



The Orchard Homeowner's Association, Inc.  
Golden, CO 80403  
[www.orchardhoa.org](http://www.orchardhoa.org)

# POLICY AND PROCEDURE MANUAL

## Abstract

The purpose of this manual is to provide all members of the Orchard HOA with a reference manual containing policies and procedures established by the Board of Directors. In the interest of brevity, an attempt has been made to include only that information which will be used under normal operating circumstances within the HOA. The governing documents for this manual are the association Bylaws as well as the Declarations and Covenants. This Manual is subject to change.

2015 Serving Board of Directors  
[www.orchardhoa.org](http://www.orchardhoa.org)

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# **1 ADOPTION OF RULES AND POLICIES POLICY**

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## **1.1 POLICY**

The Board of Directors from time to time in accordance with Associations governing documents, may Amend, Adopt or Delete, the Rules and Regulations, Policies and Procedures (collectively “Policy”) of the Association with a majority vote from the Board. Should the Board make changes to the above, it shall give all members via regular mail, a copy within 30 days after adopting the change. Any part of governing documents that do not comply with Federal, State and Local law shall not be enforceable.

The Board shall consider the following in drafting a Policy:

1. Whether the governing documents or Colorado law grants the Board the authority to adopt such a Policy;
2. The need for such Policy based upon the scope and importance of the issue and whether the governing documents adequately address the issue; and
3. The immediate and long-term impact and implications of the Policy.

The adoption of every Policy shall be listed on the agenda for the Board meeting prior to adoption by the Board and any Owner who wishes to comment on the proposed Policy shall be afforded such opportunity at the meeting in compliance with Colorado law.

Upon adoption of a Policy, the Policy or notice of such Policy (including the effective date) shall be provided to all Owners by any reasonable method as determined by the sole discretion of the Board, including but not limited to posting on the Association’s website.

Policies will be reviewed:

1. When subsequent changes to CCIOA or applicable laws are enacted; or
2. When we are notified of challenges of enforceability of existing policies; or
3. Every three years by the current Board of Directors

## 2 COVENANT ENFORCEMENT POLICY

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### 2.1 POLICY

Enforcement of the governing documents is the responsibility of the Board of Directors. From time to time, the Board or its agents may do property inspections to determine if violations of the governing documents have occurred. Additionally, any member of the Homeowners Association may file a written complaint identifying the complainant, the alleged violator, if known, and detailing time, date and nature of the alleged violation to the Board of Directors and its Design Review Committee if it involves a design review violation, which will then take the necessary steps to investigate the complaint and if warranted, issue a violation notice. Non-written complaints or written complaints failing to include any information required by this section may not be investigated or prosecuted.

#### HOA Violation Procedures

- a. A violation form must be completed, and should reference the section of the governing documents being allegedly violated and be sent to the Board of Directors for investigation. The violation form can be sent to the Board for a WARNING letter to be sent out to the offending owner.
- b. The Board of Directors, in collaboration with the Design Review Committee if applicable, will review the violation forms and verify the alleged violation of any governing documents of the HOA.
- c. If a violation is found to exist, the Board of Directors will send out the notice of violation as follows:
  - i. **1<sup>st</sup> Letter:** "Notice of Violation Warning" will be sent to property owner for compliance within 15 business days. On the 15<sup>th</sup> business day, if the Board has not received an appeal or response from the offending owner/resident, The Board will follow up with the person who submitted the complaint to see if the violation persists. If the violation persists, a 2<sup>nd</sup> Notice will be sent.
  - ii. **2<sup>nd</sup> Letter:** "Notice of Potential Fine" letter will be sent to property owner, providing notice of the violation and explaining if the violation is found to exist a fine may be imposed pursuant to the Policy. The Notice shall further state that the alleged violator is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing within 15 days of the date on the violation letter.
  - iii. **Notice of Hearing** If a hearing is requested by the alleged violator, the Board, committee or other person conducting such hearing as may be determined in the sole discretion of the Board, may serve a written notice of the hearing to all parties involved at least 10 days prior to the hearing date.

#### Hearings

##### Impartial Decision Maker

Pursuant to Colorado law, the alleged Violator has the right to be heard before an "Impartial Decision Maker". An Impartial Decision Maker is defined under Colorado law as "a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including architectural requirements, and other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general

membership of the association." Unless otherwise disqualified pursuant to the definition of Impartial Decision Maker, the Board may appoint to act as the Impartial Decision Maker the entire Board, specified members of the Board, any other individual or group of individuals.

#### Hearing Procedures

At the beginning of each hearing, the presiding officer, shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding officer may also impose such other rules of conduct as may be appropriate under the given circumstances. Neither the complainant nor the alleged violator are required to be in attendance at the hearing. The Impartial Decision Maker shall base its decision solely on the matters set forth in the Complaint, results of the investigation and such other credible evidence as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all Owners. After all testimony and other evidence has been presented at a hearing, the Impartial Decision Maker shall, within a reasonable time, not to exceed 10 days, render its written findings and decision, and impose a fine, if applicable. Failure to strictly follow the hearing procedures set forth above shall not constitute grounds for appeal of the hearing committee's decision absent a showing of denial of due process.

