

**MT. HARVARD VALLEY DEVELOPMENT  
PROPERTY OWNERS ASSOCIATION, INC.  
RESPONSIBLE GOVERNANCE POLICIES ADOPTED  
PURSUANT TO THE REQUIREMENTS OF  
THE COLORADO COMMON INTEREST OWNERSHIP ACT (“CCIOA”)  
May 18, 2019**

**I. INTRODUCTION**

The Colorado Common Interest Ownership Act, as amended (“CCIOA”) provides as follows:

**38-33.3-209.5 Responsible governance policies - due process for imposition of fines**

**(1) To promote responsible governance, associations shall:**

**(a) Maintain accurate and complete accounting records; and**

**(b) Adopt policies, procedures, and rules and regulations concerning:**

**(I) Collection of unpaid assessments;**

**(II) Handling of conflicts of interest involving board members, which policies, procedures, and rules and regulations must include, at a minimum, the criteria described in subsection (4) of this section;**

**(III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;**

**(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) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial**

**analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient.**

In order to implement these statutory requirements and other requirements of CCIOA, Mt. Harvard Valley Development Property Owners Association, Inc. (the "Association"), by resolution of the Board of Directors of the Association (the "Board"), adopts the following responsible governance policies as part of the Association Rules (the "Rules"). CCIOA and the Corrected Declaration for Mt. Harvard Valley Development Subdivision, recorded in the office of the Clerk and Recorder of Chaffee County, Colorado at Reception No. 152672, and any amendments and supplements thereto (the "Declaration"), authorize the Association to adopt Rules, and CCIOA mandates the adoption of responsible governance policies. These Rules regarding responsible governance policies shall be deemed to supplement the Declaration, the Articles of Incorporation and the Bylaws of the Association, and other Rules adopted by the Association, as amended from time to time. To the extent these Rules are inconsistent with the Declaration, Articles or Bylaws, as they may be amended from time to time, those documents shall control, as applicable, except where otherwise required by CCIOA or the Colorado Revised Nonprofit Corporation Act (the "CRNCA"). The records of the Association kept by the Secretary of the Association will include a notebook or an e-version on a portable electronic device containing all the currently adopted Rules, and the Rules will also be posted on the Association's website, if there is one.

## **II. POLICIES**

### **A. COLLECTION OF UNPAID ASSESSMENTS.**

Section 38-33.3-316.3 of CCIOA provides as follows:

#### **§ 38-33.3-316.3 Collections—limitations**

**In collecting past-due assessments and other delinquent payments under this article, an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, shall:**

**(a) Adopt and comply with a collections policy that meets the requirements of [section 38-33.3-209.5 \(5\)](#); and**

**(b) Make a good-faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of this section; except that:**

**(I) This section does not apply if the unit owner does not occupy the unit and has acquired the property as a result of:**

**(A) A default of a security interest encumbering the unit; or**

**(B) Foreclosure of the association's lien; and**

**(II) The association or a holder or assignee of the association's debt is not obligated to negotiate a payment plan with a unit owner who has previously entered into a payment plan under this section.**

**(2) A payment plan negotiated between the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, and the unit owner pursuant to this section must permit the unit owner to pay off the deficiency in equal installments over a period of at least six months. Nothing in this section prohibits an association or a holder or assignee of the association's debt from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of his or her payment plan. A unit owner's failure to remit payment of an agreed-upon installment, or to remain current with regular assessments as they come due during the six-month period, constitutes a failure to comply with the terms of his or her payment plan.**

**(3) For purposes of this section, "assessments" includes regular and special assessments and any associated fees, charges, late charges, attorney fees, fines, and interest charged pursuant to [section 38-33.3-315\(2\)](#).**

Section 38-33.3-209.5 (5) of CCIOA provides as follows:

**38-33.3-209.5**

**(5)(a) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary or the absence of a relevant provision in the declaration, bylaws, articles, or rules or regulations, the association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, may not use a collection agency or take legal action to collect unpaid assessments unless the association or a holder or assignee of the association's debt has adopted, and follows, a written policy governing the collection of unpaid assessments. The policy must, at a minimum, specify:**

**(I) The date on which assessments must be paid to the entity and when an assessment is considered past due and delinquent;**

**(II) Any late fees and interest the entity is entitled to impose on a delinquent unit owner's account;**

**(III) Any returned-check charges the entity is entitled to impose;**

**(IV) The circumstances under which a unit owner is entitled to enter into a payment plan with the entity pursuant to [section 38-33.3-316.3](#) and the minimum terms of the payment plan mandated by that section;**

