

**THE BOUNDARY ASSOCIATION**  
**RESPONSIBLE GOVERNANCE POLICIES**  
**AND PROCEDURES**

Adopted by the RVR Boundary Board  
August 5, 2022  
To replace Collections Policy and  
Enforcement Policies adopted August 25,  
2016, which shall take precedence in case of  
conflict with Boundary Bylaws

The Colorado Common Interest Ownership Act (“CCIOA”), C.R.S. § 38-33.3-209.5, requires that associations adopt certain policies, procedures, and rules and regulations concerning the following:

- (I) Collection of unpaid assessments;
- (II) Handling of conflicts of interest involving board members;
- (III) Conduct of meetings;
- (IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;
- (V) Inspection and copying of association records by unit owners;
- (VI) Investment of reserve funds;
- (VII) Procedures for the adoption and amendment of policies, procedures, and rules;
- (VIII) Procedures for addressing disputes arising between the association and unit owners; and
- (IX) Reserve Requirements.

**WHEREAS**, the following policies and procedures have been duly adopted by The Boundary Association (the “Association”).

**I. Collection Policy**

A. *Due Dates.* Quarterly installments of the annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on the first day of the first month of each quarter. Assessments or other charges not paid in full to the Association within fifteen days of the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association within fifteen days of the due date shall incur late fees and interest as provided below.

B. *Invoices.* The Association may, but shall not be required to invoice an Owner as a condition to an Owner's obligation to pay assessments or other charges of the Association.

C. *Late Charges Imposed on Delinquent Installments.* An installment of the annual assessment shall be past due and delinquent if not paid by the 15<sup>th</sup> day of the month in which it is due. The Association shall impose a twenty dollar (\$20.00) late charge on the outstanding or past due balance then due the Association. An additional twenty-dollar (\$20.00) late charge shall accrue during each and every subsequent monthly period that the assessment remains unpaid.

D. *Interest.* Delinquent assessments, fines or other charges due the Association shall bear interest at the rate of eight percent (8%) per annum from the due date until paid. All late charges and interest charges shall be due and payable immediately, without notice, in the manner provided for payment of assessments.

E. *Return Check Charges.* In addition to any and all charges imposed under the Declaration and the Rules and Regulations of the Association, a fee of \$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. Such return check charge shall be considered an assessment 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 effective on any payment of sums due under the Declaration and 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 quarterly installment of the annual assessment is not timely made within 10 days of the due date.

F. *Owner Contact Information:* To facilitate collection efforts of the Association, each Owner must provide the Association, in writing, with the following information (collectively, "Owner Contact Information"):

- a. The Owner's preferred mailing address;
- b. The Owner's preferred email address;
- c. The Owner's preferred cell phone number;
- d. The Owner's preferred language for notices and other correspondence from the Association; and
- e. If desired, a designated contact person to be contacted on the Owner's behalf.

G. *Association Records:* The Association shall maintain records of the Owner Contact Information provided by an Owner, as well as a record of all contacts between the Association and the Owner in regard to an Owner's delinquent account, including the type of communication, the date of the communication, and the time of the communication.

H. *Notice of Delinquency.* After an installment of the assessments or other charge due the Association becomes 30 days past due and before the Association may refer the matter to an attorney or collection agency, the Association shall send a "Notice of

Delinquency” to the Owners who are delinquent in payment by the following methods: (a) certified mail, return receipt requested; (b) physically posting a copy at the Owner’s unit; and (c) either sending the notice by first-class mail, sending a text message to the Owner’s cell phone number of record, or emailing the notice to the Owner’s email address of record. The Notice of Delinquency shall be sent by the Association, or any community association manager or property management company designated by the Association. The Notice of Delinquency must be in English, or the language that the Owner has previously indicated a preference for in correspondences and notices. The Notice of Delinquency must include:

- a. A statement specifying whether the delinquency concerns unpaid assessments, unpaid fines, fees, charges, or a combination of the foregoing and, if the notice concerns unpaid assessments, the notice must notify the Owner that unpaid assessments may lead to foreclosure;
- b. The total amount due, with an accounting of how the total was determined;
- c. Advise the Owner whether he/she/it is qualified to enter into a payment plan, the details of the payment plan, and instructions for contacting the Association to enter into the payment plan;
- d. The opportunity to request mediation;
- e. The name and contact information for the Owner to contact in order to request a copy of the Owner’s ledger so the Owner can verify the debt amount;
- f. the statement that action is required to cure the delinquency and that failure to do so within thirty (30) days may result in the Owner’s account being turned over to a collection agency, an attorney for collection, a lawsuit being filed against the Owner, the filing and foreclosure of a lien against the Owner’s unit (if the unpaid amounts include assessments) and/or any other remedies available under Colorado law, including the Owner’s right to vote;
- g. Notice of the late fees and interest that may accrue;
- h. A description of the steps the Association will take before legal action may be taken against the Owner, including, for unpaid fines, any cure processes that applies under the Association’s Enforcement Policy; and
- i. A description of what legal action the Association may take against the Owner, including the types of matters that may be taken to small claims court, including injunctive matters for which the Association seeks an order requiring the Owner to comply with the Association’s governing documents.