#### Failure to Timely Request Hearing

If the alleged violator fails to request a hearing within 15 days of any letter, or fails to appear at any hearing, the Impartial Decision Maker may make a decision with respect to the alleged violation based on the complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing. If a violation is found to exist, the alleged violator may be assessed a fine pursuant to this Policy. The decision of the Impartial Decision Maker shall be in writing and provided to the violator within 30 days of the hearing, or if no hearing is requested, within 30 days of the final decision.

#### Fine Schedule

The following fine schedule has been adopted for all recurring covenant violations:

First Violation:	Warning Letter
Second Violation (of same covenant or rule):	\$50.00
Third Violation (of same covenant or rule):	\$100.00

Third and subsequent covenant violations may be turned over to the Association's attorney to take appropriate legal action.

#### Board Decision Final

The Board reserves the right to waive or reduce the penalty at their discretion. Any penalties levied by the Board will be due immediately. Failure to pay will be treated in accordance with the governing documents.

## 3 CONDUCT OF MEETINGS POLICY

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### 3.1 POLICY

This policy addresses several items regarding the conduct of any meeting held by the Association.

#### Notice of Owners Meetings

In addition to any notice required in the Bylaws, notice of meetings along with an agenda shall be posted on the HOA's website; [www.orchardhoa.org](http://www.orchardhoa.org). Notice shall also be conspicuously posted in the Community prior to such meeting. If any Owner has requested that the Association provide notice via email and has provided the Association with an email address, the Association shall send notice of all Owner meetings to such Owner at the email address provided as soon as possible after notice is provided pursuant to the Bylaws but in no case less than 24 hours prior to any such meeting. Meeting locations can be obtained on the HOA website as well.

#### Board Executive Session

Executive or closed door sessions of the Board shall be conducted for the following subjects only:

1. Matters pertaining to employees of the Association or the manager's contract or involving the employment, discipline, or dismissal of an officer, agent, or employee of the Association;
2. Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
3. Investigative proceedings concerning possible or actual criminal misconduct;
4. Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
5. Review of or discussion relating to any written or oral communication from legal counsel; and
6. Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure.

Board Members and other invitees of Executive Session are bound not to disclose information discussed in the Executive or closed door session to any other person or persons. If action is warranted by the Board, the Board may take that specific action in a form of a motion, in open session, with great care of not disclosing the confidential discussion of the executive discussion. The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session.

#### Board Meeting

Homeowners are encouraged and welcome to attend all Board Meetings and Homeowner's comments are also encouraged. The President of the Association may at their discretion set a time limit on the comments from each property owner as set forth in the Conduct at Board Meetings section below.

#### Conduct at Board Meetings

All Board meetings shall be governed by the following rules of conduct and order:

1. The President of the Association, or designee, shall chair all Board meetings.
2. All persons who attend a meeting of the Board shall be required to sign in, listing their name and unit address.

3. All Owners will be given an opportunity to speak as to any matter or ask questions of the Board during the Owner forum at the beginning of the meeting. Any Owner wishing to speak during the Owner forum shall so indicate at the time of sign in.
4. Anyone desiring to speak shall first be recognized by the Chair.
5. Only one person may speak at a time.
6. Each person speaking shall first state his or her name and Unit address.
7. Any person who is represented by another person as indicated by a written instrument at the meeting shall be permitted to have such person speak for them.
8. Those addressing the Board shall be permitted to speak without interruption from anyone as long as these rules are followed.
9. Comments are to be offered in a civilized manner and without profanity, personal attacks or shouting. Comments are to be relevant to the purpose of the meeting or issue at hand.
10. Each person shall be given up to a maximum of three minutes to speak or to ask questions, although questions may not be answered until a later date. Each person may only speak once during the Owner forum and once on any other issue prior to a vote by the Board on such issue. Yielding of time by a speaker to another individual shall not be permitted. Such time limit may be increased or decreased by the Chair but shall be uniform for all persons addressing the meeting.
11. No meeting of the Board may be audio, video or otherwise recorded except by the Board to aid in the preparation of minutes. Minutes of actions taken shall be kept by the Association.
12. Anyone disrupting the meeting, as determined by the Chair, shall be asked to "come to order." Anyone who does not come to order shall be requested to immediately leave the meeting.

#### Owner Input at Board Meetings

After a motion and second has been made on any matter to be discussed, at a time determined by the Board, but prior to a vote by the Directors, Owners, or their designated representatives, present at such time shall be afforded an opportunity to speak on the motion as follows:

1. The Chair will ask those Owners present to indicate by a show of hands who wishes to speak in favor or against the motion. The Chair will then determine a reasonable number of persons who will be permitted to speak in favor of and against the motion and for how long each person will be permitted to speak. The Chair shall also announce the procedure for who shall be permitted to speak if not everyone desiring to speak will be permitted to speak.
2. Following Owner input, the Chair will declare Owner input closed and there shall be no further Owner participation on the motion at hand unless a majority of the Board of Directors votes to open the discussion to further Owner participation.

