

# *The Count Pourtales Association*

## **Governance Policies**

Effective October 10, 2024, the Board of Directors of The Count Pourtales Association, Inc. (the “Association”) has adopted the following amended and restated policies, procedures, and operating rules and guidelines pursuant to C.R.S. § 38-33.3-209.5, at a regular meeting of the Board of Directors. The intent of said policies, procedures, rules and guidelines is to ensure responsible governance of the Count Pourtales Association. These policies supplement the Covenants and Bylaws of the Association along with such other documents as are publicly available on the Association website.

The Association, through its Board of Directors, performs functions and manages the affairs of the Association as more particularly provided in the Covenants, Bylaws and Governance Policies. Any purchaser of any property within the Association shall be deemed to have assented to, ratified and approved such designation and management and is responsible for understanding such Covenants, Bylaws and Governance Policies.

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### **I. Adoption and Amendment of Policies, Procedures, and Rules Policy**

- 1. Pursuant to Article 1, Section 1.12 of the Amended and Restated Covenants of The Count Pourtales Subdivision the authority to adopt and amend policies, procedures, and rules and regulations lies with the Board of Directors of the Association (herein referred to as “Board”).
- 2. The Board, having determined that an issue affects the community for which a policy, procedure, or rule would be beneficial, and having discussed reasonable approaches to

address the issue, may adopt a policy, procedure or rule in the reasonable discretion of the Board by any method authorized by the Association's governing documents or pursuant to Colorado law.

3. For purposes of this procedure, the Board will take reasonable steps to avoid adopting a policy procedure or rule that is contrary to Federal, State or local law or the Association's governing documents. Notwithstanding the foregoing, the rule or policy may further regulate, clarify, modify or elaborate on express provisions in the Association's governing documents. The Board will exercise reasonable care to balance the Association's interests with the interests of the individual Owners.
4. The policy, procedure, rule or regulation shall be effective upon its adoption or such other date as determined by the Board, or as required by the governing documents. Notwithstanding the foregoing, the Board shall distribute the duly adopted policy, procedure, rule or regulation by any reasonable means available, including but not limited to internet posting, e-mail, mail (through a newsletter or otherwise), or by personal delivery. Pursuant to the Association's Records Inspection Policy, all duly adopted rules, and policies may be inspected by Owners.
5. An Owner's failure to receive the policy, procedure, rule or regulation shall not be a defense to the Association's ability to enforce the policy, procedure, rule or regulation or to levy fines, expenses or attorneys' fees as a result of a violation of the policy, procedure, rule or regulation.
6. This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
7. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

## **II. Conduct of Meetings**

### ***Meetings of the Members/ Meetings of the Board***

1. All regular and special meetings of the Members and meetings of the Board are open to all Members of the Association or to any person designated in writing as a Member's representative ("Designated Representative"). At an appropriate time determined by the Board, but before the Board votes on an issue under discussion, Members or their Designated Representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue but may place reasonable time restrictions on those persons speaking during the meeting.
2. The Secretary of the Association shall have the primary responsibility for:
  - (a) Ensuring that all members participating in Association meetings, either in person or by proxy, are appropriately registered and that formal records documenting such attendance or representation are maintained;

- (b) Establishing that a quorum is present before commencing the meeting;
- (c) Establishing the vote credit approval threshold effective for each item voted on; and
- (d) Providing, via posting on the Association website, at least ten (10) days prior notice of any Board meeting.

### ***Voting***

- 3. Votes for contested positions on the Board shall be taken by secret ballot. At the discretion of the Board, or upon the request such Owners who are: (i) present at the meeting or represented by proxy, if a quorum has been achieved; and (ii) holding voting credits equal to twenty percent of the total voting credits of the Association, a vote on any matter affecting the common interest community on which all Owners are entitled to vote shall be by secret ballot.
- 4. Ballots shall be counted by a neutral third party (the “Parliamentarian”) or by a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates. The results of a vote taken by secret ballot shall be reported without reference to the names, addresses, or other identifying information of Owners participating in such vote.
- 5. Voting on any motion properly proposed at the Annual or any Special Meeting of the Association shall be governed by the Association’s Bylaws insofar as vote credit entitlement and passage thresholds.
- 6. The Secretary of the Association shall maintain all executed proxy statements on file for a period of no less than one (1) year. Such records shall be available for examination by Association members subject to requests and procedures set out in Section XIV of these Governance Policies.

### ***Legal Matters***

- 7. Upon the final resolution of any matter for which the Board has received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.
- 8. Audio and video recording of Board or Member meetings is prohibited. Notwithstanding the foregoing, the official record-keeper at any meeting may, at the discretion of the Board, record the proceedings of that meeting for record-keeping purposes. The audio or video tapes of any meeting kept by the official record-keeper shall be retained until such time as the information has been memorialized in the minutes of said meeting and such minutes have been adopted by the Board. Any audio or video tapes shall be retained by the Association until such time as the Board has adopted the minutes for the recorded meeting.

### ***Executive Session***

9. Notwithstanding the foregoing, the Board or a committee thereof may hold an executive or closed-door session during any regular or special Board meeting and may restrict attendance to Board members and such other persons requested by the Board. The matters to be discussed at such an executive session are limited to:
  - a. Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
  - b. 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;
  - c. Investigative proceedings concerning possible or actual criminal misconduct;
  - d. Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
  - e. Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, including a disciplinary hearing regarding an Owner and any referral of delinquency; except that an Owner who is the subject of a disciplinary hearing or a referral of delinquency may request and receive the results of any vote taken at the relevant meeting; and
  - f. Review of or discussion relating to any written or oral communication from legal counsel.
10. Prior to convening an executive session, the Board or committee thereof, as may be applicable, shall announce the general matters to be discussed in the executive session. No rule or regulation may be validly adopted during an executive session.

### ***Etiquette / Remediating Disruptive Behavior***

11. At either a meeting of the Members or the Board, if a member refuses to stop talking after his/her allotted time has ended or otherwise disrupts the meeting, the chair of the meeting shall be entitled to request that the speaker cease speaking. If the speaker continues to speak or continues to be disruptive during the remainder of the meeting, the Board may vote to adjourn the meeting. In the alternative, or in addition to adjourning the meeting, the chair of the meeting, in the exercise of his/her reasonable discretion shall be entitled to contact law enforcement and request that the disruptive person be removed from the meeting.

### ***Other***

12. Board meetings shall be held no less than four (4) times per year with responsibilities to include, without limitation: nomination of Committee chairpersons, periodic reports from such chairpersons, mid-year review of receipts and expenditures versus budget, confirmation of completion of tax filings, status of insurance policies, summary of

communications with Association members, review of ownership changes, covenant violation concerns and preparation of a draft budget along with dues changes for the coming membership year.

13. Unless otherwise specified in the Association's Bylaws, the formal written notification of Board Meetings to all members is not required unless the stated agenda for such meeting(s) includes the formulation of policy matters that significantly effect or modify the rights or obligations of all members of the Association. When items affecting individual members of the Association are being considered, the Board should use reasonable endeavors to advise those members that may be directly affected by decisions on such matters. Notices of such meetings, as required herein, should, if time permits, be provided within thirty (30) days, but not less ten (10) days of the meeting date.
14. Any action that may be taken at a meeting of the Board of Directors may be taken without a meeting using telephone and/or electronic mail communications, provided all Board members entitled to vote on matters being considered have agreed to making such decisions without a meeting
15. This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
16. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

### **III. Annual Meeting Notice**

1. The Secretary of the Association shall be responsible for issuing the Notice of the Annual Meeting (or any rescheduled Annual Meeting) to all Association members in accordance with Sections 6.03 and 6.08 of the Association's Bylaws.
2. The meeting notice shall include a meeting agenda covering, as appropriate, the topics listed in Exhibit 1.
3. The meeting notice shall also contain a voter's proxy form to facilitate representation of members who are unable to attend the meeting.

