (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a member of the board of directors or officer of the Corporation, who is or was serving at the request of the Corporation in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner that such individual reasonably believed to be in the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. 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 he or she reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was unlawful. Such liability shall be satisfied within 30 days after request therefor if there exists adequate operating funds but, if not, the funds shall be raised by a special assessment of the members as quickly as possible, without the need of the members' approval.

10.2 **ACTIONS BY OR IN THE RIGHT OF THE CORPORATION.** The Corporation shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure judgment in its favor by reason of the fact that such person is or was a member of the board of directors or officer of the Corporation or is or was serving at the request of the Corporation in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the Corporation; but no

indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence, recklessness or willful misconduct in the performance of his or her duty in the Corporation unless, and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

10.3 SUCCESSFUL ON THE MERITS. To the extent that a director or any manager, officer, project manager, employee, fiduciary or agent of the Corporation has been wholly successful on the merits in defense of any action, suit or proceeding referred to in Sections 10.1 or 10.2 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection therewith.

10.4 DETERMINATION REQUIRED. Any indemnification under Sections 10.1 or 10.2 of this Article (unless ordered by a court) and as distinguished from Section 10.3, shall be made by the Corporation only as authorized by the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such individual has met the applicable standard of conduct set forth in Sections 10.1 or 10.2 above. Such determination shall be made by the board of directors by majority vote of a quorum consisting of those directors who were not parties to such action, suit or proceeding or, if a majority of disinterested directors so directs, by independent legal counsel or by members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence of record, and supported by a written opinion. The board of directors shall provide a copy of its written opinion to the officer or director seeking indemnification upon request.

10.5 PAYMENT IN ADVANCE OF FINAL DISPOSITION. The Corporation 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 (i) the director or officer furnishes to the Corporation a written affirmation of the director's or officer's good faith belief that he or she has met the standard of conduct described in Sections 10.1 or 10.2; (ii) the director or officer furnishes to the Corporation 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 (iii) 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 Section 10.5 shall be an unlimited general obligation of the board of directors, but need not be accepted by the subject director or officer or may be accepted without reference to financial ability to make repayment.

10.6 NO LIMITATION OF RIGHTS. The indemnification provided by 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 directors or otherwise, nor by any rights that are granted pursuant to the Nonprofit Act and CIOA. Upon a vote of the board of directors, the Corporation may also indemnify a member appointed by the board to serve on a committee (when such committee member is not also a director) upon such terms and conditions as the board of directors shall deem just and reasonable.

10.7 DIRECTORS AND OFFICERS INSURANCE. The Corporation shall 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 Corporation 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 Corporation would have the power to indemnify such individual against such liability under the provisions of this Article 10.

ARTICLE 11
LIABILITY

No member, director, managing agent or employee of the Corporation is liable, as such, for the acts, debts, liabilities or obligations of the Corporation. Except as otherwise specifically provided under CIOA with regard to the fiduciary duty of directors appointed by Declarant during the Period of Declarant Control, no director will be personally liable to the Corporation for monetary damages for any breach of fiduciary duty as a director, except that no director's liability to the Corporation for monetary damages will be eliminated or limited on account of any of the following: (i) any breach of the director's duty of loyalty to the Corporation or its members; (ii) any acts or omissions of the director not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) the director's assent to or participation in a loan by the Corporation to any director of the Corporation; or (iv) any transaction in which the director received improper personal benefit. Nothing herein will be construed to deprive any director of the right to all defenses ordinarily available to a director nor will anything herein be construed to deprive any director of any right for contribution from any other director or other person. Any repeal or modification of this Article will be prospective only and will not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE 12
AMENDMENTS

These bylaws may be amended only as set forth in the Declaration.

ARTICLE 13
METHOD OF NOTICE AND HEARINGS

13.1 METHOD OF NOTICE.

(a) Any notice to an Owner of a Unit by the Corporation or by another Owner will be sufficiently given if in writing and hand delivered, sent by facsimile transmission, or sent by certified U.S. mail, postage prepaid (provided that if a notice is sent by facsimile transmission, a copy shall be mailed by certified mail no later than the next business day), at the address registered with the Corporation as provided in Section 22.13 of the Declaration.