#### Membership Annual or Special Meetings

All Homeowners will get notice of Membership or Special meetings as described in the governing documents for the Association. Homeowners are urged to attend these meetings to protect their interests as Homeowners and the wellbeing of the Association. Homeowner's comments are encouraged at Membership Annual or Special Meetings and will be allowed on each issue prior to a vote of the membership. The President of the Association may at their discretion, set a time limit on the individual topics. Association Members, that wish to have Membership business included on the Agenda, must submit them in writing to the Board President, 30 days prior to the meeting. If items added require a vote of the Membership, the revised Agenda will be re-posted within 10 days of the meeting. Order of Business, unless otherwise provided by the Association Documents the Agenda will be established as follows:

- Call the Meeting to order
- Establish a quorum

- Approve Minutes
- Financials review
- Committee reports
- Old Business
- New Business
- Announcements
- Adjournments

The board at its discretion may alter the order of business for any meetings.

#### Conduct at Owners Meetings

All Owner meetings shall be governed by the following rules of conduct and order:

1. The President of the Association or designee shall chair all Owner meetings.
2. All Owners and persons who attend a meeting of the Owners will sign in, present any proxies and receive ballots as appropriate. (See section below regarding voting).
3. Any person desiring to speak shall sign up on the list provided at check in and indicate if he/she is for or against an agenda item.
4. Anyone wishing to speak must first be recognized by the Chair.
5. Only one person may speak at a time.
6. Each person who speaks shall first state his or her name and Unit address.
7. Any person who is represented at the meeting by another person, as indicated by a written instrument, will be permitted to have such person speak for him/her.
8. Those addressing the meeting shall be permitted to speak without interruption from anyone as long as these rules are followed.
9. Comments are to be offered in a civilized manner and without profanity, personal attacks or shouting. Comments are to be relevant to the purpose of the meeting.
10. Each person shall be given up to a maximum of three minutes to make a statement or to ask questions. The Board may decide whether or not to answer questions during the meeting. Each person may only speak once. Yielding of time by a speaker to another individual shall not be permitted. Such time limit may be increased or decreased by the Chair, but shall be uniform for all persons addressing the meeting.
11. All actions and/or decisions will require a first and second motion.
12. Once a vote has been taken, there will be no further discussion regarding that topic.
13. So as to allow for and encourage full discussion by Owners, no meeting may be audio, video or otherwise recorded. Minutes of actions taken shall be kept by the association.
14. Anyone disrupting the meeting, as determined by the Chair, shall be asked to “come to order.” Anyone who does not come to order will be requested to immediately leave the meeting.
15. The Chair may establish such additional rules of order as may be necessary from time to time.

#### Voting

All votes taken at Owner meetings shall be taken as follows:

1. Elections of Board members shall be conducted by secret ballot. Each Owner entitled to vote pursuant to the Bylaws shall receive a ballot. The ballot shall contain no identifying information concerning the ballot holder. In the event an Owner holds a proxy for another Owner, upon presentation of such proxy to the Secretary of the Association or the Secretary’s designee, the

- Owner shall receive a secret ballot to cast the vote of the Owner who provided the proxy. The proxy shall be kept and retained by the Association.
2. All other votes taken at a meeting of the Owners shall be taken in such method as determined by the Board of Directors including acclamation, by hand, by voice or by ballot. Notwithstanding the above, votes shall be taken by secret ballot at the discretion of the Board or upon the request of 20% of the Owners who are present at the meeting or represented by proxy.
  3. Written ballots shall be counted by a neutral third party, excluding the Association's managing agent or legal counsel, or a committee of volunteers who are not Board members, and in the case of a contested election, are not candidates. The committee shall be selected or appointed at an open meeting, in a fair manner, by the Chair of the Board or another person presiding during that portion of the meeting.
  4. The individual(s) counting the ballots shall report the results of the vote to the Chair by indicating how many votes were cast for each individual or how many votes were cast in favor and against any issue.

#### Proxies

Proxies may be given by any Owner as allowed by C.R.S. 7-127-203. All proxies shall be reviewed by the Association's Secretary or designee as to the following:

1. Validity of the signature
2. Signatory's authority to sign for the unit Owner
3. Authority of the unit Owner to vote
4. Conflicting proxies
5. Expiration of the proxy

## 4 INSPECTION OF RECORDS POLICY

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### 4.1 POLICY

Owners and their mortgagees shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association and upon reasonable notice. Copies are available at reasonable cost. Many of the records are kept on the Associations web page for review.