### **IV. Special Meetings of the Association**

1. If a Special Meeting of the Association is called for under the provisions of Section 6.02 of the Association's Bylaws, the Board of Directors shall:
  - (a) Set the date, time, venue and agenda for the meeting. Except as provided for in subparagraph (b) below, the date should normally be no earlier than fifteen (15) days and no later than forty-five (45) days from the date of the qualified call for such a meeting.
  - (b) In cases where the Board of Directors deems it appropriate to obtain legal advice on a matter to be considered at said special meeting, the date set for the

meeting may be deferred for such period of time as necessary to obtain and consider such legal advice.

- (c) Instruct the Secretary of the Association to issue the appropriate written notice of said meeting, including an agenda and voter's proxy form for any item to be voted on, to be sent to all members.

## **V. Minutes of Association Meetings**

1. The Secretary of the Association is responsible for preparing minutes of all Association meetings and making same available to all Association members.
2. Minutes of all Association meetings shall be reviewed and endorsed by a majority of the Board of Directors prior to publication or distribution. Formal approval of such minutes by Association members shall be done at the first subsequent Association meeting.

## **VI. Board of Directors and Committee Members – Conflicts of Interest**

1. If any contract, decision, or other action taken by or on behalf of the Board of Directors or any member of an established Committee, including, but not limited to, the Architectural Review Committee, would financially benefit any member of the Board or Committee member or any person who is a parent, grandparent, spouse, child, sibling, tenant, or resident of the Lot of a member of the Board or Committee member or a parent or spouse of any of those persons, that member of the Board or Committee member shall declare the conflict in an open meeting, prior to any discussion or action on that issue. After making such declaration, the member may participate in the discussion but shall not vote on that issue. Board members and Committee members prohibited from voting shall be counted in determining whether a quorum of the Board or Committee is present. Any contract entered into in violation of this section shall be void and unenforceable.
2. As used in this policy, "Conflicting Interest Transaction" means: A contract, transaction, or other financial relationship between the Association and a Director (Board Member) or Committee member of the Association, or between the Association and a party related to a Director or Committee member, or between the Association and an entity in which a Director or Committee member of the Association is a director or officer or has a financial interest. As used in this policy, "Officer" means any person designated as an officer or Committee Chair of the Association and any person to whom the Board delegates responsibilities, including, without limitation, a managing agent, attorney or accountant employed by the Association.
3. No loans shall be made by the Association to its Directors, Officers, or Committee members. Any Director, Officer, or Committee member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.
4. Any Conflicting Interest Transaction on the part of any Director or Committee member or party related to a Director or Committee member shall be verbally disclosed to the other Directors or Committee member in open session at the first open meeting of the

Board of Directors or Committee at which the interested Director or Committee member is present prior to any discussion or vote on the matter. The minutes of the meeting shall reflect the disclosure made. After disclosure, the Director or Committee member may participate in the discussion but may not vote on the matter.

5. No Conflicting Interest Transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a Member or by or in the right of the Association solely because the Conflicting Transaction involves a Director or Committee member of the Association or a party related to a Director or Committee member or an entity in which a Director or Committee member of the Association is a director or officer or has a financial interest or solely because the Director or Committee member is present at or participates in the meeting of the Association's Board of Directors or of the committee of the Board of Directors that authorizes, approves, or ratifies the Conflicting Interest Transaction or solely because the Director's vote is counted for such purpose if:
  - a) The material facts as to the Director's or Committee member's relationship or interest and as to the Conflicting Interest Transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes, approves, or ratifies the Conflicting Interest Transaction by the affirmative vote of a majority of the disinterested Directors or Committee members, even though the disinterested Directors are less than a quorum;
  - b. The material facts as to the Director's or Committee member's relationship or interest and as to the Conflicting Interest Transaction are disclosed or are known to the Members entitled to vote thereon, and the Conflicting Interest Transaction is specifically authorized, approved, or ratified in good faith by a vote of the Members entitled to vote thereon; or
  - c. The Conflicting Interest Transaction is fair as to the Association.
6. Common or interested Directors or Committee members may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes, approves, or ratifies the Conflicting Interest Transaction.
7. For purposes of this section, a "party related to a Director" shall mean a spouse, a descendent, an ancestor, a sibling, tenant, resident of the Lot owned by the party related to a Director, the spouse or descendent of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director, officer, or has a financial interest.
8. The Association's conflict of interest policies, procedures and rules and regulations shall be reviewed periodically.
9. This Policy shall replace and supersede all policies, rules, and regulations regarding the subject matter of this Policy.
10. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

## **VII. Association Committees**

1. The Board of Directors may designate such committees as it deems necessary to fulfill the objectives and purposes for which The Count Pourtales Association is established.
2. The Board may appoint members of the Association as it deems appropriate to *chair* each committee. Appointees shall serve at the pleasure of the Board. The Board may remove any member of a committee, with or without cause, at the Board's sole discretion. *Committee chairpersons may appoint other members of the Association to their respective committees.*
3. The Chairperson of each Committee will be responsible for ensuring activities and decisions of the committee are carried out in accordance with the Association's Amended and Restated Covenants, Bylaws and these Governance Policies.
4. Unless expressly provided for in the agreed authorities vested with a committee, the Chairperson cannot contract for services or otherwise financially commit the Association without the prior approval of the Board of Directors.
5. For committees that have been allocated a portion of the Association's Current Fiscal Year Operating Budget, and vested with the authority to commit funds against this budget, the Committee Chairperson shall, when requested, report to the Board of Directors on expenditures. In no cases shall the Committee Chairperson commit Association funds in excess of budgeted levels allocated to the committee without the expressed authorization of additional funds by the Board of Directors.
6. The Chairperson or their designated representative shall periodically report on committee activities to and as requested by the Board of Directors.

## **VIII. Operating Budget/Annual Assessment**

1. The Treasurer of the Association shall be responsible for providing an overview of prior year expenses and a forecast of future year expenses after consultation with the Association's other Officers and Committee Chairpersons, as appropriate.
2. The Board of Directors shall then vote on a budget with a reasonable degree of line item detail of income and expenditures for the forthcoming fiscal year.
3. The Secretary of the Association is responsible for ensuring that the formally approved budget is included with the Annual Meeting Notice sent to all Association members.
4. The Board of Directors shall consider if the approved budget requires an increase in the Annual Assessment fees. If an increase is deemed necessary, the Board of Directors shall vote on establishment of a new assessment level, as provided in Article V, Sections 5.02 and 5.04 of the Association's Bylaws. Any such revision to the Annual Assessment shall be communicated to Association members in the notice of the forthcoming Annual Meeting.



## **IX. Enforcement of Covenants**

### ***Definitions, Enforcement & Scope, Purpose***

#### **1. Definitions.**

- a. As used in this policy, the term “Board” shall mean the Board of Directors, any committee of the Board, or any other body established by the Association’s Governing Documents such as, but not limited to, an architectural control committee.
- b. The term “Owner” used in this policy shall refer to the Owner of record. If the person causing the violation is a guest, tenant, family member, or invitee or licensee of an Owner, then the Owner shall be responsible for the act or omission.
- c. As used in this policy, the term “Governing Documents” shall include the Association’s Declaration, Bylaws, Articles of Incorporation, Rules and Regulations, Policies, and Resolutions.
- d. The term “Notice of Violation” shall refer to the notice sent in the manner and containing the information as set forth herein.
- e. “Continuing Violation” shall mean any violations that do not threaten public safety or health and are either: 1) uninterrupted by time for a period of more than sixty (60) days from the Notice of Violation, or 2) occur on more than three separate occasions within a period of sixty (60) consecutive days from the Notice of Violation.
- f. The term “Courtesy Notice” shall refer to any communication other than a Notice of Violation, in whatever manner or form, to an Owner notifying the Owner of a violation of the Association’s Governing Documents.