**(V) That, before the entity turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the entity must send the unit owner a notice of delinquency specifying:**

**(A) The total amount due, with an accounting of how the total was determined;**

**(B) Whether the opportunity to enter into a payment plan exists pursuant to [section 38-33.3-316.3](#) and instructions for contacting the entity to enter into such a payment plan;**

**(C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the debt; and**

**(D) That action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, or other remedies available under Colorado law;**

**(VI) The method by which payments may be applied on the delinquent account of a unit owner; and**

**(VII) The legal remedies available to the entity to collect on a unit owner's delinquent account pursuant to the governing documents of the entity and Colorado law.**

**(b) As used in this subsection (5), “entity” means an association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person.**

1. **Assessments.** The annual assessment for common expenses (as defined in the Declaration) is assessed annually and is payable in the amount and due as specified in the most recent written notice from the Association until the Association notifies an Owner in writing of a different amount. Notices of the amount of the annual assessment and the date that the payment of the annual assessment is due will typically be sent to all the Owners within thirty (30) days of ratification by the Owners of the proposed budget. Assessments shall be paid by the due date stated in the assessment notice.

2. **Delinquent Assessments.** If the annual assessment is not paid by the Owner of a Unit within ninety (90) days after the due date, the Owner shall be deemed in default, shall be assessed a late fee of twenty-five dollars (\$25.00), and the unpaid amount of the assessment due shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. Partial payments received by the Association shall be applied first to the principal amount of the assessment, then to any late charges or fines, then to attorney fees and costs of

collection, and then to accrued interest. There shall be a returned check charge of fifty dollars (\$50.00) for any check that is not honored or is returned for nonsufficient funds.

3. **Notice of Default; Payment Plans.** At any time after a default in the payment of assessments by an Owner, the Board may provide a written notice of default (“Notice of Default”), which shall be sent by certified mail, return receipt requested, to the Owner at the address of the Owner found in the records of the Association or, if none is found, then to the address of the Owner as may be found in the records of the Chaffee County Assessor’s Office. The Notice of Default will be deemed to be effective five (5) days from the date of such mailing, irrespective of whether or when the letter is claimed, receipted for or otherwise delivered or received.

a. **Notice of Default.**

- i. The Notice of Default shall specify:
  - the due date and the amount of the unpaid assessment
  - the late fees, fines (if any) and all costs of collection; and
  - the interest accrued as of a specified date and the per diem interest thereafter.
  
- ii. The Notice of Default shall require the Owner to either:
  - make payment in full within thirty (30) days of the effective date of the Notice of Default; or
  - make a written request for a payment plan to the Association’s Treasurer at the Association’s principal address and/or by email to the Treasurer at an email address provided in the Notice of Default, within thirty (30) days of the effective date of the Notice of Default.
  
- iii. The Notice of Default shall further state that if payment in full is not made within such thirty (30) day period or in accordance with a written payment plan:
  - the Association may record a notice of lien amount against the Unit in the Office of the Clerk and Recorder of Chaffee County, Colorado;
  - the Owner is liable for costs of enforcement as defined by the Declaration and which includes all fees, costs, expenses and attorneys’ fees incurred by the Association in connection with the collection of the assessment;
  - all unpaid assessments, late fees, costs of collection and interest are secured by the assessment lien against the Owner and the Owner’s Unit; and
  - the Association may pursue any and all legal remedies available to it to collect the amounts due, including but not limited to, turning

the account over to a collection agency or attorney to take legal action to collect the delinquent assessments, the foreclosure of the Association's assessment lien, and/or commencement of a civil action against the Owner.

- iv. The Notice of Default shall provide the name and contact information for the individual the Owner may contact to request a copy of Owner's account records or ledger in order to verify the amount of the debt.

b. **Payment Plan.** The Notice of Default shall also advise the Owner that the Owner may request a payment plan by making a written request and submitting it to the Treasurer of the Association within thirty (30) days of the effective date of the Notice of Default. The written request may be delivered by hand, or by U.S. Mail to the principal address of the Association, and/or by email to the Treasurer's email address as stated in the Notice of Default. If the Owner makes such a request during the thirty (30) day period set forth in the Notice of Default, the Association shall make a good-faith effort to set up a payment plan with the Owner. Any payment plan shall be in writing, and shall permit the Owner to pay off the delinquent amount in no less than six equal monthly installments. Notwithstanding the forgoing, the Association shall not be required enter into a payment plan with an Owner who does not occupy the Unit and has acquired the property as a result of either a default of a security interest encumbering the Unit or foreclosure of the Association's lien. Furthermore, the Association or a holder or assignee of the Association's debt is not obligated to negotiate a payment plan with an Owner who has previously entered into a payment plan with the Association.