The following are the sole Records available for inspection :

- a. Records of receipts and expenditures affecting the operation and administration of the Association;
- b. Records of claims for construction defects and amounts received pursuant to settlement of any such claims;
- c. Minutes of all meetings of Owners;
- d. Minutes of all meetings of Board members (except records of executive sessions of the Board);
- e. Records of actions taken by the Owners without a meeting;
- f. Records of actions taken by the Board without a meeting, including written communications and e-mails among Board members that are directly related to the action so taken;
- g. Records of actions taken by any committee of the Board without a meeting;
- h. A list of the names of the Owners in a form that permits preparation of a list of the names and mailing addresses of all Owners, as well as the number of votes of each Owner is entitled to vote;
- i. The Association's governing documents which are comprised of:
  - j. The declaration;
  - k. The bylaws;
  - l. The articles of incorporation;
- m. Any rules and regulations and/or design guidelines; and
- n. Any policies adopted by the Board, including the Association's responsible governance policies.
- o. Financial statements for the last three years, which at a minimum shall include the balance sheet, the income/expense statement, and the amount held in reserves for the prior fiscal year;
- p. Tax returns for the last seven years, to the extent available;
- q. The operating budget for the current fiscal year;
- r. A list, by unit type, of the Association's current assessments, including both regular and special assessments;
- s. The result of the Association's most recent available financial audit or review, if any;
- t. A list of the Association's insurance policies, which shall include the company names, policy limits, policy deductibles, additional named insured, and expiration dates of the policies listed;
- u. A list of the names, e-mail addresses and mailing addresses of the current Board members and officers;
- v. The most recent annual report delivered to the Secretary of State;
- w. A ledger of each Owner's assessment account;
- x. The most recent reserve study, if any;
- y. Current written contracts and contracts for work performed for the Association within the prior two years;
- z. Records of Board or committee actions to approve or deny any requests for design or architectural approval from Owners;
- aa. Ballots, proxies and other records related to voting by Owners for one year after the election, vote or action to which they relate;

- bb. Resolutions adopted by the Board;
- cc. All written communications sent to all Owners generally within the past three years; and
- dd. A record showing the date on which the Association's fiscal year begins.

Records not available for inspection:

- a. Attorney client privileged documents' and records, unless the Board votes to remove such privilege.
- b. Current or ongoing contract negotiations that are currently being negotiated and that could have a negative impact if disclosed prior to the approval.
- c. Documents that would be confidential under statutory or judicial requirements.
- d. Architectural drawings, plans and designs, unless released upon the written consent of the owner of such drawings, plans or designs;
- e. Records of executive sessions of the Board;
- f. Individual unit files other than those of the requesting Owners.
- g. Personnel, salary or medical records relating to Individuals;
- h. Personal identification and account information of Owners, including bank account information, driver's license numbers, social security numbers, email addresses and telephone numbers. Notwithstanding the above, if an Owner or resident has provided the Association with his or her express written consent to disclose his or her email address or phone number, the Association may publish that information to other Owners or residents. If the Owner or resident revokes his or her consent in writing, the Association shall cease making available for inspection the Owner's or residents' email address or phone number after the receipt of such revocation, but the Association need not change, retrieve or destroy any document or record published by the Association prior to the Association's receipt of such revocation.

Procedure to requests records not available on the website:

For records not available on the HOA's website a written requests must be submitted to the Board of Directors. A description with reasonable detail of what records are requested must also be stated. Requested documents shall not be used by any owner for commercial purposes.

The membership list may not be used for any of the following purposes:

- a. To solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election held by the Association;
- b. For any commercial purpose; or
- c. Sold to or purchased by any person.

The request must be submitted to any member of the Board via e-mail or other written request.

Inspection/Copying Association Records

An Owner or his/her authorized agent is entitled to inspect and copy any of the books and records of the Association, as listed above, subject to the exclusions set forth above, upon submission of a written request to the Association describing with reasonable particularity the records sought. The Association shall provide access to the requested records by:

- a. Making the requested records available for inspection and copying by the Owner within 10 days of the Association's receipt of such written request, which inspection shall be during the regular business hours of 8:00 a.m. to 5:00 p.m.; or

- b. Making the requested records available for inspection and copying by the Owner during the next regularly scheduled Board meeting occurring within 30 days of the Owner's request; or
- c. E-mailing the requested records to the Owner within 10 days of the Association's receipt of such written request, if so requested by the Owner.

Board's right to examine

During the examination the Association reserves the right to have a Board member or its agent observe as the records as reviewed. The Association is under no obligation to create records that do not exist or compile records in any particular order. During the examination no records will be removed, altered, destroyed or marked on.

The Association may impose a reasonable charge covering the cost of labor and material, for copies of association records. The Association may require a deposit equal to the anticipated actual cost of the requested records. Failure to pay such deposit shall be valid grounds for denying an Owner copies of such records. If after payment of the deposit it is determined that the actual cost was more than the deposit, Owner shall pay such amount prior to delivery of the copies. If after payment of the deposit it is determined that the actual cost was less than the deposit, the difference shall be returned to the Owner with the copies.