I. *Collection Process.* If (a) thirty (30) days have elapsed since the Association delivered the initial Notice of Delinquency to Owner in compliance with Section I.F; (b) the Owner has not entered into a payment plan with the Association for amounts owed; and (c) the Owner’s account remains delinquent, the Association may proceed as follows:

- a. *Additional Notices of Delinquency:* The Association may send one or more additional Notices of Delinquency; provided, however, that each Notice of Delinquency must comply with Section I.F.
- b. *Filing a lien:* The Association may file a Notice of Lien against the property of any delinquent Owner in accordance with the terms and provisions of the Declarations, Articles and Bylaws..
- c. *Referral to an Attorney.* The Association may refer the Owner's delinquent account to an attorney and/or collection agency. In addition, if an Owner has defaulted on an agreed upon payment plan, the Association may refer the matter to an attorney and/or collection agency. However, the Association may only refer a delinquent account or payment plan in default to an attorney and/or collection agency if a majority of the Board votes to refer the matter in a recorded vote at an executive or open meeting. Upon referral to the Association's attorney and/or collection agency, the attorney and/or collection agency shall consult with the Association to determine what collection procedures are appropriate. After an account has been referred to an attorney and/or collection agency, the account shall remain with the attorney and/or collection agency until the account is settled, has a zero balance, or is written off. The Owner(s) of the Unit with the delinquent account shall be responsible for, and pay as an assessment on such Unit, any attorney's fees incurred in this instance.
- d. *Suspension of Voting Right.* In addition to the steps outlined above, the Association may elect to suspend the voting rights of any Owner whose account is delinquent until the account is brought current..

J. *Payment Plan.* If qualified to do so, a Owner who becomes delinquent in payment of assessments, fines, fees or other amounts due to the Association, may enter into a payment plan with the Association, over a period of eighteen (18) months. Under the payment plan, the Owner may choose the amount to be paid each month, so long as each payment is at least twenty-five dollars (\$25.00). The Owner may elect to pay the remaining balance due at any time during the payment plan. Such payment plan shall be offered to each Owner prior to the Association referring any account to an attorney or collection agency. The Owner will be deemed to default on the payment plan if the Owner fails (a) to pay three (3) or more of the agreed upon 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 pendency of the payment plan. In the event that the Owner defaults on the payment plan, the Association may, without additional notice, refer the delinquent account to an attorney or collection agency for collection action. Each Owner is qualified to enter a payment plan, unless:

- a. The Owner does not occupy the property and acquired title to the property by foreclosure of a security interest encumbering the property or foreclosure of the Association's lien; or
- b. The Owner has previously entered into a payment plan with the Association.

K. *Foreclosure of Lien.* The Association may choose to foreclose on its lien in lieu of

or in addition to suing a Owner for a money judgment, except where the debt securing the lien consists only of fines or fees the Association has imposed on the Owner and/or collection costs or attorney fees incurred by the Association that are only associated with assessed fines. 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 a vote by the Board of Directors. Upon foreclosure, any Board member, employee of the Association's management company, or employee of a law firm representing the Association, or any immediate family member of the foregoing, shall not be permitted to purchase the foreclosed unit. The Association shall not commence a foreclosure proceeding for delinquent assessments unless:

- a. The Association has followed all notice requirements provided in this policy;
- b. The Association has made a good faith effort, by written offer, to coordinate with the Owner for a payment plan; and
- c. Within thirty (30) days after providing offer of payment plan, the Owner has either (a) declined the plan; (b) accepted the plan and failed to pay at least three (3) monthly installments within fifteen (15) days of the due date

L. *Referral of Delinquent Accounts to Collection Agencies.* The Association may, but shall not be required to refer delinquent accounts to one or more collection agencies for collection after a majority of the Board votes in favor of such action in a recorded vote pursuant to C.R.S. § 38-33.3-308(4)(e). Upon referral to a collection agency, the agency shall take all appropriate action to collect the accounts referred.

M. *Attorney's Fees on Delinquent Accounts.* As an additional expense permitted under the Declaration, Articles and Bylaws, the Association shall be entitled to recover its reasonable attorney's fees incurred in the collection of assessments or other charges due the Association from a delinquent owner.

N. *Legal Remedies Available to the Association.* In the event of delinquencies, the Association may undertake any combination of the following remedies: turning the Owner's account over to a collection agency or an attorney for collection, filing a lien, filing a lawsuit against the Owner, the filing and foreclosure of a lien against the Owner's unit and/or any other remedies available under the Association's governing documents or Colorado law. Any party seeking to enforce its rights under the Association's governing documents pursuant to this Collections Policy for disputes regarding assessments, fines or fees owed to the Association for seven thousand five hundred dollars (\$7,500.00) or less, exclusive of interest and costs, may file a claim in small claims court.

O. *Notice For Delinquent Accounts and Statement of Account.* On a monthly basis, the Association shall send, by first-class mail and email to any Owner with delinquent account, an itemized list of all assessments, fines, fees and other charges due to the Association. At any time, a

Owner may request a statement of account (*i.e.*, a ledger) detailing any amounts the Owner owes the Association. The Association shall not assess a fee or other charge for providing a statement of account to a Owner.