c. **Failure to Cure.** If the assessment default is not cured and paid in full, including late fees, interest and other costs and expenses incurred by the Association, either within the thirty (30) day period set forth in the Notice of Default or in accordance with a payment plan established with the approval of the Association, the Association may then proceed as stated in the Notice of Default. If a delinquent account is subject to an approved payment plan, an Owner's failure to remit payment of an agreed-upon installment, or to remain current with regular assessments as they come due during the six-month period, constitutes a failure to comply with the terms of his or her payment plan and shall subject the Owner to collection action as set forth in the Notice of Default.

## **B. HANDLING OF BOARD MEMBER CONFLICTS OF INTEREST.**

Section 38-33.3-209.5 (4) of CCIOA concerning conflicts of interest provides:

### **38-33.3-209.5**

**(4)(a) The policies, procedures, and rules and regulations adopted by an association under subparagraph (II) of paragraph (b) of subsection (1) of this section must, at a minimum:**

**(I) Define or describe the circumstances under which a conflict of interest exists;**

**(II) Set forth procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and**

**(III) Provide for the periodic review of the association's conflict of interest policies, procedures, and rules and regulations.**

**(b) The policies, procedures, or rules and regulations adopted under this subsection (4) must be in accordance with section 38-33.3-310.5.**

Section 38-33.3-310.5 of CCIOA provides:

**38-33.3-310.5 Executive board - conflicts of interest - definitions**

**(1) Section 7-128-501, C.R.S., shall apply to members of the executive board; except that, as used in that section:**

**(a) "Corporation" or "nonprofit corporation" means the association.**

**(b) "Director" means a member of the association's executive board.**

**(c) "Officer" means any person designated as an officer of the association and any person to whom the board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the board.**

C.R.S. § 7-128-501 the CRNCA provides:

**7-128-501 Conflicting interest transaction**

**(1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest.**

**(2) No loans shall be made by a corporation 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 corporation for the amount of such loan until the repayment thereof.**

**(3) 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 nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation'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 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, even though the disinterested directors are less than a quorum; or**

**(b) The material facts as to the director'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 nonprofit corporation.**

**(4) Common or interested directors 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.**

**(5) For purposes of this section, a "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, 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.**

The Association and Board shall utilize the above statutory provisions, Section 7.4 of the Bylaws, and the provisions below, as they may be amended from time to time, to review and address any potential conflicts of interest relating to the Officers and Directors of the Association. In accordance with 38-33.3-209.5 (4) (a) (III), the Board shall periodically review these statutory provisions, Bylaws and any other policies, procedures, and rules and regulations that it adopts concerning conflicts of interest.

A Director must disclose a conflict of interest to the Board during a Board meeting in open session and cannot vote on the conflicting decision or contract. The conflicted Director may participate in the discussion about a conflicting decision or contract unless a majority of the Directors who are not conflicted determine such discussion would not be appropriate.

**C. CONDUCT OF ASSOCIATION AND BOARD MEETINGS.**

1. **Notice.** See Articles IV and VI of the Bylaws. The provisions of the Bylaws, CCIOA and the CRNCA shall govern and control voting and notice requirements for Owners and Board meetings.

2. **Open Board and Association Meetings.** All regular and special meetings of the Board and the Association will be open to attendance by all Owners and Owner's representatives. An "Owner's representative" shall mean a person designated in writing by a proxy or other document executed by an Owner and authorizing the Owner's representative to act for such Owner as designated in the authorization. Unless otherwise limited scope, any such authorization shall remain in effect until withdrawn in writing by the Owner and the Board shall retain all such proxies or other documents. All members are encouraged to attend and participate in the Board meetings or to provide written comments to the Board on pending issues prior to any such meeting. Association meetings shall be scheduled per the Declaration, Bylaws and as otherwise determined by the Board.