## 5 ALTERNATIVE DISPUTE RESOLUTION

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### 5.1 POLICY

All disputes between the Association and Homeowners (other than disputes or claims specifically exempted from alternative dispute resolution, including the collection of assessments or other monies owed to the Association) will be addressed and resolved in compliance with these procedures.

#### Initial Discussion

It is expected that in the event of any dispute the parties will initially conduct good faith negotiations and attempt to resolve the dispute as good neighbors.

#### Mediation

If the Board believes the disagreement is a result of misunderstanding, miscommunication and/or breakdown of relationships between the parties, it may elect to engage a trained, impartial mediator to facilitate understanding and agreement. The mediator should be acceptable to all parties and the costs of the mediator, if any, will be shared equally between the parties in the dispute.

#### Arbitration

If the Board, at its discretion, believes mediation would not be effective, it may elect to propose a trained, neutral arbitrator with expertise in the issue to be arbitrated. Arbitration is a more formal proceeding than mediation as the parties to the mediation and/or their attorneys will present evidence, argument and other documents and information under oath in support of their position. The formality of the process can vary, based on the rules of arbitration agreed to by the parties to the arbitration or imposed by the arbitrator. The arbitration substitutes for and is an alternative to litigation in the State courts, and there are only limited rights and circumstances available to obtain review of a binding arbitration decision in the State courts. Typically the arbitrator will issue a written arbitration decision and award, and if it is necessary to enforce the decision and award through the State courts then the decision and award will be filed with the court and become public record. The arbitrator should be acceptable to all parties and the fees charged by the arbitrator and costs of the arbitration typically will be shared equally between all parties to the dispute. Depending on the outcome of the arbitration however, the arbitrator may have the discretion to award the substantially prevailing party its costs and attorney fees and the non-prevailing party will be required to pay those costs and fees as well.

## 6 CONFLICT OF INTEREST POLICY

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### 6.1 POLICY

It is the policy of the Association to identify, disclose and mitigate conflicts of interest in the conduct of Association business. In 2011, House Bill 11-1124 became law, amending Title 38-33.3-209.5 of the Colorado Common Interest Ownership Act to require homeowner associations to:

1. Define when a conflict of interest exist;
2. Adopt procedures to follow when a conflict of interest exists, including disclosure rules and when a conflicted board member must recuse themselves from voting;
3. Require a periodic review of conflict of interest policies.

The intent of the statute, and this Conflict of Interest Policy, is to promote open disclosure of conflicts of interest that would benefit a Director separate from his or her interest as a homeowner.

Circumstances under which a conflict of interest may exist include personal financial interest, or that of a friend or relative, in a business relationship with the Association. This could include gifts, gratuities and kick-backs from suppliers or contractors, exchanging business favors or influencing the Board for the purpose of financial gain or any other benefit to the Director, and is not in the common interest of the Association and homeowners.

Board and Committee members must disclose any conflicting interest transaction to the Board in open session at the first open meeting of the Board of Directors at which the interested director or committee member is present prior to any discussion or vote on the matter. Any Board member with a conflict must not participate in the discussion of, nor vote on, the transaction. The minutes of the meeting shall reflect the disclosure made, the abstention from voting, the composition of the quorum and record who voted for and against.

A “conflicting interest transaction” means a contract, transaction, or other financial relationship between the Association and a Board or a committee member, or between the Association and a party related to a Director or committee member, or between the Association and an entity in which a Board or committee member of the Association is a director or officer or has a financial interest.

A “party related to a Board or committee member” means a spouse, a descendant, an ancestor, a sibling, the spouse or descendant of a sibling, an estate or trust in which the Board or committee member or a party related to a Board or committee member has a beneficial interest, or an entity in which a party related to a Board or committee member is a director or officer or has a financial interest.

#### Loans

No loans shall be made by the Association to its Directors or officers. Any Director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of the loan until it is repaid.

#### Enforceability of Conflicting Interest Transaction

No conflicting interest transaction shall be voidable by an Owner or on behalf of the Association if:

- a. The facts about the conflicting interest transaction are disclosed to the Board, and a majority of the disinterested Board members, even if less than a quorum, in good faith approves the conflicting interest transaction;
- b. The facts about the conflicting interest transaction are disclosed or the Owners entitled to vote on the matter, and the conflicting interest transaction is authorized in good faith by a vote of the Owners entitled to vote on the matter; or
- c. The conflicting interest transaction is fair to the Association.

A Director will not participate in the formation of policy in which a personal or business interest exists, unless such interest is fully disclosed and all of the remaining directors agree that participation in deliberations and voting by the conflicted director is in the interests of the Association. Participation by a conflicted Director does not extend to voting on a contract for goods and services (See "Contracting Policy").