P. *Application of Payments.* All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied in the following order:

- a. regular assessments due or to become due with respect to such Owner, and fines, fees or other charges owed.
- b. payment of any and all interest charges, late fees, legal fees and costs (including attorney fees), expenses of enforcement and collection, returned check charges, lien fees,
- c. late charges, and interest,
- d. costs owing or incurred with respect to such Owner pursuant to the Declaration and Rules and Regulations, or this Policy
- e. past-due special assessments,
- f. currently due special assessments,

## **II. Board Members' Conflicts of Interest**

### **A. DEFINITIONS**

(1) "Conflicting interest transaction" means a contract, transaction, or other financial relationship between the Association and a Director, or between the Association and a party related to a Director, or between the Association and an entity in which a Director of the Association is a director or officer or has a financial interest.

(2) "Director" or "Board Member" means a member of the Association's Board of Directors or "Board".

(3) "Party related to a Director" means a spouse, a descendant, an ancestor, a sibling, the spouse or descendant 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 or officer or has a financial interest.

### **B. POLICY**

(1) 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.

(2) If any contract, decision, or other action taken by or on behalf of the Board would financially benefit any Director or Party related to a Director, then, in advance of entering

into that contract, making the decision or taking the action, that interested Board Member shall declare at an open meeting of the Board, that a conflict of interest exists and shall describe in detail all of the particular facts of the conflict of interest.

(3) After the interested Board Member makes such a declaration, the interested Board Member may participate in a discussion of the matter giving rise to the conflict of interest. However, the interested Board member may not vote on the issue giving rise to the conflict of interest.

(4) Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee that authorizes, approves or ratifies the conflicting interest transaction.

(5) The conflicting interest transaction may not be void or voidable by an Owner or the Association if:

i. The facts about the conflicting interest transaction are disclosed to the Board, and a majority of the disinterested Directors, even if less than a quorum, in good faith approves the conflicting interest transaction;

ii. The facts about the conflicting interest transaction are disclosed to 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

iii. The conflicting interest transaction is fair to the Association.

(6) No Board Member, employee of the Association, employee of a law firm representing the Association or immediate family member of these persons may purchase a foreclosed unit.

### **III. Conduct of Meetings**

*A. Member Meetings.* All meetings of the Association are open to every Member, or to any person designated by a Member in writing as the Member's representative, and Members or designated representatives so desiring shall be permitted to attend, listen, and speak at an appropriate time during the deliberations and proceedings.

*B. Board Meetings.* All meetings of the Board are open to every Member, or to any person designated by a Member in writing as the Member's 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 the issue. The Board may place reasonable time restrictions on persons speaking during the meeting, to allow sufficient time for as many members as possible to comment within the time permitted. Unless otherwise determined by the President or acting chair, the time limit will be three minutes per member. Members will only be allowed to speak more than once at the discretion

of the Board. If more than one person desires to address an issue and there are opposing views on that issue, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

*C. Executive Session of Board.* Notwithstanding the foregoing, the Board or a committee thereof may hold an executive or closed door session and may restrict attendance to Board Members and other persons specified by the Board; provided that any such executive or closed door session may only be held in accordance with the provisions and requirements of CCIOA, as amended from time to time, or other applicable law. Matters for discussion by an executive or closed session are limited to:

- (1) 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;
- (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) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- (5) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, including a disciplinary hearing under the Enforcement Policy and any referral of delinquency under the Collections Policy; except that a 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;
- (6) Review of or discussion relating to any written or oral communication from legal counsel.

Prior to the time the members of the Board convene in executive session, the President or acting chair shall announce the general matter of discussion as enumerated in paragraphs (1) to (6) above. No rule or regulation of the Board shall be adopted during an executive session.

*D. Recording of Meetings.* Note taking is permitted, however, video or audio recording of all or any portion of any meeting by Members is prohibited.

*E. Member Conduct.* No Member is entitled to speak until recognized by the chair. There shall be no interruption of anyone who has been recognized by the chair, except by the chair. Specific time limits set for speakers shall be strictly observed. Personal attacks, whether physical or verbal, and offensive language will not be tolerated. All comments are to be directed to the chair and not other individual participants. All comments are to be restricted to the agenda item being discussed.

F. *Curtailment of Member Conduct.* Should the President or acting chair determine that any Member has spoken for the allocated amount of time or longer, or determine that the Member is in violation of the provisions of this policy, the President or acting chair shall have the authority to instruct that member to yield the floor, and that member will be obligated to comply with the President's or acting chair's instruction.

#### IV. Enforcement of Covenants and Rules

A. *Initial Warning Letter.* If the Board finds an Owner has committed a violation of any provisions of the Declaration, Bylaws or Rules or any of the Association's governing documents, an initial warning letter shall be sent to the violator explaining the nature of the violation. The violator will be given a reasonable amount of time to comply based on the nature and severity of the violation, as determined in the sole discretion of the Board.