3. **Contents of Notice/Agendas.** The notice of any meeting of the Owners will be in accordance with the Bylaws. Any information on the agenda provided by the notice of Meeting shall not be deemed to exclude (i) other issues that the Board may wish to consider at Board meetings or (ii) other issues that the Board or Owners may wish to consider at Association meetings. Owners desiring further information or copies of an agenda should contact an Officer of the Association.

4. **Participation by Owners at Board Meetings and Owners' Meetings.** At an appropriate time determined by the Board, but before the Board votes on an issue under discussion at a Board meeting that requires a vote of the Board, an Owner or an Owner's representative desiring to speak on the issue will be reasonably permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the Board meeting. If more than one person desires to address an issue and there are opposing views, the Board shall provide for reasonable number of persons to speak on each side of the issue. Similarly, at meetings of Owners, if it becomes necessary, as determined by the reasonable discretion of the President of the Association, the President may set reasonable limits on the time an Owner may speak and the number of Owners who may speak regarding a particular issue. While free and open discussion is encouraged and desired at all times, the President and the Board may always consider other concerns affected by such discussion, including but not limited to, the impacts of such discussion on the other Owners and persons present at any meeting and the need for other business to be conducted at a meeting. The President of the Association will be the presiding officer at all meetings of the Board and of the Owners. In the absence of the

President, the other Officers and Directors attending the meeting will designate another member of the Board to be the presiding officer for the meeting.

5. **Executive Sessions.** The Board may, in its discretion, hold private or confidential executive sessions in accordance with C.R.S. § 38-33.3-308, Section 6.5 of the Bylaws, and other applicable Colorado law.

6. **Secret Ballot.** To the extent required, the Association will comply with C.R.S. § 38-33.3-310 regarding the need and procedure for a secret ballot. See Sections 4.10 and 5.6 of the Bylaws. Uncontested elections of Board members, defined as elections in which the number of candidates is equal to or less than the positions to be filled, and all other votes taken at a meeting of the Owners shall be taken by such method as determined by the Board including acclamation, by hand, by voice or by ballot.

7. **Rules of Order.** The Board shall determine all procedures and disputes related to the conduct of its own meetings. The President or other presiding officer shall determine all procedures related to the conduct of Association meetings, provided such procedures are reasonable and non-discriminatory.

**D. ENFORCEMENT OF COVENANTS, RULES and REGULATIONS; NOTICE AND HEARING; SCHEDULE OF FINES.**

Sections 38-33.3-209.5 (2) and (3) of CCIOA provide:

**38-33.3-209.5**

**(2) Notwithstanding any provision of the declaration, bylaws, articles, or rules and regulations to the contrary, the association may not fine any unit owner for an alleged violation unless:**

**(a) The association has adopted, and follows, a written policy governing the imposition of fines; and**

**(b) (I) The policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the unit owner notice and an opportunity to be heard before an impartial decision maker.**

**(II) As used in this paragraph (b), "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to**

**have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.**

**(3) If, as a result of the fact-finding process described in subsection (2) of this section, it is determined that the unit owner should not be held responsible for the alleged violation, the association shall not allocate to the unit owner's account with the association any of the association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, a unit owner shall not be deemed to have consented to pay such costs or fees.**

The Notice and Hearing procedure provided in the Bylaws and in these Responsible Governance Policies and as conducted by the Board shall comply with the foregoing requirements of CCIOA. The Declaration and CCIOA authorize the Board to adopt rules for the regulation and management of the Common Elements and the Property, as defined in the Declaration. The Declaration creates restrictions on the use of Lots or Units and the Common Elements, prohibits certain actions, and creates responsibilities and liabilities for Owners and other persons. The Declaration and CCIOA also authorize the Board to enforce the Declaration, and levy and collect fines and assessments and recover costs of collection, including interest, costs and attorneys' fees against an Owner who violates the Declaration or the Rules. CCIOA also provides that an Owner may be entitled to recover costs and attorneys' fees if the Association wrongfully deprives the Owner of certain rights.