The Board of Directors will not establish, construct or perpetuate any program or procedure in which a conflict of interest might exist. The Board is to strive to maintain the highest ethical values at all times.

The Board shall review this Policy and the procedures contained herein periodically to determine whether any revisions or amendments to this Policy are necessary or warranted.

## 7 CONTRACTING POLICY

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### 7.1 POLICY

The Association does not have employees to perform duties for the Association. All undertakings and activities of the Association are performed by the Board of Directors, Officers, and members of established committees or outside independent contractors engaged by the Board. The conduct of Association business will require from time to time the use of vendors and independent contractors to facilitate the use, maintenance, repair, replacement, modification and added improvements to the common areas and provision of common services (i.e. trash service, accounting and insurance).

Procurement of goods or services, where the expected aggregate amount will exceed \$5,000 in a one-year period, will be documented by written agreement/contract, and will be approved by the Board, which shall consider the work/products proposed, current budget and revenue sources, and the overall interests of the homeowners.

The Board shall approve contracts by vote at Board meetings, or separate written consent, which is to be read into the record of the next meeting of the Board and recorded in the minutes thereof. Voting and approval of contracts will not be conducted during any closed “executive session” of the Board. Approved contracts may be executed by an Officer designated by the Board.

The Board, at its sole discretion, may direct that multiple proposals be obtained to evaluate products and services, prior to voting/approval.

The Board may refer contracts to legal counsel for review, prior to engaging in a contract.

Considerations for engaging outside contractors shall include:

- **Qualifications:** to deliver and/or perform the work to specifications, completely and safely, while protecting the assets of the Association.
- **Experience:** verifiable with references, that the contractor will deliver/perform the work and satisfy all representations they have made to the Association.
- **Costs:** that are competitive and reasonable for the scope of products/work as requested by the Association and proposed by the contractor.
- **Licensing and insurance:** are documented by the contractor that they have professional credentials as required by Federal, State or Local regulations for the work, and that they have broad form liability and workers compensation insurance covering any on-site performance by the contractor. Performance bonding will not be required, unless specifically directed by the Board.

#### Conflicts of Interest

To avoid actual or perceived conflicts of interest, Board members and members of committees must disclose any financial interest, connection or relationship with a proposed contractor prior to any vote or approval of a contract. Similarly, proposing contractors shall disclose any relationship or connection with any homeowner, director or committee member at the time of proposal of work. See also “Conflict of Interest Policy”.

## 8 INVESTMENT POLICY

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### 8.1 POLICY

It is the policy of the Association to invest unused funds for the benefit of the Association.

Funds not expected to be used for current year operations, and designated reserve funds, are to be invested in a commercial financial institution designated by the Board.

Investment of funds is to be guided first by safety, then liquidity, then rate of return.

- **Safety**. Protect principal amounts – no risk to principal from market forces. Control access to funds by only those designated by the Board.
- **Liquidity**. Preserve unrestricted access to funds, with no withdrawal penalties or fees, or no notice period for access to funds.
- **Rate of Return**. Best market rate that preserves safety and liquidity.

The officers and members of the Board of Directors shall make investment decisions in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director or officer reasonably believes to be in the best interests of the Association in accordance with the Colorado Revised Nonprofit Corporation Act.

## 9 RESERVE STUDY POLICY

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A Reserve Study is a structured review of the assets of the Association and an assessment of replacement reserves that may be needed to meet our financial obligations to replace or refurbish assets, beyond maintenance inclusions in the annual budgets.

A structured program of Reserve Study guides a process of responsible management of the Association assets, as well as the following:

- Meets legal requirements for common interest associations to manage assets;
- Provides for replacement funding of major common items;
- Enhances resale values, by documenting planned replacements and planning for expenditures;
- Minimizes the need for special assessments;
- Meets accounting standards that require proper reporting of replacement funding for major assets.

### 9.1 POLICY

It is the policy of the Association to conduct a Reserve Study every three years. A Reserve Study may be performed internally by the Board, a committee of homeowners appointed by the Board, or an outside contractor engaged by the Board. The Board may also designate and direct the use of outside consultants and/or contractors to provide professional consultations, calculations, engineering, estimates and counsel that may be deemed appropriate to complete a Reserve Study.

A Reserve Study includes:

- Component inventory, listing items included and excluded from the Reserve Study;
- Condition Assessment, with remaining expected life, value estimates and replacement cost estimates;
- Analysis of existing funding status;
- Review of previous Reserve Studies and funding plans;
- Funding recommendation for replacement of major common items;
- Report to Board with conclusions and recommendations.

A component inventory will include assets of the Association, such as improvements to common area real estate parcels (Tracts A, B, C & E), the neighborhood perimeter fence and the entrance walls and signs on Fig Street at 44<sup>th</sup> Avenue.

Items to be excluded from consideration are public roadways, utilities, and homeowner lot improvements. The detention pond does not normally accumulate water or suffer related siltation. Concrete runners handle routine drainage through the detention pond. The last major work in the detention pond was 2014, with the removal of two landscaped berms.