2. **Enforcement & Scope.** Pursuant to the Amended and Restated Covenants of The Count Pourtales Subdivision (“Declaration”) and pursuant to the Colorado Common Interest Ownership Act (“Act”), the Association or any member of the Association, or both, may bring an action to enforce the terms of the Association’s covenants and rules. The collection of delinquent assessments shall be governed by the Association’s Collection Policy. All capitalized terms not herein defined shall be as defined as in the Declaration.

3. **Purpose.** The Association’s primary objective is to uphold the terms of the Declaration and other Governing Documents that benefit the community at large. To the extent that a neighbor-to-neighbor dispute exists that is not a violation of the Association’s Governing Documents, the Board encourages the neighbors to resolve the dispute in an informal and cooperative manner if possible.

### ***Initial Complaint.***

1. **Complaint of Alleged Violation.** In the event that a claimed violation of the Association's Governing Documents is brought to the Board's attention through a written complaint, the Board shall review the written complaint. Any complaint submitted to the Board shall be sufficiently detailed to provide the provisions of the Governing Documents alleged to have been violated together with the time, date, and place of the violation and any witnesses thereto. The Board may, but need not, review claimed violations that are submitted anonymously or verbally. The Board may also prosecute alleged violations of the Association's Governing Documents without receipt of a written complaint if one or more of the Board members or the Association's manager, *if any*, or agents have personal knowledge of an alleged violation.
2. **Initial Determination After Receipt of Complaint.** After the Association receives a complaint or otherwise becomes aware of an alleged violation as set forth above in Section 1 of this Article, the Association, either through the Board or the Association's manager, shall take the following action:
  - a. Determine whether there is sufficient information to support an alleged violation of the declaration, bylaws, covenants, or other Governing Documents of the association; and
  - b. Determine whether the alleged violation threatens the public safety or health.
3. **Designated Contact.** An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to the alleged violation. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices any time communications are sent out. To identify a designated contact, an Owner must complete the attached Designated Contact Form, a blank copy of which is attached to this Policy and return it to the Association by (a) certified mail, return receipt requested, and (b) e-mail.
4. **Language Preference.** An Owner may notify the Association if the Owner prefers that correspondences and notices sent to the Owner by the Association regarding the Owner's alleged violation be in a language other than English. If the Owner does not notify the Association of a language preference, then the Association shall send all correspondences and notices to the Owner in English. If the Owner does notify the Association of a language preference, then the Association shall send all correspondences and notices related to the Owner's alleged violation to the Owner in English and in the language identified by the Owner as the Owner's preferred language. NOTICE: The Association's obligation to provide notice and correspondence in a language other than English is expressly limited to notices and correspondences about an Owner's alleged violation that are sent to the Owner. The Association is not obligated to provide notices and correspondences to the Owner related to any other subject matter in a language other than English. To identify a preference that correspondence and notices from the Association be made in a language other than English, an Owner must deliver a written language preference request to the Association by certified mail, return receipt requested.

### ***Violations That Threaten The Public Safety or Health***

If the Board or manager reasonably determines the violation threatens the public safety or health per Article II, Section 2:

1. **Notice of Violation.** The Association will promptly provide a written Notice of Violation, in English and in any language for which the Owner has indicated a preference, to the Owner and the Owner's Designated Contact. If the person causing the violation is a guest, tenant, family member, or invitee or licensee of an Owner, then the Owner shall be responsible for the act or omission. The Association may, but need not, send a notice to the person causing the violation if such person is not also an Owner.
2. **Content of Notice of Violation.** The Notice of Violation shall:
  - a. State with reasonable detail the circumstances of the claimed violation as known by the Board or manager;
  - b. State the action or actions required to cure the alleged violation;
  - c. State the interval upon which fines may be levied for the violation;
  - d. Inform the Owner that the Owner shall have seventy-two (72) hours to cure the violation before the Association may pursue fines; and
  - e. Provide the Owner an opportunity for a hearing before the Board to refute the complaint as provided in Article V below.
3. **Means of Sending the Notice of Violation.** In addition to sending the notice to any Designated Contact, the notice of violation shall be sent to the Owner at the address registered with the Association, and if no such address is registered, then to the address of the Owner's Lot within the Association's community. All notices shall be delivered personally or by first class U.S. mail, postage prepaid. The Association, upon the written request of the Owner delivered to the Association personally, by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the Association, will mail the notice of violation to another address as set forth in the Owner's written request.
4. **Inspection.** After the seventy-two (72) hours' notice period expires, the Association may, to the extent permitted under the Association's Governing Documents and/or the law, inspect the Lot or area where the violation is alleged to have taken place to determine whether or not the violation has been cured.
  - a. If the Association determines that the violation has not been cured, the Association may proceed to fine the Owner and/or pursue legal action as needed and/or pursue all other remedies allowed in the Association's Governing Documents or at law.
  - b. If the Association determines that the violation has been cured, the Association shall notify the Owner, in English and any other language that the Owner has indicated a preference, that the Owner will not be fined.

5. Requesting a hearing does not preclude or prevent the Association from entering the Lot to conduct necessary measures to abate the violation(s) as described in this Article VI of this policy to the extent permitted by the Declaration.
6. Nothing in this Article III shall preclude the Association from assessing any costs incurred by the Association in either remediation of the violation or repair of damage to the Common Elements or one or more Lots.

### ***Violations That Do Not Threaten The Public Safety or Health***

If the Board or manager reasonably determines the violation does not threaten the public health or safety per Article II, Section 2:

1. **Notice of Violation.** The Board shall send a notice, in English and in any language for which the Owner has indicated a preference, to the Lot Owner and the Owner's Designated Representative. If the person causing the violation is a guest, tenant, family member, or invitee or licensee of an Owner, then the Owner shall be responsible for the act or omission. The Board may, but need not, send a notice to the person causing the violation if such person is not also an Owner.
2. **Content of Notice of Violation.** The notice of violation shall:
  - a. State with reasonable detail the circumstances of the claimed violation as known by the Board;
  - b. State the action or actions required to cure the alleged violation;
  - c. State the interval upon which fines may be levied for the violation;
  - d. Provide the Owner an opportunity for a hearing before the Board to refute the complaint as provided in Article V below;
  - e. Inform the Owner that the Owner has an initial thirty (30) day period in which to cure the violation or the Association may, after conducting an inspection and determining the Owner has not cured the violation, fine the Owner; and
  - f. Inform the Owner that the Association may continue to fine and also pursue legal action against the Owner if the violation remains uncured after a second thirty (30) day period and inspection by the Association.
3. **Means of Sending the Notice of Violation.** In addition to sending the notice to any Designated Contact, the Notice of Violation shall be sent to the address registered with the Association, and if no such address is registered, then to the address of the property within the Association's community owned by the Owner. All notices shall be sent by certified mail, return receipt requested.
4. **Uncured Violation after Initial Thirty (30) Days.** Upon the expiration of the thirty (30) days and unless the Owner has provided satisfactory visual evidence that the violation has been cured prior to that date, the Association shall inspect the Lot within seven (7) days. If the Association's inspection determines that the violation has not

been cured, the Association may issue fines to the Owner, and a second thirty (30) day period to cure shall commence. The Association may, but is not required to, send a second Notice of Violation. The Association also may, but is not required to, send a Courtesy Notice of the uncured violation to the Owner.