1. **Enforcement Procedures.** Subject to the requirements of CCIOA, the Declaration, and the Bylaws, as they may be amended from time to time, the Association, by its Board, will follow the procedures outlined below with respect to enforcement in addressing violations of the Declaration and other Rules of the Association, except for those violations with regard to payment of assessments which are addressed in and governed by Section 7 of the Declaration and in Section II A of these Responsible Governance Policies and except for more specific, other or additional procedures that may be outlined in the Declaration.

a. **Reporting Violations.** Complaints regarding alleged violations may be reported either in writing or orally by an Owner or group of Owners within the community, Board member(s), committee member(s) or other agents or designees of the Board. Complaints shall contain the information listed below in order to be investigated. At the discretion of the Board, written or oral complaints failing to include any of the information required in this provision may or may not be investigated or pursued:

- i. identity and address of the complainant;
- ii. address of the alleged violator and name of the alleged violator if complainant knows this;

- iii description of the alleged violation and reference to the applicable Section of the Declaration or Rules of the Association that is allegedly being or has been violated; and
- iv. date violation was observed and any other pertinent or helpful information that will assist the Board in its investigation.

b. **Investigation.** Following receipt of a complaint by the Board, two Board members or its designees will investigate the alleged violation. If additional information is needed, the complaint may be returned to the complainant or may be investigated further by the Board or by a designated individual or committee. The Board shall have sole discretion in appointing an individual or committee to investigate the matter.

c. **Written Notices of Violations.** If, based on their investigation, the Directors believe a violation has occurred or is occurring, the Board will give notice of any violation of the Declaration or Rules of the Association in the following manner:

- i. **Informal Contact.** The Board or its \_\_\_\_\_ will contact the Owner of the Unit where the alleged violation is occurring or who is alleged to be responsible for the violation to make sure the Owner is aware of the violation and to ascertain the Owner's plan to abate the violation. If the Board or its agent, in its sole discretion, believes that the Owner is already aware of the violation and will not abate the violation in a satisfactory manner, the Board may proceed immediately to "Demand for Abatement" procedure set forth below without informal contact.
- ii. **Demand for Abatement.** A notice (the "Demand for Abatement") will be hand delivered or mailed by certified mail, return receipt requested to the Owner who is alleged or believed to be responsible for the violation. If mailed, the notice shall be mailed to the Owner at the Owner's address as set forth in the records of the Association, or if no current address is found in the records of the Association, at the mailing address of the Owner as found in the records of the Chaffee County Assessor's Office. If the Unit is rented or leased under contract, it is the responsibility of the Owner to inform the tenant/occupant of the Demand for Abatement and to assure that the tenant/occupant complies with the Demand for Abatement. The Board, in its sole and absolute discretion, may also elect to provide notice of the violation to the tenant/occupant of the Unit by certified mail, return receipt requested or by hand delivery. The Demand for Abatement shall contain the following information:
  - the alleged violation with reference to the particular provisions of the Declaration or the Rules of the Association, as may be applicable;
  - the action required to abate the violation;
  - a time period, generally not less than five (5) days, during which the violation may be abated without further sanction, if such

violation is a continuing one. If such violation is not a continuing one, a statement that any additional similar violation could result in the imposition of a sanction after Notice and Hearing. Note: The Board may vary the time granted for abatement in its sole and absolute discretion, based on the particular facts and circumstances, including but not limited to the severity of the violation and the effect of the violation on the health, safety and aesthetics of Mt. Harvard;

- the Association’s website, if there is one, for information on current Board membership; and
- a Certificate of Mailing or Hand Delivery.

d. **Follow-up Process.** Two Board members or their delegates shall verify whether or not corrective action was made by the Owner within the time period required in the Demand for Abatement. Findings will be written and filed in the records of the Association. A copy of the Demand for Abatement and complaint record shall be maintained by the Board in written or electronic form in the records of the Association.

e. **Notice of Hearing.** If the violation continues past the time period required for correction in the Demand for Abatement or if the same violation subsequently occurs within a twenty-four (24) month time period from the date the previous violation, the Board or its agent shall serve the violator with a Notice of Hearing to be held by the Board. A Notice of Hearing will be hand delivered mailed by certified mail, return receipt requested to the Owner. If mailed, the notice shall be mailed to the Owner at the Owner’s address as set forth in the records of the Association, or if no current address is found in the records of the Association, at the mailing address of the Owner as found in the records of the Chaffee County Assessor’s Office. The Notice of Hearing shall contain:

- i. a description of the alleged violation;
- ii. date of Demand for Abatement letter;
- iii. date of hearing, which shall be no less than fifteen (15) days from the date of the Notice of Hearing;
- iv. place of hearing;
- v. time of hearing;
- vi. invitation to the Owner to attend the hearing and produce any statement, evidence, and witness on his or her behalf;
- vii. the proposed sanction to be imposed on the Owner if the Board determines that a violation has occurred and the Owner shall be held responsible for the violation;
- viii. the address of the Association’s website, if there is one, for information on current Board membership and the Association’s Governing Documents; and
- ix. a Certificate of Mailing or Hand Delivery.