B. *Notice of Violation.* Subsequent to the Initial Warning Letter, should the Owner not cure the violation to the satisfaction of the Board, the Board shall then make a reasonable determination as to whether the violation threatens public safety or health and send a "Notice of Violation" of any provisions of the Declaration, Bylaws, Rules or any of the Association's governing documents.

1. *Violations Threatening Public Safety or Health.* Where the Board has reasonably determined that the violation threatens public safety or health, the Board will proceed as follows:

a. Notice: The Board shall deliver written Notice of Violation to the Owner. The Notice of Violation must be sent in English and the language that the Owner has previously indicated a preference for correspondence and notices. The Notice of Violation must include the following:

- i. Date and time of the violation;
- ii. Description of the violation;
- iii. References to portions of the Governing Documents that the Owner violated or is in violation of;
- iv. That the board has determined the violation threatens public safety or health;
- v. That the Owner has seventy-two (72) hours to cure the violation or the Association may fine the Owner;
- vi. The action(s) required to cure the violation;
- vii. The fines to be imposed if the violation is not remedied within the cure period, including the interval at which such fines may be assessed if the violation is continuing in nature; and
- viii. As further detailed in this Enforcement Policy, an explanation of the Owner's right to request a hearing, and the timeline for the hearing process described in this policy.

b. Inspection and Cure: The Owner may notify the Association of its cure and provide visual evidence of the cure. If the violation has been cured and the Association confirms the cure, the violation shall be deemed cured on the

date notice was sent by the Owner. If the Owner notified the Association of its cure but failed to provide visual evidence or if the Association reasonably doubts the veracity of the visual evidence provided, the Association shall inspect the property as soon as practicable to determine whether the violation has been cured. If the Association does not receive notice that the Owner cured the violation, the Association shall inspect the property within seven (7) days of the expiration of the cure period to determine whether the violation has been cured.

c. Fines: If the Owner has not cured the violation within seventy-two (72) hours, the Association may impose fines upon the Owner in accordance with the Fine Schedule listed below.

d. Legal Action: In addition to imposing fines, if the Owner has not cured the violation within seventy-two (72) hours, the Association may take legal action against the Owner for the violation, including, without limitation seeking an injunction ordering compliance, prohibiting future occurrences of the violation, for damages, and for any other appropriate relief. Such legal action can be in addition to any hearing or associated hearing procedures proscribed under this Policy.

2. *Violations Not Threatening Public Safety or Health*. Where the Board has reasonably determined that the violation does not threaten public safety or health, the Board will proceed as follows:

a. Notice: The Board shall deliver a Notice of Violation to the Owner. The Notice of Violation must be sent in English and the language that the Owner has previously indicated a preference for correspondence and notices. The Notice of Violation must include the following:

- i. Date and time of the violation;
- ii. Description of the violation;
- iii. References to portions of the Governing Documents that the Owner violated or is in violation of;
- iv. The action(s) required to cure the violation;
- v. That the Owner has thirty (30) days to cure the violation or the Association may fine the Owner;
- vi. The fines to be imposed if the violation is not remedied within the cure period, including the interval at which such fines may be assessed if the violation is continuing in nature; and
- vii. As further detailed in in this Enforcement Policy, an explanation of the Owner's right to request a hearing, and the timeline for the hearing process described in this policy.

b. Fines: If the Owner has not cured the violation with thirty (30) days, the Association may impose fines upon the Owner in accordance with the

Fine Schedule listed below. The total amount of fines imposed for each violation shall not exceed five hundred dollars (\$500.00).

c. Second Cure Period: If the Owner has not cured the violation within thirty (30) days, the Association shall grant the Owner a second thirty (30) day period before initiating any legal action against the Owner. The Association may impose fines upon the Owner during the second cure period, as described in the preceding paragraph, and institute collection procedures in accordance with the Association's Collection Policy.

d. Legal Action: In addition to imposing fines, if the Owner has not cured the violation by the expiration of the second thirty (30) day cure period, the Association may take legal action against the Owner for an injunction ordering compliance, prohibiting future occurrences of the violation, for damages, and for any other appropriate relief, but may not foreclose on any assessment lien solely for fines assessed against the Owner. Such legal action can be in addition to any hearing or associated hearing procedures proscribed under this Policy.

e. Inspection and Cure: After a notice of violation has been delivered to a Owner, the Owner may notify the Association of its cure and provide visual evidence of the cure. If the violation has been cured and the Association confirms the cure, the violation shall be deemed cured on the date notice was sent by the Owner. If the Owner notified the Association of its cure but failed to provide visual evidence or if the Association reasonably doubts the veracity of the visual evidence provided, the Association shall inspect the property as soon as practicable to determine whether the violation has been cured. If the Association does not receive notice that the Owner cured the violation, the Association shall inspect the property within seven (7) days of the expiration of the cure period to determine whether the violation has been cured.

f. Notice After Cure: Once the violation has been cured, the Association shall provide written notice to the Owner of the outstanding fine balance for the violation, and that no further fines will be assessed for the violation.

