

[Comments from Marc Rochkind are shown bracketed, italicized, and in a serif font, like this paragraph.]

**AMENDED AND RESTATED
BYLAWS
OF
GUNBARREL GREEN HOMEOWNERS ASSOCIATION, INC.**

These Amended and Restated Bylaws of the Gunbarrel Green Homeowners Association, Inc. are made and entered into as of this _____ day of _____, 201___. These Amended and Restated Bylaws replace in their entirety all previous Bylaws, which are hereby terminated and of no further force and effect whatsoever.

ARTICLE I. Definitions

Section 1. “Association” shall mean and refer to Gunbarrel Green Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Colorado, with its mailing address at P. O. Box 11217, Boulder, CO 80301.

Section 2. “The Properties” shall mean and refer to real properties located in Gunbarrel Green, a subdivision in the County of Boulder, State of Colorado, which properties are or may be subject to certain restrictions of record, as more fully defined in the Articles of Incorporation of the Association.

[Do all references to the Articles in this document need to be changed to “Amended and Restated Articles of Incorporation”?]

Section 3. “Member” shall be defined as any person or entity who is entitled to Membership pursuant to Article IV of the Articles of Incorporation of the Association.

Section 4. “Notice” shall be defined as at least two weeks written notice addressed to each Member’s home address within Gunbarrel Green, or such other address as the Member may provide in writing to the secretary of the Association.

~~Section 5. “Architectural committee” shall be as defined in that certain declaration of restrictions, covenants and conditions covering certain lots in Gunbarrel Green, recorded July 26, 1963 at 2:20 p.m., Reception No. 732360, in Book 1292, Page 312 of the records, and any amendments thereto of record, of the Clerk and Recorder of the County of Boulder, State of Colorado, and shall have the duties set forth in the Articles of Incorporation of the Association.~~

[Delete this Section, as the same verbiage appears in ARTICLE VII of the Articles. Redundancies can cause future inconsistencies and make the documents harder to read.]

Section 6. “Declaration” shall be defined as the declarations of restrictions, covenants and conditions covering certain lots in Gunbarrel Green, recorded July 26, 1963 at 2:20 p.m., Reception No. 732360, in Book 1292, Page 312, and any amendments thereto of record, of the records of the Clerk and Recorder of the County of Boulder, State of Colorado.

Section 7. “Dues” shall mean the annual amount required to be paid by each Member of the Association. Each Member shall be charged the same amount in Dues as every other Member.

Section 8. “Assessments” shall be a charge for special needs as determined by the Board of Directors.

~~Section 9. “Fees” shall be a charge for services rendered by the Board of Directors and shall be in an amount to no more than reimburse the Association for its time and expenses in providing such services.~~

[Change the Fee section to this: “Fees” shall be a charge when ownership of a Property is transferred to cover Association costs. The amount of such Fee shall cover only direct Association costs related to the transfer, and shall not include volunteer time.]

[This entire Definitions article should be moved into the Articles, since (1) those terms are used there, (2) the Articles is the superior and predecessor document, and (3) the Articles need to stand on their own, except where they explicit defer to the Bylaws.]

ARTICLE II. Location

The principal office of the Association shall be located at such place as may be designated by the Board of Directors. ~~The registered office at the time of the adoption of these Revised and Restated Bylaws is 5098 Cottonwood Drive, Boulder, Colorado 80301.~~ The registered address is updated annually with the Colorado Secretary of State and is available from the Secretary of State.

[The address doesn't have to appear here, since if it's changed this document won't be updated, and the reader will be misled. The word “is” should be changed to “shall be”.]

ARTICLE III. Membership

Membership shall be as provided in Article IV of the Articles of Incorporation of this Association.

ARTICLE IV. Dues, Fees and Assessments

The Board of Directors of the Association shall have the power to propose Assessments and changes in Dues.

[Add: "subject to Article X of the Articles of Incorporation".]

~~Section 1. Assessments must be approved by an affirmative vote of at least sixty percent (60%) of Members with voting rights.~~

[Delete; already in Articles.]

~~Section 2. A change in Dues must be approved by a majority vote of those Members present or represented by proxy at an Annual or Special Meeting of the Association provided Notice of the change of Dues was provided to Members prior to the Meeting.~~

[Delete; already in Articles, or should be. See my comments there.]

Section 3. Such Dues and/or Assessments in arrears may become a lien upon the property against each Member, if so determined by the Board of Directors.

[What about Fees?]

~~Section 4. When the Board of Directors provides copies of the Association documents and status of payment of Dues and Assessments it may, at its discretion, assess a Fee for services. The Fee for such services shall not exceed the reasonable value of the time and expense of providing such service. At the time of the execution of these Revised and Restated Bylaws, the amount being charged is One Hundred (\$100) Dollars.~~

[Fees are covered by my comments here and in the Articles. They should be collected only when there's a property transfer. This paragraph should be deleted, as it seems to suggest that members will be charged if they inquire about the status of their payments. This section should be deleted.]

ARTICLE V. Voting Rights

Section 1. Voting rights of the Members of the Association shall be as provided in Article V of the Articles of Incorporation of this Association and shall be subject to current payment of any Dues or Assessments levied pursuant to Article III of the Articles of Incorporation of this Association.