A copy of the Notice of Hearing shall be maintained by the Board in written and/or electronic form in the records of the Association.

f. **Hearing.** The hearing shall be held pursuant to the Notice of Hearing and in accordance with the requirements of the Bylaws, the Responsible Governance Policies and CCIOA, affording the Owner a reasonable opportunity to be heard before an impartial decision maker. Members of the Association may attend hearings (like any other meeting of the Board) and provide evidence and information to the Board as part of the hearing conducted by the Board. Hearings will require a quorum of the Board, consisting of a simple majority of the Board, in attendance in person.

Prior to the effectiveness of any sanction imposed by the Board, proof of the Notice of Hearing and the service of it on the Owner shall be placed in the minutes of the hearing. Such proof shall be deemed adequate if a copy of the Notice of Hearing, together with a statement of the date and manner of delivery, is entered by the Officer, Director, or agent who delivered such Notice. The notice requirement shall be deemed satisfied if the Owner appears at the hearing.

If, at the close of the hearing, the Board requires more time to reach a decision and provide a written decision to the Owner, the Board shall render its decision and provide written notice of its decision to the Owner not more than thirty (30) calendar days from the date of the close of the hearing.

g. **Minutes/Decision.** The minutes of the hearing shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board shall be final. A written copy of the Board's decision shall also be provided to the Owner within ten (10) calendar days of the hearing. A copy of the hearing minutes shall be maintained by the Board written and/or electronic form.

h. **Schedule of Fines.** In the event it is determined that a violation of the Declaration or the Rules has occurred, then the Board shall have the right to impose the fines for the violations listed in the Schedule of Fines in Section D 2 below. Any fines imposed by the Board on an Owner as a result of a hearing must be paid and collected within the time period determined by the Board at the hearing. When the Board has deferred its decision to a later date, the written decision will include the amount of the fine, the time for payment of the fine, and the address to submit payment. All fines are payable by cash or check payable to: "Mt. Harvard Valley Development Property Owners Association, Inc."

i. **Waiver of Fines.** The Board may waive all, or any portion, of the fine if, in its sole discretion, such waiver is appropriate under the circumstances.

j. **Other Enforcement Means.** This fine schedule and enforcement process is adopted in addition to all other enforcement means available to the Association through the Declaration, the Bylaws, the CCIOA and other Colorado law, as may be amended

from time to time. The use of this process does not preclude the Association from using any other enforcement means.

k. **Supplement/Conformance to Law.** The provisions of this enforcement policy shall be in addition to and supplement the terms and provisions of the Declaration and the Bylaws, in particular the Notice and Hearing procedure outlined in Article X of the Bylaws. It is intended that the procedures specified herein shall comply with the “due process” requirements stated in Section 38-33.3-209.5(2) of CCIOA and other applicable requirements of CCIOA and other Colorado law that govern the Association.

2. **Schedule of Fines.** The Board, after Notice and Hearing as described in the Bylaws and these Responsible Governance Policies, has the right to levy and collect fines against an Owner for actions, omissions or other activities of the Owner which are in violation of the Declaration. Such fines are deemed assessments and are enforceable and collectable as such in accordance with the Declaration and CCIOA. Before the Board will assess any fines against an Owner, it will provide the Owner with the Notice and Hearing procedure specified in Article X of the Bylaws and this Section D. Fines for violations of the Declaration or any of the Rules of the Association (the “Governing Documents”) will be assessed against an Owner who is found to be in violation of the Governing Documents in accordance with a written Schedule of Fines. By the adoption of these Responsible Governance Policies, the Board establishes the following Schedule of Fines, which the Board may amend from time to time at its discretion, in accordance with the procedures for adopting and amending Rules set forth herein.

a. In the event the Board finds that the Owner has failed to abate the violation as requested, the fine for a first violation shall be one hundred dollars (\$100.00).

b. In the event the Owner abates the violation as requested, but the Board finds that the Owner has committed a repeat violation within twenty-four (24) months of a first violation, the fine for such repeat violation shall be one hundred fifty dollars (\$150.00).

c. In the event the Board finds that the Owner has failed to abate a violation and that the Owner has committed a repeat violation within twenty-four (24) months of a first violation, the fine for repeat violation shall be two hundred dollars (\$200.00).

d. In addition to the fines for a first violation and for repeat violations as set forth above, if the Board finds that the Owner is committing an ongoing violation, the Board may assess additional fines for violations which continue beyond the time for correction set forth in the Demand for Abatement on a per diem basis in the amount of twenty dollars (\$20.00) per day.

e. If an Owner fails to pay the fine by the due date for payment specified by the Board, the Owner shall be liable for and obligated to pay costs and expenses reasonably incurred by the Association in collecting the fine along with interest at the rate of twelve percent (12%) interest per annum on any unpaid balance of the total of fines and costs of collection.