*C. Services of Notices.* Service of all notices required or permitted to be given hereunder shall be made as follows:

If to an Owner: By physically posting a copy on the Owner's unit; by certified mail, return receipt requested, to the Owner's preferred address as contained in the Association's records, or by email to the Owner's preferred email address as contained in the Association's records.

If to the Association: By personal delivery or U.S. Mail, postage prepaid, addressed to the Association in care of its registered agent and office, as maintained with the Colorado Secretary of State or such other address as the parties may be advised of in writing.

Any notice personally delivered shall be deemed received on the date of delivery, and any notice mailed shall be deemed received on the fifth day following the date of mailing.

*D. Fines.* Any infraction of any covenant, rule or regulation in which a fine is not already specifically stated may result in a fine for each occurrence according to the following schedule:

First violation:	Warning or up to \$200
Second violation (of same covenant or rule):	Up to \$300
Third violation (of same covenant or rule):	Up to \$400
Fourth and subsequent violations (of same covenant or rule):	Up to \$500
Violation that threatens public safety or health	Up to \$1000

If a violation is one that is continuing in nature, the Association may assess a fine in intervals of every other day, weekly, or monthly until the violation is abated. Alternatively, if a violation remains uncured for more than forty-eight hours from the date a fine is levied against an Owner, the Association may elect to provide a new Notice of Violation to the Member and levy additional fines.

After the violation has been cured by the Owner to the satisfaction of the Board, the per day fine will cease to accrue and the remaining any unpaid balance, will be subject to an eight (8%) monthly finance charge and may begin the date the charges are imposed. The fine assessment is due and payable immediately upon receipt of notice of the said assessment. The Association's managing agent shall give notice of said assessment to the applicable Owner as provided in these Policies and Procedures.

*E. Request for Hearing.* In the event any Owner desires a hearing or to attend a Board meeting to challenge or contest any alleged violation and possible fine, said Owner must, within 14 days from receipt of the Initial Warning Letter, request such hearing by notifying the Association, in writing, of such hearing request. In the event a proper and timely request for a hearing is not made as provided herein, the right to a hearing shall be deemed forever waived. If a hearing is not requested within the aforementioned 14-day period, the Board may continue to assess a reasonable fine within the guidelines contained in these Rules. In requesting a hearing before the Association, an Owner shall state and describe the grounds and basis for challenging or denying the alleged violation as well as such other information the Owner deems pertinent.

*F. Discovery.* Upon written request to the Association, not later than ten days prior to the date of hearing, the Owner shall be entitled to: (a) obtain the names and addresses of witnesses, to the extent known to the Association, and (b) inspect and make copies of any statements, writings and investigative reports relative to the case contained in the Association's records. Nothing in this section shall, however, authorize the inspection or copying of any writing or other thing which is

privileged from disclosure by law or otherwise made confidential or protected, such as attorney work product.

*G. Board to Conduct Hearing.* The Board shall hear and decide cases set for hearing pursuant to these Policies and Procedures. The Board may appoint an officer or other Owner to act as the presiding officer (the "Presiding Officer") at any of the hearings. Any person or group of persons involved in the enforcement process outlined above must be an "impartial decisions maker" as defined by C.R.S. § 38-33.3-209.5(2)(b). The impartial decision maker must not have any direct, personal or financial interest in the outcome. Any impartial decision maker who is incapable of objective and disinterested consideration of any enforcement matter before the Association shall disclose such to the President of the Board prior to the hearing and the persons shall be disqualified from all proceedings with regarding the Hearing at issue. If disqualification of the person results in an even number of remaining persons eligible to preside over the hearing, the Presiding Officer may appoint an impartial Owner, in good standing, to serve as a voting Owner of the Hearing.

*H. Conflicts.* It shall be incumbent upon each Board member to make a determination as to whether s/he is able to function in a disinterested and objective manner in consideration on each hearing before the Board. Any Board member incapable of objective and disinterested consideration on any hearing before the Association shall disclose such to the President of the Association prior to the hearing on the case, if possible, or, if advance notice is not possible, then such disclosure shall be made at the hearing, and said Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of remaining Board members eligible to hear a case, the Presiding Officer shall appoint an Association member, in good standing, to serve as a voting member of the hearing board.

*I. Hearing.* Each hearing shall be held at the scheduled time, place and date, provided that the Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board by Reading the notice of hearing. The general procedure for hearing shall consist of opening statements by each party; presentation of testimony and evidence, including cross-examination of witnesses by each party; and closing statements by each party. Notwithstanding the foregoing, the Board may exercise its discretion as to the specific manner in which a hearing shall be conducted and shall be authorized to question witnesses, review evidence and take such other reasonable action during the course of the hearing which it may deem appropriate or desirable to permit the Board to reach a just decision in the case. Rules of law regarding trials and presentation of evidence and witnesses shall be applicable to the hearing insofar as the Presiding Officer deems adherence to such rules of law to be in the interests of justice; provided that any relevant evidence should be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the course of serious affairs. The decision of the Board at each hearing shall be based on the matters set forth in the notice of hearing, request for hearing and such evidence as may be presented at the hearing. Unless otherwise determined by the Board of Directors, all hearings shall be open to attendance by all Owners of the Association, unless otherwise determined by the board pursuant to C.R.S. § 38-33.3-308(4)(e), which allows the Board to hold a disciplinary hearing regarding a Member in

executive or closed session. If the disciplinary hearing is held in an executive or closed-door session, the Member may request and receive the results of any vote taken at the relevant meeting..