5. **Uncured Violation after the Second Thirty (30) Days** Upon the expiration of the second thirty (30) day cure period and unless the Owner has provided visual evidence that the violation has been cured prior to that date, the Association shall inspect the Lot within seven (7) days. If the Association's inspection determines that the violation has not been cured, the Association may take legal action and/or continue to fine the Owner.
6. **Courtesy Notices.** At any time, the Association may, but is not required, to send a Courtesy Notice of the violation informing the Owner of the violation. The Association may send the Courtesy Notice in any manner chosen by the Board.

### ***Fair And Impartial Fact-Finding Hearing And Determination***

1. **Requesting and Scheduling Hearing.** If the Owner charged with a violation timely responds in writing and requests a hearing, a hearing shall be set and written notice of the date, time, and place of hearing shall be provided to the Owner.
2. **Fair and Impartial Fact-Finding Process.** If a hearing is held, it will include a fair and impartial fact-finding process concerning whether the violation occurred and whether the Owner is the one who should be held responsible for the violation.
3. **Decision Makers.** The hearing will be held before the Board or a committee having authority to make a decision but the people making the decisions shall not have any direct personal or financial interest in the outcome. A decision maker will 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.
4. **No Request for Hearing.** If the Owner does not respond in writing with a request for a hearing within the time frame set forth in the Notice(s) of Violation, then the Board or committee will make its determination based on the facts available and the Board or committee may impose a fine or penalty.
5. **Hearing Procedure.** The procedure to be followed at a hearing shall be as follows:
  - a. The President of the Board or committee chair or their designee shall be the chairperson of the meeting ("Chair"). The Chair shall conduct the hearing and shall recognize people prior to them speaking and shall direct them to stop speaking as the chair deems appropriate. At the conclusion of the hearing, the Board or committee may, but need not, make a final decision at the hearing. In any case, the Board or committee shall send written notice of its decision to the Owner within a reasonable time after the meeting. Any fine, penalty, or suspension of privileges shall not take effect until at least five (5) days after the decision. It shall be expressly permissible to hold any hearing telephonically or via a video conferencing platform.

- b. If any person present at the hearing continues to speak or continues to be disruptive during the remainder of the meeting, the decision maker may vote to adjourn the hearing. In the alternative, or in addition to adjourning the hearing, the chair, in the exercise of his/her reasonable discretion shall be entitled to contact law enforcement and request that the disruptive person be removed from the hearing.

### ***Fine Interval Schedule***

1. **Violations that Threaten the Public Health and Safety.** The Board or committee shall exercise its discretion with regard to the amount of any particular fine levied. The Association may impose a fine every other day.
2. **Violations that Do Not Threaten the Public Health and Safety.** The Board or committee shall exercise its discretion with regard to the amount of any particular fine levied but shall be limited to the following fine schedule in cases of violations which, in the Association's sole discretion, do not threaten the public health and safety:
  - a. **First Violation** of the Governing Documents occurring within a one calendar year period, uncured after the Association's inspection within seven (7) days following the expiration of the initial thirty (30) day period stated in the Notice of Violation establishing that the violation has not been cured: fine not to exceed \$100.00;
  - b. **Second Violation** of the Governing Documents occurring within a one calendar year period of the first violation, uncured after the Association's inspection within seven (7) days following the expiration of the initial thirty (30) day period stated in the Second Notice of Violation establishing that the violation has not been cured: fine not to exceed \$150.00;
  - c. **Third and Subsequent Violations** of the Governing Documents occurring within a one calendar year period of the Second Violation, uncured after the Association's inspection within seven (7) days following the expiration of the initial thirty (30) day period stated in the Third (or subsequent) Notice of Violation establishing that the violation has not been cured: fine not to exceed \$250.00; and
  - d. **Continuing Violations** of the Governing Documents as defined in Article I herein: a fine imposed every other day not to exceed \$500.00 in total for the violation.
3. **Damages.** The above-listed fine schedule shall not limit the Association's ability to assess the Owner for any damages including but not limited to costs incurred by the Association to cure the violation arising from the Owner's violation of the Governing Documents.
4. **Enforcement Action Other Than Fines.** Notwithstanding anything in this policy to the contrary, the Association shall have the right, at any time and without proceeding through the steps outlined herein and without regard to the fine schedule, to take the following action as the Board deems appropriate and if allowed by the Governing Documents of the Association:

- a. Enforce the provisions of the Governing Documents through court action;
  - i. For a threat to public health and safety, after 72 hours following Owner's failure to comply after receiving written Notice of the Violation as described in Article I herein above.
  - ii. For any other violation, after the Notice of Violation and the two thirty (30) day cure periods have elapsed with the violation not having been cured pursuant to Section 4 and 5 of Article IV herein above.
- b. Suspend the Owner's membership privileges, voting privileges, and/or rights to use the Common Elements.
- c. Exercise self-help.
- d. Request that the court appoint a receiver to take possession of the Lot and exert control over the Lot in accordance with the court's order.

Nothing in this section constitutes an election of remedies nor precludes the Board from levying fines as set forth above while at the same time seeking injunctive relief for violations of a continuing nature or violations that affect the health, safety, or welfare of the residents or the property pursuant to the Act. The prevailing party to any action shall be entitled to recover its costs, expenses and reasonable attorneys' fees.

### ***General Provisions***

1. **Notice of Cured Violation.** For any violation that is deemed cured either by the Owner submitting notice of the cure to the Association with satisfactory visual evidence and subsequently verified by the Association or as determined by the Association, the Association shall send a written notice to the Owner that includes the following: (1) confirmation that the violation was cured; (2) notice that fines may have been assessed against the Owner for the violation; (3) notice that fines shall not be further assessed with regard to the violation; (4) notice of any outstanding balance owed to the Association or a statement that the Owner's outstanding balance owed to the Association shall be sent to the Owner within the next thirty (30) days. If the Owner's outstanding balance is not provided with the cured violation notice, then the notice must also include information regarding how the Owner may obtain information related to the Owner's outstanding balance.
2. **Address for Notices.** All notices and correspondences shall be mailed to the address of the Lot owned by the Owner that is within the Association's community. However, upon the registration/written request of the Owner delivered to the Association by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the Association, the Association will mail notices and other correspondence to another address as set forth in the Owner's written request.
3. **No Waiver.** Failure of the Association to enforce its Governing Documents pursuant to this Policy shall not constitute a waiver of the right to enforce the same thereafter.

4. **Enforcement Costs.** The Association may require reimbursement for enforcement costs incurred as a result of an Owner's violation of the Governing Documents. Enforcement costs include, but are not limited to, mailing fees, the cost of posting notice at an Owner's Lot, and enforcement services provided by the Association's agent.
5. **Effective Date.** This Policy shall control the actions of the Association and Owners from the effective date of this Policy and going forward. This policy shall replace all previous policies, rules, and regulations regarding the subject matter of this Policy from the effective date of this Policy and forward, subject to the right of the Board to amend this Policy. Any transactions or conduct that occurred prior to the effective date of this Policy, but which were related to the subject matter of this Policy, shall be controlled by the policy, rule or regulation that was in effect at the time the conduct or transaction occurred or was supposed to occur.
6. **Savings Clause; Reformation.** In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.
7. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## **X. Collections**

### ***Due Date, Late Fees, Interest, Itemized List, Designated Contact, Language Preference***

1. **Due Date.** Assessments are due on or before each April 1, which is the first (1<sup>st</sup>) day of each membership year. Assessments not received on or before the date due shall be past due. If the full amount of any past due assessment is not received by the Association within thirty (30) days of the due date, the assessment shall be considered delinquent.
2. **Late Fees.** When an assessment is delinquent, a late fee equal to seven percent (7%) of the delinquent assessment, but in no event on a daily basis, *may* be assessed to the delinquent account.
3. **Interest.** Delinquent assessments shall bear interest at the rate of eight percent (8%) per annum, *compounded annually*, from the date that the delinquent assessment was levied until paid in full.
4. **Itemized List.** For each Owner who has a delinquent balance owed to the Association, the Association shall send an itemized list of all assessments, fines, fees, and charges that the Owner owes to the Association. The Association shall send the itemized list as follows:
  - a. *Period:* On a monthly basis, until the Owner is no longer delinquent.