3. **Enforcement and Collection Costs.** Enforcement actions available to the Association are provided for in CCIOA, the Declaration, the Bylaws, and the Association Rules, including these Responsible Governance Policies. A violating Owner may be liable to the Association for all costs and expenses incurred by the Association, including reasonable attorneys' fees, to compel compliance with the Declaration or the Association Rules. All monies due to the Association shall be included in the amount of the Assessment Lien against the Owner's Unit pursuant to the Declaration and CCIOA. Owners are cautioned to comply promptly, as, in the event of any enforcement proceeding, the costs of enforcement for which an Owner is liable may be substantial.

**E. INSPECTION AND COPYING OF RECORDS.**

1. **Records.** The Association's current records (those which are from at least the three calendar years previous to the current calendar year) relating to minutes of meetings and certain financial information and the Association's Governing Documents will be available from the Association's Secretary.

2. **Inspection and Copying.** See Article XI the Bylaws regarding an Owner's rights to inspect and copy records.

3. **Limitations on Use of Membership Lists.** In accordance with C.R.S. § 38-33.3-317(2), membership lists may not be obtained or used any Owner for:

- a. any purpose unrelated to an Owner's interest as an Owner without consent of the Board;
- b. soliciting money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
- c. any commercial purpose;
- d. selling or purchasing by any person.

**F. INVESTMENT OF RESERVE FUNDS.**

1 **Purpose.** The purpose of the Association's reserve fund is to obtain, build-up and maintain adequate funds for the periodic maintenance, repair and replacement of portions of the Common Elements and to have adequate funds for a cash reserve for emergencies and other unanticipated contingencies.

2. **Investment; Standard of Care.** With regard to the investment of reserve funds of the Association, the Board and the Officers of the Association shall make investment decisions in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director or Officer reasonably believes to be in the best interests of the Association in accordance with the CRNCA and the Bylaws. Generally, reserve funds shall be invested in a mixture of short term and long-term investments in FDIC insured institutions or other investments guaranteed by the U.S. Government. While the Association will always seek a reasonable rate of return on the

investment based on the current market, safety of principal and accessibility of monies without undesired penalties will always be primary considerations. The Board may periodically hire or consult with a qualified investment counselor to assist the Association in formulating investment strategies.

3. **Reserve Studies**. The Board will obtain reserve studies on a regular basis, but not less often than every five (5) years, to determine the adequacy of current and the amounts of future reserve funds needed or desired for the Association.

4. **Certain Investments Prohibited**. The Board may not invest Association funds in any business, property or investment in which any Officer or Director (including and aggregated with the interests of any relative or affiliate thereof) holds any interest except where such investment is a share or interest in a company or fund traded on a recognized national exchange and the interest of such Officer or Director (including and aggregated with the interests of any relative or affiliate thereof) is less than one percent (1%) of the total ownership in such business, property or investment.

#### **G. ADOPTION AND AMENDMENT OF ASSOCIATION RULES.**

These Responsible Governance Policies may be amended from time to time by the Board in the same manner that other Rules may be amended. At such time as the Board proposes adopting or amending Rules, the Board shall provide written notice of the proposed Rules to all Owners. The notice will also be posted on the Association' website, if there is one. The notice shall include a copy of the text the proposed Rules and the date of the Board meeting at which the Board proposes to adopt the Rules, which date shall be not less than thirty (30) days following the date the notice of the proposed Rules is sent to the Owners. The notice will also request that the Owners review the proposed Rules and provide comments on them to the Board at or in advance of the Board meeting specified in the notice.