J. *Decision.* After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its decision thereon within ten (10) days after the hearing. A decision, either a finding for or against the Owner, shall be by a majority of the Board. The Board shall issue written findings of fact and conclusions, and, if applicable, shall impose a reasonable fine as provided in the Association's Rules. The Board may also issue and present for recording with the Clerk and Recorder of Eagle County, Colorado, a notice of finding of violation. Upon satisfactory compliance with the Association's governing documents, the notice may be released by the Association issuing and recording a release of notice of findings of violations.

K. *Fines During Pendency of Hearing Process.* If fines or other monetary awards are levied against a Owner pursuant to this Policy during the pendency of a hearing requested by Owner and/or the Board's decision on the hearing, such monies will not become due and payable until the Board issues a final decision confirming the monies levied against the Owner. If the Board decides that fines or other monetary awards should not have been levied against the Owner, then the Owner shall not be charged the fine or other monetary award initially levied and the Association shall not allocate to the Owner's account any of the Association's costs or attorney fees incurred in asserting or hearing the claim.

L. *Enforcement and Attorney's Fees.* In accordance with the Declaration, Bylaws and Rules, it is hereby declared to be the intention of the Association to enforce the of its governing documents by any and all means available to the Association at law or in equity, and to seek recovery and reimbursement of all attorney's fees, Association expenses and costs incurred by the Association in connection therewith.

M. *Association Records.* The Association shall maintain records of all contacts between the Association and the Owner in regard to a violation, including the type of communication, the date of the communication, and the time of the communication.

## V. Inspection and Copying of Records

The Association will maintain, retain and produce Association records in accordance with the procedures and requirements set forth in the Colorado Not-for-Profit Corporation Act, Colorado Common Ownership Interest Act and Association's governing documents, including the declaration, articles of incorporation, bylaws and this policy. The following policy (the "Policy") conforms with C.R.S. §§ 38-33.3-209.4, 209.5 and 317, and shall apply to the inspection and copying of the Association's records:

1. All Association records must be maintained in a form that allows conversion into written form in a reasonable time.
2. The following records **will be maintained** at the Association's principal office and shall be considered the sole records of the Association for purposes of document retention and production to owners:

- a. Detailed records or 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 the owners and the Board, a record of all actions taken by the owners and the Board without a meeting, and a record of all actions taken by any committee of the Board;
- d. Written communications among, and votes cast by the Board 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 owners in a form that permits preparation of a list of names of all owners and the physical mailing addresses at which the Association communicates with them, showing the number of votes each owner is entitled to vote;
- f. The Association's current declaration, covenants, bylaws, articles of incorporation, rules and regulations, responsible governance policies adopted pursuant to C.R.S. § 38-33.3-209.5, and other policies adopted by the Board;
- g. Financial statements as described as in C.R.S. § 7-136-106 for the past three years and tax returns of the Association for the past seven years, to the extent available;
- h. A list of the names, email addresses and physical mailing addresses of the current Board members and officers;
- i. The Association's most recent annual report (if any) delivered to the Secretary of State;
- 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, to be sent by certified mail, return receipt requested, so they are received by the requesting party within fourteen days of the Association's receipt of request;
- k. The Association's most current 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 years;

- m. Records of Board or Committee actions to approve or deny any requests for design or architectural approval from owners;
  - n. Ballots, proxies and other records related to voting by owners for one year after the election, action or vote to which they relate;
  - o. Resolutions adopted by its Board relating to the characteristics, qualifications, limitations, and obligations of members of any class or category of members;
  - p. All written communications within the past three years to all owners generally as owners;
  - q. Any contact with a Member in regard to a Member's delinquency in paying assessments, fines, or fees, including information regarding the type of communication used to contact the Member and the date and time that the contact was made, pursuant to C.R.S. § 38-33.3-209.5; and
  - r. The designated contact and preferred language of a Member, pursuant to C.R.S. § 38-33.3-209.5.
3. An owner or owner's authorized agent may inspect and copy Association records during normal business hours if the owner or authorized agent has submitted a written request, describing with reasonable particularity the records sought, at least ten days prior to the inspection or production of documents. The Association's "Request to Inspect Records" form is attached to and made a part of this Policy. The Association may not condition the production of records upon the statement of a proper purpose.
4. Notwithstanding Paragraph 3 above, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an owner's interest as an owner without the consent of the Board. Without limiting the generality of this Paragraph 4, without the consent of the Board, a membership list or any part thereof may not be:
- a. Used to solicit money or property unless such money or property will be used solely to solicit the votes of owners in an election to be held by the Association;
  - b. Used for any commercial purpose; or
  - c. Sold to or purchased by any person.
5. 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 owners 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 negotiations;
  - c. Communications with legal counsel that are otherwise protected by attorney-client privilege or the attorney work product doctrine;
  - d. Disclosure of information in violation of law;
  - e. Records of an executive session of the Board; or
  - f. Records relating to or concerning individual units other than those of the requesting owner.
6. 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; and
  - b. Personal identification and account information of members, including bank account information, telephone numbers, email addresses, driver's license numbers, and social security numbers.
7. The Association will impose a reasonable charge, which may be collected in advance and will cover 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.
8. 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 of an owner.
9. The Association is not obligated to compile or synthesize information.
10. Association records and the information contained within those records shall not be used for commercial purposes.
11. Upon request, the selling unit owner shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the Association's usual fee pursuant to Paragraph 7 above, all the common interest community's governing documents and financial documents, as listed in the most recent version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.
12. Audits or reviews of the books and records of the Association shall be done at the discretion of the Board or upon owner request as follows:
- a. An audit is required only if the Association has annual revenues or