- b. *Means of Sending:* To the Owner and, if applicable, to the Owner's designated contact by (i) first-class mail; and (ii) if the Association has the relevant e-mail address, by e-mail.
  - c. *Language Preference:* The itemized list shall be sent in English unless the Owner has indicated a preference for receiving correspondence and notices from the Association in another language, per Section 6 herein below. If the Owner indicates a language preference other than English, then the itemized list shall be sent in the language indicated.
  - d. *Designated Contact:* If the Owner has identified another person to serve as a designated contact for the Owner, per Section 5 herein below, then the Association shall also send a copy of the itemized list in English to the designated contact for the Owner.
  - e. *Courtesy Notices:* The itemized list may be included in one or more courtesy notices sent to the Owner prior to sending a Notice of Delinquency in accordance with Section 10 herein below.
5. **Designated Contact.** An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to delinquency. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices any time communications are sent out. To identify a designated contact, an Owner must complete the attached Designated Contact Form, a blank copy of which is attached to this Policy, and return it to the Association by certified mail, return receipt requested.
6. **Language Preference for Delinquent Account.** An Owner may notify the Association if the Owner prefers that correspondences and notices sent to the Owner by the Association regarding the Owner's delinquent account be in a language other than English. If the Owner does not notify the Association of a language preference, then the Association shall send all correspondences and notices to the Owner in English. If the Owner does notify the Association of a language preference, then the Association shall send all correspondences and notices related to the Owner's delinquent account to the Owner in English and in the language identified by the Owner as the Owner's preferred language. NOTICE: The Association's obligation to provide notice and correspondence in a language other than English is expressly limited to notices and correspondences about an Owner's delinquent account and/or alleged violations that are sent to the Owner. The Association is not obligated to provide notices and correspondences to the Owner related to any other subject matter in a language other than English. To identify a preference that correspondence and notices from the Association be made in a language other than English, an Owner must deliver a written language preference request to the Association by certified mail, return receipt requested.

***Prior to Referral to Attorney or Collection Agency – Contact, Notices of Delinquency***

7. **Record of Contacts.** The Association shall maintain a record of any contacts with an Owner regarding a delinquency. These records shall include the following information:

- a. *Type of Communication*: The type of communication used to contact the Owner (e.g., letter by mail, e-mail, telephone call, text); and
  - b. *Date and Time*: The date and time that the contact was made.
8. **Contact / Notices of Delinquency**. In the event of a delinquent assessment, the Association shall take the following steps:

Step	Action	When Action Taken (Not Earlier Than)
1.	<b>Courtesy Notice, Itemized List.</b>	Courtesy notice(s): at the discretion of the Board of Directors; itemized list: on a monthly basis when an account has an outstanding balance
2.	<b>Notice of Delinquency.</b> The Association shall alert the Owner of the delinquency by sending a Notice of Delinquency.	When an Owner has a delinquent account if a courtesy notice/itemized list has not already been sent to the Owner
3.	<b>Referral Board Vote in Executive Session.</b> The Association's Board shall vote on what action the Association will take, in a recorded vote at a meeting conducted pursuant to C.R.S. § 38-33.3-308(4)(e). <i>See C.R.S. § 38-33.3-209.5(1.7)(a)(I)</i>	If the Owner has not paid the delinquency within the time frame set forth in the Notice of Delinquency.

9. **Notice of Delinquency – Definition.** “Notice of Delinquency” means the written notice that an Association sends to an Owner to notify the Owner of any unpaid assessments, fines, fees, or charges that the Owner owes the Association, as required by C.R.S. § 38-33.3-209.5(1.7)a)(I).
10. **Content of Notice of Delinquency.** The Notice of Delinquency must:
  - a. Specify the total amount due, with an accounting of how the total was determined;
  - b. Specify whether the opportunity to enter into a payment plan exists pursuant to C.R.S. § 38-33.3-316.3 and instructions for contacting the entity to enter into such a payment plan;
  - c. Specify the name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt;
  - d. Be written in English and in any language that the Owner has indicated a preference for correspondence and notices;

- e. Specify whether the delinquency concerns unpaid assessments; unpaid fines, fees, or charges; or both unpaid assessments and unpaid fines, fees, or charges;
  - f. If the Notice of Delinquency concerns unpaid assessments, the Notice of Delinquency must notify the Owner that unpaid assessments may lead to foreclosure; and
  - g. Include:
    - i. A description of the steps the Association must take before the Association may take legal action against the Owner, including a description of the Association's cure process for violations of the Association's governing documents established in accordance with C.R.S. § 38-33.3-209.5(1.7)(b); and
    - ii. A description of what legal action the Association may take against the Owner, including a description of the types of matters that the Association or Owner may take to small claims court, including injunctive matters for which the Association seeks an order requiring the Owner to comply with the declaration, bylaws, covenants, or other governing documents of the Association;
  - h. State the following or similar statement, depending on whether more than one Notice of Delinquency will be sent: "Action is required to cure the delinquency. Failure to do so within thirty (30) days may result in your account being turned over to a collection agency or attorney, a lawsuit being filed against you, the filing of a lien against your property and foreclosure of a lien against your property if the delinquency is for unpaid assessments, or other remedies available under Colorado law. The Association may but is not required to exercise these remedies, except for foreclosure of a lien against your property, in small claims court if the amount at issue does not exceed \$7,500, exclusive of interest and costs;" and,
  - i. The Association may send more than one Notice of Delinquency.
11. **Means of Sending Notice(s) of Delinquency.** In sending the Owner or a designated contact a Notice of Delinquency, the Association shall send the Notice of Delinquency by the following means:
- a. Certified mail, return receipt requested;
  - b. Physically post a copy of the notice of delinquency at the Owner's unit at least one (1) time if more than one Notice of Delinquency is sent; and
  - c. One of the following means:
    - i. First-class mail;
    - ii. Text message to a cellular number that the Association has on file because the Owner has provided the cellular number to the Association; or
    - iii. E-mail to an e-mail address that the Association has on file because the Owner has provided the e-mail address to the Association.

12. **Owner's Mailing Address for Mail.** All notices and correspondences shall be mailed to the address of the unit owned by the Owner that is within the Association's community. However, upon the written request of the Owner delivered to the Association personally, by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the Association, the Association will mail Notices of Delinquency to another address as set forth in the Owner's written request.
13. **Board Vote in Executive Session.** If the Owner has not paid the delinquency within the time frame set forth in the last Notice of Delinquency sent to the Owner, then the Association may take any or all of the following actions:
  - a. Refer a delinquent account to a collection agency or attorney only if a majority of the Board votes to refer the matter in a recorded vote at a meeting conducted pursuant to C.R.S. § 38-33.3-308(4)(e);
  - b. Send an additional Notice of Delinquency;
  - c. File a claim in Small Claims Court, pursuant to C.R.S. § 38-33.3-209.5(9); or
  - d. Take no current action to collect the delinquency, except that the Association's statutory lien may continue to encumber the Owner's property, subject to the six-year statute of limitations, pursuant to C.R.S. § 38-33.3-316(5).