A completed Reserve Study will be reviewed by the Board, to consider report recommendations, funding proposals and appropriate communications to, and approvals of, the homeowners. Each Annual Meeting of homeowners of the Association will include an agenda item to review reserve funding status.

## 10 COLLECTION POLICY

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### 10.1 POLICY

The Association will refer all delinquent accounts promptly to an attorney for collection so as to minimize the Association's loss of assessment revenue. The law offices of Hindman and Sanchez have been retained to handle all collection matters. The following terms and processes have been defined and adopted by the association to ensure each collection is handled fairly, consistently, and in accordance with Colorado Statute:

#### Due Date

The annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on January 1st of each year. Assessments or other charges not paid in full to the Association within 45 days of the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association within 45 days of the due date shall incur late fees and interest as provided below. In the event notice of acceleration is given to delinquent Owner(s), the Owner(s) of the unit shall also be charged any costs incurred by the Association in giving notice of such acceleration.

#### Receipt Date

The Association shall post payments on the day that the payment is received in the Association's office.

#### Late Charges on Delinquent installments

The Association shall impose on a monthly basis a \$6.00 late charge for each Owner who fails to timely pay his/her installment of the annual assessment within 45 days of the due date. This late charge shall be a "common expense" for each delinquent Owner.

#### Personal Obligation for Late Charges

The late charge shall be the personal obligation of the Owner(s) of the unit for which such assessment or installment is unpaid. All late charges shall be due and payable immediately, without notice, in the manner provided by the Declaration (and as set forth herein) for payment of assessments.

#### Return Check Charges

In addition to any and all charges imposed under the Declaration, Articles of Incorporation and Bylaws, the Rules and Regulations of the Association or this Resolution, a return check fee, not to exceed \$20.00, shall be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. This returned check charge shall be a "common expense" for each Owner who tenders payment by check or other instrument which is not honored by the bank upon which it is drawn. Such return check charge shall be due and payable immediately, upon demand. Notwithstanding this provision, the Association shall be entitled to all additional remedies as may be provided by applicable law. Returned check charges shall be the obligation of the Owner(s) of the unit for which payment was tendered to the Association. Returned check charges shall become effective on any instrument tendered to the Association for payment of sums due under the Declaration, Articles, Bylaws, Rules and Regulations. If two or more of an Owner's checks are returned unpaid by the bank within any fiscal year, the Association may require that all of the Owner's future payments, for a period of one (1) year, be made by certified check or money order. This

return check charge shall be in addition to any late fees or interest incurred by an Owner. Any returned check shall cause an account to be past due if full payment of the installment of the annual assessment is not timely made within 45 days of the due date.

#### Service Fees

In the event the Association incurs any type of service fee, regardless of what it is called, for the handling and processing of delinquent accounts on a per account basis, such fees will be the responsibility of the Owner as such fee would not be incurred but for the delinquency of the Owner.

#### Payment Plans

Any Owner who becomes delinquent in payment of assessments after January 1, 2014 and whose account is not currently with the Association's attorney or a collection agency for collection action on January 1, 2014, may enter into a payment plan with the Association, which plan shall be for a minimum term of 6 months or such other term as may be approved by the Board of Directors. Such payment plan shall be offered to each owner prior to the Association referring any account to an attorney or collection agency for collection action. In the event the Owner defaults or otherwise does not comply with the terms and conditions of the payment plan, including the payment of ongoing assessments of the association, the Association may, without additional notice, refer the delinquent account to an attorney or collection agency for collection action or may take such other action as it deems appropriate in relation to the delinquency.

#### Attorney Fees on Delinquent Accounts

As an additional expense permitted under the Declaration and by Colorado law, the Association shall be entitled to recover its reasonable attorney fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent Owner. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred, upon demand.

#### Application of Payments

Once an account is referred to the Association's attorney, all sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied in the following manner: first to the payment of any and all legal fees and costs (including attorney fees), then to expenses of enforcement and collection, late charges, returned check charges, lien fees, and other costs owing or incurred with respect to such Owner pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, prior to application of the payment to any special or regular assessments due or to become due with respect to such Owner.

#### Collection Process

- (a) After an installment of an annual assessment or other charges due to the Association becomes more than 60 days delinquent, the Board of Directors shall send a written notice ("First Notice") of non-payment, amount past due, notice that interest and late fees have accrued and request for immediate payment.

The Association's notice, at a minimum shall including the following:

- (i) The total amount due to the Association along with an accounting of how the total amount was determined.
- (ii) Whether the Owner may enter into a payment plan and instructions for contacting the Association to arrange for and enter into a plan.