- expenditures of at least \$250,000 and owners of at least one-third of the units represented by the Association request in writing an audit.
- b. A review is required only when requested in writing by the owners of at least one-third of the units represented by the Association.
  - c. Copies of audits or reviews shall be available on request to any owner within thirty days after completion.
13. Within ninety days after the change or any of the following, the Association will give written notice to the owners of the following items by first class mail, personal delivery, a binder at the principal place of business, or posting on the Association's website:
- a. Name of the Association and the common interest community;
  - b. Name and address of the management company, if any;
  - c. Physical address and phone number for the Association and the designated agent or management company; and
  - d. Date of recording of the Declaration and recording information.
14. Within ninety days after the end of each fiscal year, the Association will make the following information available to owners by first class mail, personal delivery, a binder at the principal place of business, or posting on the Association's website:
- a. Date the Association's fiscal year begins;
  - b. Operating budget for the current year;
  - c. List of current regular and special assessments, by unit type;
  - d. Annual financial statements, including reserves, if any;
  - e. Results of most recent audit or review;
  - f. List of all the Association insurance policies (property, general liability, director and officer liability, fidelity), including companies, policy limits and deductibles, additional insureds, and expiration dates;
  - g. The Association bylaws, articles and rules and regulations;
  - h. Minutes of the Board and member meetings for the prior fiscal year; and
  - i. The Association's "Responsible Governance Policies."

## **VI. Standard of Care for Directors Investing Reserve Funds.**

A. Directors and officers must meet the standards of care outlined in the Colorado Revised Nonprofit Code when investing association reserve funds. The standards require directors and officers to act:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like situation would exercise under similar circumstances; and
- (3) in a manner the director or officer reasonably believes to be in the best interest of the association.

B. In discharging their duties, directors and officers may rely on other people on matters that the directors or officers reasonably believe are within that person's professional or expert competence.

## **VII. Adoption and amendment of policies, procedures, and rules.**

The Board may from time to time adopt and amend the policies, procedures and rules and regulations concerning the Community, except the new policy, procedure, rule or amendment shall not amend the terms of the Declaration which may only be amended as provided therein. Such amendments are valid and enforceable against an Owner only if:

- (a) Their purpose is to promote the convenience, safety, or welfare of the Owners;
- (b) They are reasonably related to the purpose for which they are adopted;
- (c) They are not retaliatory or discriminatory in nature;
- (d) They are sufficiently explicit in prohibition, direction, or limitation of the Owner's conduct to fairly inform him of what he must or must not do to comply.

In order to adopt or amend a policy, procedure, or rule and regulation, the Board shall approve the same in accordance with the Bylaws and send notice of the newly-adopted policy, procedure, rule and regulation to the Owners via first class mail or email (if the Owner has provided an email address to the Association). No policy, procedure, or rule and regulation shall be effective until sent to the Owners.

## **VIII. Alternative Dispute Resolution Policy**

In the event that the Declaration or Bylaws do not cover a dispute and except in the case of the Association's collection of assessments or enforcement of the covenants, bylaws, or rules and regulations of the Association by the Association, the following policy regarding alternative dispute resolution is applicable:

*A. Meeting with Board.* In the event of any dispute involving the Association and an Owner, it is the intention of the Association to resolve the dispute informally and without the need for litigation. The Owner or the Association shall notify the other in writing of the claim, stating (i) the nature of the Claim, including the date, time, location, persons involved, (ii) the basis of the claim (i.e. the provisions of the Declaration, the Bylaws, the Articles, Rules or

Regulations or other authority out of which the claim arises); (iii) what the claimant wants the other to do or not do to resolve the claim; and (iv) that claimant wishes to resolve the claim by mutual agreement and is willing to meet in person with the other at a mutually agreeable time and place to discuss in good faith ways to resolve the claim.

The parties shall make every reasonable effort to meet either in person or by conference call to resolve the claim by good faith negotiation.

*B. Mediation.* If a meeting is unsuccessful or does not occur, all claims or disputes, except in the case of the collection of assessments, shall be initially submitted to mediation in good faith. The parties shall jointly appoint a mediator and will share equally in the cost of mediation. If a party does not respond within ten (10) days of receipt of a request to mediate or if the parties cannot agree on a mediator within ten (10) days of the request, the mediation requirement shall be deemed fulfilled. If mediation does occur, it shall be completed within thirty (30) days from the date of request.