### ***Payment Plans***

14. **Legal Authority and Standard.** The Association shall make a good-faith effort to communicate with an Owner to set up a payment plan that meets the requirements of C.R.S. § 38-33.3-316.3 and, if seeking foreclosure, §38-33.3-209.5(7)(a)(II), unless the Association is not obligated to negotiate or enter into a payment plan with an Owner.
15. **Right to a Payment Plan.** The Association is obligated to negotiate, coordinate, and enter into a payment plan with an Owner, unless:
  - a. The Owner has previously entered into a payment plan with the Association under this Policy; or
  - b. The Owner does not occupy the property and has acquired the property as a result of:
    - i. A default of a security interest encumbering the property; or
    - ii. Foreclosure of the Association's lien.
16. **Minimum Period of Payment Plan and Minimum Installment Amount.** The Association must permit the Owner to pay off the deficiency in installments over a period of at least eighteen (18) months. The Owner may choose the amount of each installment payment as long as each installment payment is at least \$25.00 and the total amount owed is paid by within the eighteen (18) month period and the Owner remains current on payment of regular assessments.

17. **Failure to Comply with Payment Plan.** An Owner fails to comply with the terms of the payment plan if the Owner fails:
  - a. To remit payment of three (3) or more agreed-upon monthly installments within fifteen (15) days after the monthly installments were due; or
  - b. To remain current with regular assessments as they come due during the eighteen-month agreed-upon payment period.
18. **Effect of Failure to Comply with Payment Plan.** If an Owner fails to comply with the terms of his or her payment plan, the Association may pursue legal action against an Owner without further notice to the Owner.

### ***Remedies***

19. **Remedies.** The remedies available to the Association to collect on an Owner's delinquent account include:
  - a. Recording a notice of assessment lien against a delinquent Owner's property, in addition to the Association's statutory lien;
  - b. Bringing an action at law for entry of a money judgment in favor of the Association and against a delinquent Owner;
  - c. Bringing an action for foreclosure of the Association's lien against the property of the delinquent Owner;
  - d. Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Association's interest;
  - e. File a claim in Small Claims Court, pursuant to C.R.S. § 38-33.3-209.5(9); and
  - f. Turning over a delinquent account of an Owner to a collection agency or attorney.

### ***Foreclosure of Association Lien***

20. **Conditional Right to Foreclose.** The Association shall not commence a legal action to initiate a foreclosure proceeding based on an Owner's delinquency in paying assessments unless:
  - a. The balance of the assessments and charges secured by its lien equals or exceeds six (6) months of common expense assessments based on a periodic budget adopted by the Association;
  - b. The Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis;

- c. The Association has complied with each of the requirements in C.R.S. § 38-33.3-209.5 and 316.3 related to an Owner's delinquency in paying assessments;
- d. The Association has provided the Owner with a written offer to enter into a repayment plan pursuant to C.R.S. § 38-33.3-316.3(2) that authorizes the Owner to repay the debt in monthly installments over eighteen (18) months. Under the repayment plan, the Owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least twenty-five dollars (\$25.00) until the balance of the amount owed is less than twenty-five dollars (\$25.00); and
- e. Within thirty (30) days after the Association has provided the Owner with a written offer to enter into a repayment plan, the Owner has either:
  - i. Declined the repayment plan. An Owner declines a payment plan by failing to accept in writing the Association's offer to enter into a payment within thirty (30) days from the date of the Association's written offer; or
  - ii. After accepting the repayment plan, the Owner failed, on at least three (3) separate occurrences, to pay a monthly installment within fifteen (15) days after the monthly installment was due or fails to pay ongoing assessments levied following the acceptance of the payment plan.

21. **Conditions Under Which Foreclosure is Prohibited.** The Association shall not:

- a. Foreclose on an assessment lien if the debt securing the lien consists only of one or both of the following:
  - i. Fines that the Association has assessed against the Owner; or
  - ii. Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines; or
- b. Commence a foreclosure action based only on outstanding fees, charges, late charges, attorney fees up to the maximum amount authorized, fines, and/or interest.

***Referral to Attorney***

- 22. **Post-Referral Communication.** After an Owner's delinquent account has been referred to the Association's attorney (hereinafter "Association Attorney") for legal action, the Owner and, if applicable, the Owner's designated contact shall direct all communications regarding the delinquent account to the Association Attorney.
- 23. **Association Attorney Demand Letter.** The Association Attorney shall mail a demand letter to the address of the property within the Association's community owned by the delinquent Owner, if any.

24. **Action After Attorney Demand Letter – Delinquency Cured.** If the amount set forth in the Association Attorney demand letter is received by the Association Attorney by the date set forth in such demand letter, the Association Attorney shall take no further action and shall return the account back to the Association.
25. **Action After Attorney Demand Letter – Delinquency Not Cured - Lawsuits.** If the Owner fails to timely pay the full amount set forth in the initial demand letter, the Association Attorney may file a lawsuit in County Court or District Court against the Owner. In the alternative, or in addition thereto, the Association Attorney may also pursue the other remedies set forth above in Article IV (Remedies). Lawsuits shall set forth the sum of alleged delinquent assessments, late fees, costs of collection, attorney fees, court costs, and any other expenses due as of the approximate date of the lawsuit. Lawsuits shall be prosecuted as the Association Attorney deems appropriate.
26. **Attorney Fees.** Except to the extent limited by Colorado law, the Association is entitled to costs and reasonable attorney fees that the Association incurs in collecting a delinquency under this Policy.

***Application of Payments, Restrictive Endorsement, Accord and Satisfaction, Returned-Check Charge, No Setoff, and Miscellaneous***

27. **Application of Payments.** Payments received by the Association or the Association Attorney shall be applied in the following order, as may be applicable:
- a. To the regular assessments owed, with partial payments being applied first to the oldest delinquent assessment and then continuing until the most recent assessment is paid;
  - b. To any special assessments levied and owed;
  - c. To attorney fees and legal costs and expenses;
  - d. To the Association's other out-of-pocket costs, expenses and charges associated with the delinquency;
  - e. To fines levied by the Association with regard to the delinquency or other violations of the Association's governing documents, regardless of when incurred;
  - f. To late fees; and
  - g. To interest.
28. **Restrictive Endorsement.** If an Owner intends to satisfy the entire debt of the Association by restrictive indorsement on a check or money order for an amount less than the full balance then due on the Owner's delinquent account, that check or money order must be delivered to the Association Attorney by prepaid certified mail, return receipt requested. Any payment of less than the outstanding balance that contains a writing that the Association's representatives, including but not limited to

the Association Attorney, believe could be a restrictive endorsement or any other restriction, including an accord and satisfaction, on the receipt of the funds, or that is accompanied by any letter, note or other communication that could be considered a restrictive endorsement or any other restriction on the receipt of the funds may, at the discretion of the Association Attorney, be returned.

29. **Returned-Check Charge.** If a check or other instrument tendered to the Association is returned or dishonored for any reason, the Association may charge a returned check fee of up to \$20.00. Additionally, or in the alternative, the Association may pursue all other remedies available at law that may be applicable, including the right to seek treble damages plus costs and attorneys' fees. *See C.R.S. § 38-33.3-209.5(5)(a)(III).*
30. **No Setoff.** In the event of any legal action brought to collect delinquent assessments, an allegation that the Association has failed to comply with the terms of the Association's governing documents, including this Collection Policy, shall not constitute a defense for non-payment or entitle the Owner to a setoff of any assessments owed.
31. **Supersedes Previous Policies.** This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
32. **Terms.** Any terms not identified in this Policy shall have the meaning given them in the Association's recorded Declaration, together with all amendments and supplements thereto.
33. **Savings Clause; Reformation.** If a Court finds that any portions of this collection policy unenforceable, the Court shall reform this policy to the least extent necessary to give effect to the intent of this collection policy. In such event, all remaining portions of this collection policy shall remain in force and effect.
34. **Headings.** Headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## **XI. Investment of Association Funds/Financial Controls**

1. The Treasurer of the Association is responsible for ensuring that all financial records and transactions shall be conducted using Generally Accepted Accounting Principles.
2. It is the responsibility of the Treasurer of the Association to deposit all receipts and to maintain all surplus funds of the Association in an FDIC insured account at a designated bank or banks doing business in the State of Colorado. The maximum amount on deposit at any given bank shall not exceed the federal deposit insurance limitation for such bank. Funds on deposit that exceed near term needs for liquidity should, to the extent practicable, be in an interest-bearing account.
3. At least one other designated Officer or member of the Board of Directors in addition to the Treasurer should be authorized and have signature authority on the subject accounts.