Section 2. The voting rights of any Member whose Dues and/or Assessments are in arrears shall be suspended. Upon payment of such Dues and/or Assessments, such Members' rights and privileges shall be automatically restored.

Section 3. Voting by written proxy shall be permitted, pursuant to the conditions of Article VI, Section 7.

ARTICLE VI. Meetings of the Members

Section 1. Place of Meetings. Meetings of the Association shall be at such place within the County of Boulder, State of Colorado, as the Board of Directors of may determine.

Section 2. Annual Meetings. Annual Meetings of the Members shall be held at a time and place designated by the Board of Directors. Unless Notice is provided to Members indicating otherwise, the Annual Meeting will be held on the first Tuesday in October at 7:00pm.

Section 3. Special Meetings. Special Meetings of the Members may be called at any time by the president or by the Board of Directors or upon written request to the Board of Directors of ten percent (10%) of the Members with voting rights.

Section 4. Emergency Meetings. These Meetings shall not be subject to the two weeks' notice requirement and may be called at any time by the president or by the Board of Directors or upon written request to the Board of Directors of ten percent (10%) of the Members with voting rights. Notice of an Emergency Meeting shall be given by the President to the extent reasonable.

Section 5. Notice of Meetings. Written Notice of each Annual or Special Meeting of the Members shall be given as provided in the definition of Notice in Article I, Section 4. Such Notice shall specify the place, day and hour of the Meeting and the amount of any proposed Dues increase and the amount of any Assessment. In the case of a Special Meeting, the Notice shall state the general purpose of the meeting.

Section 6. Quorum. For any vote of the Membership, a quorum shall be defined as those Members attending any Annual, Special, or Emergency Meeting in person provided Notice has been given, and further provided that at least ten Members with voting rights attend the Meeting. Unless otherwise provided in the Articles of Incorporation of this Association or the Bylaws of this

Association, all business to be conducted by the Membership may be conducted by a majority vote at any Meeting where a quorum is present.

[If no notice is determined to be reasonable by the President for an Emergency Meeting, how is a quorum determined?]

Section 7. Proxies. At all Meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated at the time granted, and filed with the secretary prior to the vote in question. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his lot. No proxy shall extend beyond a period of thirty (30) days from the date granted. Proxies shall not be counted in determining whether a quorum is present.

[Not clear what “conveyance ... of his lot” means. Should be reworded.]

ARTICLE VII. Board of Directors

Section 1. The number and election of the directors shall be as provided in Article VI of the Articles of Incorporation of this Association.

[I thought the Board wanted to increase its membership to as many as 9.]

Section 2. Vacancies in the Board of Directors shall be filled by majority vote of the remaining Directors. Any such appointed Director is to hold office until his or her successor is elected by the Members at the next Annual Meeting of the Members, or at any Special Meeting duly called for this purpose.

Section 3. Term of Office. Directors can be elected to serve consecutive terms without limitation.

Section 4. Nomination. Nomination for election to the Board of Directors shall be made by the Board of Directors. Nominations may also be made from the floor at the Annual Meeting by Members with voting rights. The Board shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Only Members of the Association with voting rights may be nominated.

[Should be a provision allowing nominees to speak for 5 minutes before the vote, and to take up to 5 minutes of questions from the floor.]

Section 5. Election. Election to the Board of Directors shall be by secret written ballot unless the number of nominees does not exceed the number of vacancies, in which case Election may be by acclamation. At such election the

Members or their proxies may cast one vote with respect to each vacancy. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 6. Compensation. No director shall receive compensation, except as provided in Section 1 of Article XV of these Bylaws, for any service he or she may render to the Association, in his or her capacity as director. However, any director may be reimbursed for his or her actual and reasonable expenses incurred in the performance of his or her duties.

ARTICLE VIII. Meetings of Directors

Section 1. Regular Meetings. Regular Meetings of the Board of Directors shall be held with such frequency, and at such place and hour as may be fixed from time to time by the resolution of the Board. Unless otherwise determined by the Board of Directors, quarterly meetings shall be held. Any Member of the Association may attend any meeting of the Board of Directors.

Section 2. Special Meetings. Special Meetings of the Board of Directors shall be held when called by the president of the Association, or by any three directors.

Section 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.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which such quorum is present shall be regarded as the act of the Board.

Section 4. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Such written approval may be submitted to the president of the Board via email or other means of communication. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

[Seems to negate ability of members to attend Regular meetings, since the Board can do anything it wants in secret. Should be greatly restricted.]

[Add: "Minutes of all Board of Directors meetings, and all actions taken without a meeting, shall be available online within three business days of the the meeting."]

This was approved at the October HOA meeting and should be in the Articles.]
[Also approved at the October meeting was the requirement to provide notice of Board meetings. Should be in Bylaws.]

ARTICLE IX. Powers and Duties of the Board of Directors

The Board of Directors shall have the powers and duties as provided in Article VI of the Articles of Incorporation of this Association.