#### **H. ALTERNATIVE DISPUTE RESOLUTION.**

Section 38-33.3-124 of CCIOA provides:

**38-33.3-124. Legislative declaration - alternative dispute resolution encouraged - policy statement required.**

**(1) (a) (I) The general assembly finds and declares that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.**

**(II) The general assembly hereby specifically endorses and encourages associations, unit owners, managers, declarants, and all other parties to**

**disputes arising under this article to agree to make use of all available public or private resources for alternative dispute resolution, including, without limitation, the resources offered by the office of dispute resolution within the Colorado judicial branch through its web site.**

**(b) On or before January 1, 2007, each association shall adopt a written policy setting forth its procedure for addressing disputes arising between the association and unit owners. The association shall make a copy of this policy available to unit owners upon request.**

**(2) (a) Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding.**

**(b) The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.**

**(c) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.**

**(3) The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration under the uniform arbitration act, part 2 of article 22 of title C.R.S., or by another means of alternative dispute resolution under the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S.**

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

If a dispute or deadlock arises between parties in their capacities as Owner/Member, Director, Officer, or the agents, representatives or employees of any of them, concerning any material provision of this Declaration, the Association's Articles of Incorporation or Bylaws, the Association Rules or any decision of the Board, and the parties are unable to resolve the dispute within a reasonable time, the dispute shall be referred to mediation by request made in writing by one party upon the other. Within ten (10) days of the receipt of such request, the parties shall select a single trained and impartial mediator. Unless otherwise agreed upon in writing by all parties to the dispute, the venue shall be in Chaffee County, Colorado. The cost of the mediator shall be borne equally by the parties regardless of outcome. Mediation shall then proceed in accordance with the following guidelines.

1. The purpose of the mediation is to (a) promote discussion between the parties; (b) assist the parties to develop and exchange pertinent information concerning the issues in dispute;

and (c) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy.

2. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as required by the mediator.

3. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a party.

4. Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

5. In the event either condition expressed in subparagraph 4 above occurs, and the parties are unable to resolve the dispute through mediation, then the parties shall be entitled to pursue whatever appropriate legal recourse they have to resolve the dispute.

## I. SHORT-TERM RENTAL REQUIREMENTS

Any property owner conducting short-term rentals shares the responsibility to keep the impact of guests to a minimum and is required to adhere to the following rules specifically for property owners conducting short-term rentals:

1. The property owner is responsible for following all applicable state and county laws rules, and regulations on inspections, taxes, etc.

2. The property owner must adhere to all rules and regulations as set forth in the Mt. Harvard Valley Development Property Owners Association Covenants and Responsible Governance.

3. All renters must digitally or otherwise acknowledge that they agree to abide by all relevant HOA and county guidance on speed limits, noise, fires and other rules. The form acknowledging agreement to comply with HOA and county rules and regulations (which may be expanded upon but not reduced) must include the following:

### **Welcome to Mt. Harvard Valley Estates!**

We hope that you enjoy your stay and get to experience this wonderful area to the fullest. But first, please read, comprehend, and sign the basic subdivision rules below:

- **Please obey posted speed limit signs!** Mt. Harvard Valley Development Property Owners Association, Inc.  
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*Increased speeds deteriorate our roads faster and cause excessive dust, which is a nuisance to all of us, not to mention that there can be children, pets, or wildlife on the road at any time.*

- **Quiet hours are from 10pm to 8am.**

*Sound travels very far in this area. Please respect your neighbors.*

- **Stay on the road at all times, respect private property and obey all “No Trespassing” signs.**

*Mt. Harvard Trail is the road used to access our neighborhood from the highway and is on private property, which includes the riverbanks on both sides of the bridge and the ponds past the mailboxes.*

- **No open fires!**

*Unless you have specific permission from your host, do not light any fires (propane grills are fine). Do not flick cigarette butts out of your car or anywhere, for that matter. Always use appropriate receptacles. We are in a high-risk fire area, please act responsibly.*

I, \_\_\_\_\_ (printed name of group leader)  
hereby acknowledge that I have read and understood the rules listed above and will inform every member of my group of said rules and make sure to the fullest of my abilities that everyone in my group, including myself, will adhere to said rules.

Signed, \_\_\_\_\_ (group leader) on behalf of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (name of group member)  
(name of group member)  
(name of group member)  
(name of group member)  
(name of group member)

### **III. COMPLIANCE WITH COLORADO LAW**

These Responsible Governance Policies are intended at all times to comply with, and at all times possible, shall interpreted to be consistent with, Colorado law. In the event that these Responsible Governance Policies do not comply with any provision of Colorado law, such provision of Colorado law shall be deemed a part of these Responsible Governance Policies until the Board takes action to amend or supplement the same.