4. Payment by the Treasurer for third party services should normally require prior review and endorsement from the authorized contracting party that the charges are correct, and the invoiced services have been adequately performed.
5. Payment by check for any expense in excess of \$1000 shall require the signature of the Treasurer and a written concurrence by at least one additional member of the Board of Directors.
6. The Board of Directors is responsible for monitoring expenditures against the amounts authorized in the Association's Current Fiscal Year Operating Budget. The Board shall have the authority to transfer funds between budget categories, if necessary, but in no case shall the Board authorize the expenditure of funds in excess of amounts retained in the financial accounts of the Association.
7. The Board may consider the need for a Special Assessment in the event the Association encounters extraordinary expenses that could not be met, or were not intended to be met, out of funds included in the Current Fiscal Year Operating Budget.

## **XII. Investment of Reserve Funds**

1. **Standard of Conduct.** With regard to the investment of reserve funds of the Association, the Board shall make decision:
  - a. In good faith;
  - b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - c. In a manner the director reasonably believes to be in the best interests of the Association.

The Board shall be entitled to rely on the information, opinions, reports or statements of accountants, legal counsel, and those other persons the Board reasonably believes have professional or expert competence in the matters at issue, pursuant to C.R.S. § 7-128-401. The Board shall be subject to the standards set forth in C.R.S. § 7-128-401, except that as used in that section, "corporation" or "nonprofit corporation" means the Association, "Director" means a member of the Association's Board, and "Officer" means any person designated as an officer of the Association and any person to whom the Board delegates responsibilities, including, without limitation, a managing agent, attorney or accountant employed by the Association.

2. **Treasurer's Responsibility.** The Treasurer of the Association shall be primarily responsible for the tasks of investigating investment options for and the investment of the Association's reserve funds. However, the entire Board shall be responsible for the ultimate decisions made with regard to the investment of reserve funds.
3. **Evaluation of Investment Options.** The Treasurer shall evaluate investment options available to the Association, taking into account the security of the investment, the potential rate of return, the availability of federal deposit insurance, the liquidity of the

investment, the reputation of the investment as well as of any advisors to the Treasurer, as well as any other factors that the Treasurer deems are reasonable.

4. **Preservation of Principal.** Any investment of Association funds shall take into consideration the preservation of the principal balance of the reserve funds. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital. The Association shall, when investigating potential investment options, seek to mitigate loss by diversifying the investment portfolio, limiting investments to the safest types of investments, minimizing the risk of the market value of investments in the portfolio due to changes in general interest rates, structuring its investments in such a way as to remain sufficiently liquid to meet all planned reserve fund expenditures, and minimizing the need to sell investments prior to maturity.
5. **Treasurer's Reports.** The Treasurer shall report to the Board with the Treasurer's recommendations regarding the investment of reserve funds. The Board shall vote on the decisions made and shall document such vote in the minutes of the Association.
6. **Conflicts.** No member of the Board or any person who is a parent, grandparent, spouse, child, or sibling of a Board member, or a parent or spouse of any of those persons shall financially benefit, directly or indirectly, in the investment of reserve funds other than as a member of the Association generally.
7. **Periodic Inspection.** The Board shall investigate on a periodic basis, but no less frequently than quarterly, the current balance of reserve funds and shall adjust the investments as needed to comply with the terms of this policy and the advice of those professionals upon whom the Board rely.
8. **Supersedes Previous Rules.** This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
9. **Severability.** In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

### **XIII. Reserve Studies**

1. It is the policy of the Association to conduct a reserve study for the portions of the Association's community that are maintained, repaired, improved or replaced by the Association.
2. The Association shall prepare internally, or request the external preparation of, a reserve study for those items of the Association's community that are maintained, repaired, improved or replaced by the Association. The reserve study will be periodically updated when deemed appropriate by the Board of Directors but shall be updated no less frequently than every five (5) years.
3. The individual or individuals preparing the reserve study may or may not have professional experience in conducting the reserve study. The reserve study will be based on both physical and financial analyses of the Association's community.

4. The reserve study will recommend a funding plan for any work recommended by the reserve study. The funding of the work recommended by the reserve study will be reviewed at least once per year and incorporated into the Association's then-current budget.
5. Sources of funding will generally consist of regular periodic maintenance fees collected by the Association. However, in the event of an urgent and/or unforeseen reserve, the Board of Directors shall be entitled to fund the expenditure by any legal means not prohibited by the Association's governing documents, including but not limited to the levy of one or more special assessments or the borrowing of funds.
6. This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
7. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

#### **XIV. Records and Record Inspection**

1. The Association must maintain the following, all of which shall be deemed to be the sole records of the Association for purposes of document retention and production to owners:
  - a. Detailed 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 those claims;
  - c. Minutes of all meetings of its unit owners and executive board, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by any committee of the executive board;
  - d. Written communications among, and the votes cast by, executive board members that are:
    - i. Directly related to an action taken by the board without a meeting pursuant to C.R.S. § 7-128-202; or
    - ii. Directly related to an action taken by the board without a meeting pursuant to the Association's bylaws;
  - e. The names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the Association communicates with them, showing the number of votes each unit owner is entitled to vote;

- f. Its current declaration, covenants, bylaws, articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity, rules and regulations, design guidelines, responsible governance policies adopted pursuant to C.R.S. § 38-33.3-209.5, and other policies adopted by the executive board;
- g. Financial statements as described in C.R.S. § 7-136-106, for the past three (3) years and tax returns of the Association for the past seven (7) years, to the extent available;
- h. A list of the names, electronic mail addresses, and physical mailing addresses of its current executive board members and officers;
- i. Its most recent annual report delivered to the secretary of state, if any;
- j. Financial records sufficiently detailed to enable the Association to comply with C.R.S. § 38-33.3-316 (8) concerning statements of unpaid assessments;
- k. The Association's most recent reserve study, if any;
- l. Current written contracts to which the Association is a party and contracts for work performed for the Association within the immediately preceding two (2) years;
- m. Records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners;
- n. Ballots, proxies, and other records related to voting by unit owners for one (1) year after the election, action, or vote to which they relate;
- o. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- p. All written communications within the past three (3) years to all unit owners generally as unit owners;
- q. The date on which its fiscal year commences;
- r. Its operating budget for the current fiscal year;
- s. A list, by unit type, of the Association's current assessments, including both regular and special assessments;
- t. Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- u. The results of its most recent available financial audit or review;

- v. A list of all Association insurance policies, including, but not limited to, property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insured, and expiration dates of the policies listed;
- w. The Association's responsible governance policies adopted under C.R.S. § 38-33.3-209.5; and
- x. A list of current amounts of all unique and extraordinary fees, assessments, and expenses that are chargeable by the Association in connection with the purchase or sale of a Unit that are not paid through or included as part of the Owner's annual assessment. For the purposes of this Policy, unique and extraordinary fees include transfer fees, record change fees, and charges for status letters or statements of assessments due.