- (iii) A name and contact information for an individual the owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt.
- (iv) A statement indicating that action is required to cure the delinquency and that failure to do so within thirty days may result in the Owner's delinquency account being turned over to an attorney, a collection agency, the filing of a lawsuit against the Owner, appointment of a receiver, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado Law including revoking the owners right to vote if permitted in the Bylaws or Declaration.
- (b) After an installment of an annual assessment or other charges due to the Association becomes more than 90 days delinquent, the Board of Directors shall send a second written notice ("Second Notice") of non-payment, amount past due, notice that interest and late fees have accrued, notice of intent to file a lien and request for immediate payment.
- (c) After an installment of an annual assessment or other charges due to the Association becomes more than 120 days delinquent, the Board of Directors shall turn the account over to the Association's attorney for collection. Upon receiving the delinquent account, the Association's attorneys may file a lien and send a letter to the delinquent Owner demanding immediate payment for past due assessments or other charges due. Upon further review, the Association's attorney may file a lawsuit. If a judgment or decree is obtained, including without limitation a foreclosure action, such judgment or decree shall include reasonable attorney's fees together with the cost of the action and any applicable interest and late fees.
- (d) In addition to the steps outlined above, the Association may elect to suspend the voting rights of any Owner whose account is past due at the time of such voting.

#### Collection Procedures/Time Frames

The following time frames shall be followed for use in the collection of installments of the annual assessment and other charges:

- (a) Due Date (date payment due) January 1st
- (b) Past Due Date (date payment is late if not received on or before that date)
- (c) 45 days after due date First Notice (notice that late charges and interest have accrued, required disclosures of the Association and the availability of a payment plan if applicable)
- (d) Any time after 60 days after due date Second Notice (notice that late charges and interest have accrued, notice of intent to file lien)
- (e) Any time after 90 days after due date Delinquent account turned over to Association's attorney; Lien filed; Demand letter sent to Owner.
- (f) Any time after 120 days after due date

The attorney is to consult with the Association as necessary to determine if payment has been arranged or what collection procedures are appropriate.

#### Certification of Status of Assessments

The Association shall furnish to an Owner or such Owner's designee upon written request, first class postage prepaid, return receipt, to the Association's agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's property for a reasonable fee. However, if the account has been turned over to the Association's attorney, such request may be handled through the attorney.

### Bankruptcies and Foreclosures

Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any unit within the Association, the Board of Directors shall notify the Association's attorney of the same and turn the account over to the Association's attorney, if appropriate.

### Referral of Delinquent Accounts to Attorneys

Upon referral to the Association's attorney, the attorney shall take all appropriate action to collect the accounts referred. After an account has been referred to an attorney, the account shall remain with the attorney until the account is settled, has a zero balance or is written off. The attorney, in consultation with the Board of Directors, is authorized to take whatever action is necessary and determined to be in the best interests of the Association, including, but not limited to:

- (a) Filing of a suit against the delinquent Owner for a money judgment;
- (b) Instituting a judicial foreclosure action of the Association's lien, upon approval by the Association's Board of Directors;
- (c) Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interests; and
- (d) Filing a court action seeking appointment of a receiver. All payment plans involving accounts referred to an attorney for collection shall be set up and monitored through the attorney.

### Appointment of a Receiver

The Association may seek the appointment of a receiver if an Owner becomes delinquent in the payment of assessments pursuant to the Declaration and Colorado law. A receiver is a disinterested person, appointed by the court, who manages the rental of the property, collects the rent and disburses the rents according to the court's order. The purpose of a receivership for the Association is to obtain payment of current assessments, reduce past due assessments and prevent the waste and deterioration of the property.

### Rental Interception

To the extent permitted by the Declaration, the Association may, without court order, notify the tenant of any unit where the Owner is delinquent in the payment of assessments, pursuant to the Declaration and Colorado law, that rents shall be paid to the Association effective immediately and continue until such time as the Owner's account is current. Such notice shall be in writing to the tenant and the Owner. All funds received by the Association from the tenant shall be credited to the Owner's account as set forth herein.

### Judicial Foreclosure

The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment. The purpose of foreclosing is to obtain payment of all assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action. The Association shall consider individually each recommendation for a foreclosure and may only approve a foreclosure action after the delinquency equals or exceeds six months of common expenses assessments based on a periodic budget adopted by the Association. Such foreclosure shall be approved by the Board of Directors via resolution or a vote of the Board recorded in the minutes of the meeting at which the vote was taken.

### Waivers

The Association is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances.

### Communication with Owners

All communication with a delinquent Owner shall be handled through the Association's attorney once a matter has been referred to the attorney. No member of the Board of Directors shall discuss the collection of the account directly with an Owner after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact.

### Communication by Owners

Owners may communicate with the Association in any manner they choose including email, text, fax, phone, or in writing, when available. However; in doing so, the Owner acknowledges that the Association and/or its agents may communicate via the same method unless otherwise advised.

### Defenses

Failure of the Association to comply with any provision in this Policy shall not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by this Policy.

### Definitions

Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.

### Supplement to the Law

The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the Project.

### Deviations

The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.

### Amendments

This Policy may be amended from time to time by the Board of Directors.