ARTICLE X. Officers and their Duties

Section 1. The officers of this Association shall be a president, a vice president, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create. All officers shall be Members of the Board of Directors.

Section 2. The officers shall be chosen by a majority vote of directors.

Section 2. The officers shall be chosen by a majority vote of Directors.

Section 3. All officers shall hold office at the pleasure of the Board of Directors.

Section 4. The president shall see that orders and resolutions of the Board of Directors are carried out.

[Vague and open to abuse. Powers of the Board to enforce things like dues are already spelled out elsewhere. Also, the President presides at Board and membership meetings.]

Section 5. The vice president shall perform all the duties of the president in the absence of the president.

Section 6. The secretary shall be the secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings. He or she shall keep the records of the Association, and shall record the names of all Members of the Association, together with their addresses as registered by such Members.

[And maybe acts as President when President and Vice President are absent?]

Section 7. The treasurer shall deposit in appropriate bank accounts all monies of the Association and shall make disbursements of such funds only as

directed by the resolutions of the Board of Directors. The Board of Directors shall designate those persons who have authority to sign checks on the Association's bank accounts. All funds shall be deposited in interest-bearing accounts, where possible. The treasurer shall also keep proper books of account. He or she shall prepare an annual budget, an annual income statement and an annual balance sheet statement, and the budget and the balance sheet statement shall be presented to the Membership at its regular Annual Meeting. An annual audit or review by a certified public accountant may be authorized at the discretion of the Board of Directors or at the written request of 10% of the Members with voting rights. The treasurer shall provide title companies with a statement of status of Dues and Assessments owed when a property is being sold and instruct title companies to collect at the time of closing any unpaid Dues and/or Assessments that are owed to the Association by the owner of the property being sold.

ARTICLE XI. Committees

Section 1. Unless otherwise provided for herein, each committee shall consist of a chairperson and two (2) or more Members and shall include a Member of the Board of Directors for board liaison. The committee shall be appointed by the Board of Directors prior to each Annual Meeting to serve from the close of such Annual Meeting until the close of the next Annual Meeting, and such appointment shall be announced at each such Annual Meeting. The Board of Directors may appoint such other committees as it deems desirable, including other standing or ad hoc committees.

~~Section 2.~~ The Architectural Committee shall have the duties set forth in the Declaration and Articles of Incorporation of this Association and shall make recommendation for action to the Board of Directors. Architectural Committee Members shall take such action as directed by the Board.

[To avoid duplication, change to: "The Architectural Committee shall be as stated in ARTICLE VII of the Articles of Incorporation."]

ARTICLE XII. Books and Records

Section 1. The books, records and papers of the Association shall be made available upon reasonable notice to the secretary and shall be subject to inspection by any Member of the Association during reasonable business hours.

Section 2. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member online and at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XIII. Corporate Seal

The Association may have a seal in circular form having within its circumference the name of the Association and the words "Seal, Colorado,"

ARTICLE XIV. Amendments

Section 1. These Bylaws may be amended, at an Annual or Special Meeting of the Members, by a vote of a majority of Members with voting rights attending the Meeting in person or represented by proxy, provided that those provisions of these Bylaws which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matter stated herein to be or which is in fact governed by the Declaration applicable to the Properties may not be amended except as provided in such Declaration. Any proposed Bylaw change shall be published in writing with the notice of the Meeting at which the change will be voted.

[Change "majority" to "sixty percent (60%) of voting members in person or by proxy". That is, back to what the existing Bylaws say.]

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration applicable to the Properties referred to in Article I of these Bylaws and these Bylaws, the Declaration shall control.

[This priority clause should be moved to the Articles, where it will have more force. The Bylaws are easier to change than the Articles, and such a change could alter the priorities.]

ARTICLE XV. Miscellaneous

Section 1. Character of Association. This Association is not organized for profit. No Member, Member of the Board of Directors, or officer shall receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be distributed to, or inure to the benefit of any director, officer or Member, except upon a dissolution of the Association, provided, however, that a reasonable remuneration may be paid to any Member who is in the employ of the Association for his services as such employee or independent contractor, and that any Member, manager, director or officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in conjunction with the administration of the affairs of the Association.

[Add a clause prohibiting any member of the board from doing any paid work for the HOA, or working for a company that does paid work for the HOA. This avoids creating a conflict-of-interest.]

Section 2. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, unless changed by the Board of Directors. The first fiscal year shall begin on the date of incorporation.

Section 3. Proof of Ownership/Member in Good Standing. Upon request, each Member of the Association shall forthwith furnish to the Board of Directors a photocopy of the recorded instrument or other suitable written proof of ownership, such as a tax bill, vesting in that person such ownership as entitles him or her or it to become a Member of this Association, which instrument shall remain in the files of the Association. A Member shall not be deemed to be in good standing, nor shall he be entitled to vote at any Annual or Special Meeting of Members, unless the Board of Directors has proof of such person's ownership entitling such person to be a Member of the Association and all Association Dues, Fees and Assessments are current.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this ____ day of _____, _____.

BOARD OF DIRECTORS:

Janet Reutcke

Cynthia Arey

Gina Hyatt

Sandi Misura