If mediation is unsuccessful or does not occur, the parties may pursue their claims via the appropriate court or submit the dispute to binding arbitration.

*C. Binding Arbitration.* If the matter cannot be resolved by mediation or otherwise within thirty (30) days of the request for mediation, alternative dispute resolution (ADR) in the form of Binding Arbitration may be pursued if both the Owner and the Association agree.

*D.* This policy is an agreement of the Association and Owners to mediate and/or arbitrate all claims except the stated exceptions and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration shall be final and binding and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

*D. Costs.* If the claims are resolved through negotiation as provided above, each party shall bear all of its own costs incurred in resolving the claim, including its attorney fees, unless the parties otherwise agree. If the claims are not resolved through negotiation and the claim goes to arbitration, the prevailing party shall receive as a part of its award from the opposing party all of its costs, including attorney fees, and any expenses incurred as a result of the dispute resolution procedures of this policy.

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

*F. Amendment.* This policy may be amended from time to time by the Board of Directors.

*G. Disputes between Owners.* Any disputes between Owners are subject to the Declaration.

## **IX. Reserve Requirements**

*A. Funding.* After receipt of any reserve study or any updates thereto, the Board of

Directors of the Association shall establish a funding plan or update the funding plan and then adjust the assessments allocated for the Reserve Fund (as defined herein) to match the requirements identified by the reserve study or update. All assessments placed in the Reserve Fund shall be in accordance with the Association's policy then in effect regarding investment of reserve funds.

B. *Deviations.* The board may deviate from the procedures set forth in this policy if in its sole discretion such deviation is reasonable under the circumstances.

C. *Reserve Studies.* The Board shall determine when a reserve study is required. If and when a reserve study is performed, such study will comply with the following:

- (a) All reserve studies and updates shall be based on both a physical analysis and a financial analysis of the portions of the Association which are maintained, repaired, replaced and subject to improvement by the Association.
- (b) All reserve studies and updates shall include an inventory, a condition assessment based on a site inspection and contain an estimate of remaining useful life.

D. *Funding.* After receipt of the initial reserve study or any updates thereto, the Board of Directors of the Association shall establish a funding plan or update the funding plan and then adjust the assessments allocated for the Reserve Fund to match the requirements identified by the reserve study or update. All assessments placed in the Reserve Fund shall be in accordance with the Association's policy then in effect regarding investment of reserve funds.

E. *Deviations.* The Board may deviate from the procedures set forth in this policy if, in its sole discretion, it finds such deviation is reasonable under the circumstances.

## **X. Miscellaneous.**

A. Notwithstanding anything herein to the contrary, the Association reserves the right, at any time and from time to time hereafter, to modify, amend, repeal and/or re-enact these Policies and Procedures in accordance with the Declaration, Bylaws and applicable law. The Board or its management company shall send notice of the newly-adopted policy, procedure, rule and regulation to the Owners via first class mail or email (if the Owner has provided an email address to the Association). No policy, procedure, or rule and regulation shall be effective until sent to the Owners.

B. The Board and its management company are empowered to enforce these Policies and Procedures. All Policies and Procedures shall be in effect at all times.

C. Failure by the Association, the Board or any person to enforce any provision of these Policies and Procedures shall in no event be deemed to be a waiver of the right to do so thereafter.

D. The Provisions of these Policies and Procedures shall be deemed to be independent and several, and the invalidity of anyone or more of the provisions hereof, or any portion thereof, by judgment or decree of any court of competent jurisdiction, shall in no way affect the validity or enforceability of the remaining provisions, which provisions shall remain in full force and effect.

E. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

F. The captions to the sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed so as to define, limit or otherwise describe the scope of these policies and procedures or the intent of any provision hereof.

These Policies were adopted this 5<sup>th</sup> day of August, 2022 by resolution of the Board of Directors of The Boundary Association Inc., a Colorado nonprofit corporation.

The Boundary Association, Inc.

By:  Secretary

**ADDENDUM A**

**REQUEST TO INSPECT RECORDS**

This written request is pursuant to the Policy on Records Inspection of the Boundary Association.

To: \_\_\_\_\_  
c/o \_\_\_\_\_ (Management) Address: \_\_\_\_\_

Email: \_\_\_\_\_

Date of this Request: \_\_\_\_\_, 20\_\_\_\_

Date you or your agent intends to inspect the records (Must be at least 10 days after date of request): \_\_\_\_,  
20\_\_\_\_\_

Person(s) requesting Inspection of the Association's records: \_\_\_\_\_

Person(s) who will be present for the review of the Association's records: \_\_\_\_\_

**Please note that all actual costs of inspection and any authorized copies must be paid in advance by the person requesting them.**

**Specify with particularity the records requested for Inspection. Please include type and date(s) of record, indication of those records for which you request a copy, and any specifics that will identify the information you seek to review. If necessary, use additional sheets.**

<u>Record</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_ Authorized by: \_\_\_\_\_