(b) All notices, demands or other notices intended to be served upon the Corporation or the board of directors of the Corporation will be sent by certified mail, postage prepaid, to the registered agent for the Corporation at the registered address of the Corporation, as may be on record with the Office of the Secretary of the state of Colorado.

13.2 HEARINGS. Before the board of directors may suspend a member's voting rights, levy an individual assessment upon a member or impose a fine upon a member Declaration (other than late fees and default interest charged and collected pursuant to the Association's Policies), as set forth in the Declaration, the board of directors must provide the member with notice of the proposed action and the opportunity for a hearing. The member must be given not less than fifteen days prior written notice of the proposed action and the reasons therefor. The member must have an opportunity to be heard, orally or in writing, by the board of directors not less than five days before the effective date of action.

ARTICLE 14 MISCELLANEOUS

14.1 **FISCAL YEAR.** The fiscal year of the Corporation will be determined by the board of directors.

14.2 **GENDER.** The masculine gender is used in these bylaws as a matter of convenience only and will be interpreted to include the feminine and neuter genders as the circumstances indicate.

14.3 **DEFINITIONS.** Capitalized terms not otherwise defined in these articles will have the meanings ascribed to such terms in the Declaration or the Nonprofit Act, as the case may be.

14.4 **RECEIPT OF NOTICES BY THE CORPORATION.** Notices, member writings consenting to action, and other documents or writings will be deemed to have been received by the Corporation when they are actually received: (1) at the registered office of the Corporation in Colorado; (2) at the principal office of the Corporation (as that office is designated in the most recent document filed by the Corporation with the Secretary of State for Colorado designating a principal office) addressed to the Corporation; (3) by the President of the Corporation wherever he or she may be found; or (4) by any other person authorized from time to time by the board of directors to receive such writings wherever such person is found.

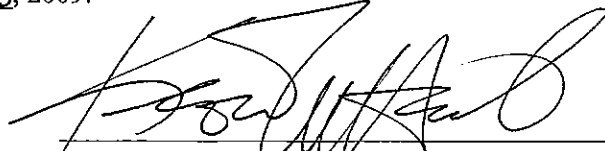
14.5 **EMERGENCY POWERS AND BYLAWS.** An “emergency” exists for the purposes of this Section if a quorum of the directors cannot readily be obtained because of some catastrophic event. In the event of an emergency, the board of directors may: (a) modify lines of succession to accommodate the incapacity of any director, employee or agent; and (b) relocate the principal office, designate alternative principal offices or regional offices, or authorize others to do so. During an emergency, notice of a meeting of the board of directors only needs to be given to those directors whom it is practicable to reach and may be given in any practicable manner including by publication or radio. Corporate action taken in good faith during an emergency binds the Corporation and may not be the basis for imposing liability on any director, employee or agent of the Corporation on the ground that the action was not authorized. The board of directors may also adopt emergency bylaws, subject to amendments or repeal by the members, which may include provisions necessary for managing the Corporation during the emergency including: (x) procedures for calling a meeting of the board of directors; (y) quorum requirements for the meeting; and (z) designation of additional or substitute directors. The emergency bylaws will remain in effect only during the emergency and will cease to be of effect when the emergency ends.

14.6 **DISTRIBUTIONS.** The term “distribution” means the payment of a dividend or any part of the income or profit of the Corporation to its directors or members. The Corporation will not make any distribution except as follows: (a) to pay compensation in a reasonable amount to its directors, members, agents or employees for services rendered; (b) to confer benefits upon its members in conformity with its purposes; (c) to make distributions upon dissolution in compliance with applicable law; and (d) to satisfy its indemnification obligations pursuant to Article 10 hereof.

14.7 **PRESENCE.** Except with respect to a meeting called pursuant to Section 6.8 hereof, the terms “present” and “presence” with respect to a member, director or officer means attendance in person, by proxy (to the fullest extent provided by the Nonprofit Act), via telephonic or other electronic means or via “real time” e-mail.

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

The above bylaws were approved and adopted by the board of directors of ONYX Owners Association, Inc., effective as of February 23, 2009.



KEVIN M. HART, Secretary