## **2. Availability of Records**

- a. Subject to paragraphs 3, 4, 5, and 6 of this policy, all records maintained by the Association must be available for examination and copying by a unit owner or the owner's designated agent.
- b. The Association may require unit owners to submit a written request, describing with reasonable particularity the records sought, at least ten (10) calendar days prior to inspection or production of the documents, and may limit examination and copying times to normal business hours or the next regularly scheduled executive board meeting if the meeting occurs within thirty (30) calendar days after the request.
- c. Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations of the Association to the contrary, the Association may not condition the production of records upon the statement of a proper purpose.

## **3. Consent of Board / Restrictions on Use of Membership List**

- a. Notwithstanding section (a) of paragraph 2, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner without consent of the executive board.
- b. Without limiting the generality of subparagraph (a) of this section (3), without the consent of the executive board, a membership list or any part thereof may not be:
  - i. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the unit owners in an election to be held by the Association;
  - ii. Used for any commercial purpose; or
  - iii. Sold to or purchased by any person.

4. Records maintained by the Association may be withheld from inspection and copying to the extent that they are or concern:
  - a. Architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;
  - b. Contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;
  - c. Communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;
  - d. Disclosure of information in violation of law;
  - e. Records of an executive session of an executive board; or
  - f. Individual units other than those of the requesting owner.
5. Records maintained by the Association are not subject to inspection and copying, and must be withheld, to the extent that they are or concern:
  - a. Personnel, salary, or medical records relating to specific individuals; or
  - b. Personal identification and account information of members and residents, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers; except that, a member or resident may provide the Association with prior written consent to the disclosure of, and the Association may publish to other members and residents, the person's telephone number, electronic mail address, or both. The written consent must be kept as a record of the Association and remains valid until the person withdraws it by providing the Association with a written notice of withdrawal of the consent. If a person withdraws his or her consent, the Association is under no obligation to change, retrieve, or destroy any document or record published prior to the notice of withdrawal. Written consent and notice of withdrawal of the consent may be, but is not required to be, given by electronic mail.
6. The Association may impose a reasonable charge, which may be collected in advance. Reasonable charges may cover the costs of labor and material, for copies of Association records. The charge may not exceed the estimated cost of production and reproduction of the records, including the costs of copying, mailing, and any necessary special processing.
7. A right to copy records under this policy includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the unit owner.
8. The Association is not obligated to compile or synthesize information.

9. Association records and the information contained within those records shall not be used for commercial purposes.
10. This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
11. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

**XV. Alternative Dispute Resolution**

1. The Board desires to encourage the use of certain types of alternative dispute resolution (“ADR”) to resolve certain claims between Owners and the Association, pursuant to C.R.S. § 38-33.3-124. In addition to Colorado law, Article 25 of the Amended and Restated Covenant of The Count Pourtales Subdivision (“Declaration”) also addresses alternative dispute resolution.
2. The Board has determined that mediation can be an effective method of resolving certain disputes if both parties to the dispute genuinely desire to mediate the dispute. Consequently, the term “ADR” as used in this policy shall apply only to mediation. Furthermore, compliance with this policy is purely voluntary but encouraged nonetheless.
3. To the extent that Article 25 of the Declaration is applicable and exercised in the sole discretion of the Association, this policy incorporates Article 25 of the Declaration. In the event of a conflict between the provisions of the Declaration and this Policy, the Declaration prevails.
4. If an Owner or the Association desires that a matter between the two, other than those excluded above, be submitted to mediation, the moving party shall submit a written request for mediation. The other party shall respond in writing within thirty (30) days of receipt of the request for mediation. Should the parties agree to mediate, the parties shall work cooperatively to select a mutually-acceptable mediator and shall endeavor to mediate the dispute in a good faith manner.
5. Any agreement reached through mediation shall be documented in a signed writing. Unless the parties agree to the contrary, the cost of the mediation shall be divided equally between the Owner and the Association. If the dispute is resolved through mediation, the parties’ respective attorneys’ fees shall be paid as set forth in the writing.
6. If the parties resolve any dispute through mediation, and the other party fails to abide by the terms of the written agreement pertaining to such resolution, then the other party may file suit to enforce such agreement immediately. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party all costs incurred in enforcing such agreement, including without limitation, attorney fees and costs.
7. If mediation is to be pursued, the Association may request an agreement with the Owner be executed prior to the commencement of the mediation, which tolls any applicable statute of limitations while the parties are attempting to resolve the dispute

through ADR.

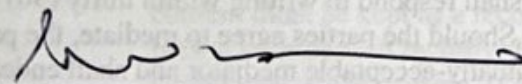
8. The parties may be, but do not need to be, represented by counsel at the mediation proceedings.
9. Compliance with this policy shall not be a pre-requisite to seeking redress through litigation; either party can request mediation in accordance with this policy before or after a suit is filed.
10. This Policy shall replace and supersede all previous policies, rules, and regulations regarding the subject matter of this Policy.
11. In the event that a court of competent jurisdiction finds any portion of this policy void or otherwise unenforceable, the other provisions shall remain in full force and effect.

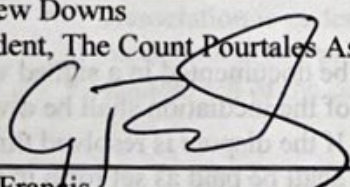
#### **XVI. Interpretation**

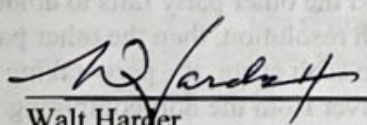
Notwithstanding any provision of these Governance Policies it is intended that such policies, procedures and operating rules and guidelines are supplemental and subservient to the Association's Amended and Restated Covenants, Amended and Restated Articles of Incorporation, and Bylaws. In the event of any conflict in effect, the Amended and Restated Covenants, Amended and Restated Articles of Incorporation, and these Bylaws (in that order) shall prevail.

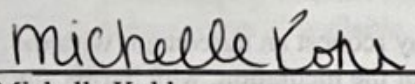
#### **XVII. Effective Date**

These Governance Policies have been adopted by unanimous consent this 10<sup>th</sup> of October, 2024 by the Board of Directors of The Count Pourtales Association.

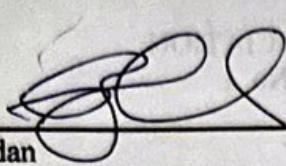
  
\_\_\_\_\_  
Andrew Downs  
President, The Count Pourtales Association

  
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Kyle Francis  
Vice-President, The Count Pourtales Association

  
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Walt Harder  
Treasurer, The Count Pourtales Association

  
\_\_\_\_\_  
Michelle Kohl  
Secretary, The Count Pourtales Association



  
Renee Pazdan

Member-at-Large, The Count Pourtales Association

THE COUNT POURTALES ASSOCIATION  
Governance Policies Exhibit No. 1

ANNUAL MEETING OF THE COUNT POURTALES ASSOCIATION INFORMATION  
NORMALLY INCLUDED IN THE MEETING NOTICE

1. Meeting Date, Time and Location.
2. Meeting Agenda, addressing as appropriate, without limitation or restriction on order, the following information:
  1. (a) Introduction/Call to Order/Verification of Quorum.
  2. (b) Treasurers Report. Presentation of Budget. Ratification of Budget.
  3. (c) Designated Association Committee Reports and Reviews of Association Operations, to include when relevant:
    - - Review of Changes to Association By-Laws or Governance Policies
    - - Revision to Annual Assessment
    - - Individual Committee Reports
  4. (d) Designated Outside Speakers and Presentations
  5. (e) Report of Nominating Committee and Election of Board of Directors
  6. (f) Other Business
  7. (g) Adjournment
3. Proxy Form
4. Copy of the Current Fiscal Year Operating Budget approved by the Board of Directors.
5. Notice and invitation to members of the planned meeting of the Board of Directors scheduled immediately following the Annual Meeting.