

BYLAWS OF THE CLEVELAND PLACE HOA

ARTICLE 1 OFFICES

- 1.1 The Cleveland Place HOA is a Colorado nonprofit corporation, with its principal office located at 306 Cleveland Place, Carbondale, Colorado, 81623. The mailing address of the Association is P.O. Box 2062, Carbondale, Colorado 81623. The Association may also have other offices and may carry on its purposes at such other places within and outside the State of Colorado as the Board may from time to time determine.

ARTICLE 2 MEMBERSHIP, ASSOCIATION GENERAL POWERS, DEFINITIONS

- 2.1. Name. The name of the Association is the Cleveland Place HOA (“Association”).
- 2.2 Membership. There shall be one Membership in the Association for each Lot in the Cleveland Place subdivision as described in the plat entitled “Final Plat Cleveland Place Subdivision,” recorded on July 22, 2005, Reception No. 678760, and the “Declaration of Covenants, Conditions, and Restrictions for Cleveland Place Subdivision,” recorded on July 22, 2005, Reception No. 678761, Book 1709, Page 283, all as recorded in the records of Garfield County, Colorado, and any amendments thereto. The person or persons who constitute the owner of a Lot shall automatically be the holder of the Membership appurtenant to the Lot and shall collectively be the Members of the Association with respect to that Lot (“Member or “Owner”). Membership appurtenant to the Lot shall automatically pass with fee simple title to the Lot. Membership in the Association shall be assignable separate and apart from fee simple title to a Lot and may not otherwise be separated from ownership of a Lot.
- 2.3 Declaration. The Lots in the Cleveland Place Subdivision are governed by the plat entitled “Declaration of Covenants, Conditions, and Restrictions for Cleveland Place Subdivision,” recorded on July 22, 2005, Reception No. 678761, Book 1709, Page 283, as recorded in the records of Garfield County, Colorado, and any amendments thereto, which shall be collectively referred to as the “Declaration.”
- 2.4 Definitions. Terms used herein shall have the same meanings specified in the Declaration.
- 2.5 Association's General Powers. The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Cleveland Place subdivision. The Association shall serve as the governing body for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the common areas/common elements, the levying and collection of Assessments and other expenses and such other matters as may be provided in these Bylaws, the Declaration and the Articles of Incorporation. The Association shall have all the powers, authority and duties as may be necessary and appropriate for the management of the business and affairs of the Cleveland Place subdivision, including without limitation all of the powers, authority and duties provided for in the Colorado Common Interest Ownership Act and the Colorado Revised Nonprofit Corporation Act.

ARTICLE 3
ASSESSMENTS

- 3.1 In addition to the Assessments specified in Section 4.8 of the Declaration, The Association may assess the Members for the following:
- a. Maintenance for Common Areas within the Cleveland Place subdivision.
 - b. General maintenance of the Cleveland Place subdivision.
 - c. Liability insurance for property owned or maintained by the Association.
 - d. Liability insurance for the Officers and the Board of Directors of the Association.
 - e. Other insurance as approved by the Board of Directors of the Association.
 - f. Other services or actions required by any state, county, or other government entity.
 - g. Other matters as determined by the Members or Board of the Association.

ARTICLE 4
MEETINGS OF MEMBERS - NOTICE. QUORUMS. PROXIES. VOTING

- 4.1 Annual Meetings. The Annual Meeting shall be held once every fiscal year on a date and time as specified by the Board of Directors. The President shall preside over all meetings and shall run the meeting according to agenda. Such meetings may be held via teleconference, where a sufficient number of owners to establish a quorum, in different locations, are connected by electronic means, through audio or video, or both.
- 4.2 Special Meetings. Special Meetings of the Members may be called at any time by the President or by a majority of the Board or upon written request of Members who are entitled to vote twenty percent (20%) of all the votes of the Association.
- 4.3 Secret Ballot. At the discretion of the Board or upon the request of twenty percent (20%) of the Members present at the meeting or represented by proxy, a vote on any matter affecting the Association on which all other Owners are entitled to vote shall be by a secret ballot. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Members who are selected or appointed at an open meeting, in a fair manner, by the President of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates.
- 4.4 Notice of Meetings. Written or electronic notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing or e-mailing a copy of such notice, postage prepaid (if by mail), at least ten (10) days before such meeting to each Member entitled to vote, addressed to the Member's mailing or e-mail address. Such notice shall specify the place, day and hour of the meeting and the items on the agenda. In the case of a special meeting, the purpose of the meeting shall be specified. For the purpose of issuing such notices, the Board may establish a record date for determination of membership in accordance with the laws of Colorado. The Board may provide notice of all regular and special meetings of Members by electronic mail to all Members who so request and who furnish the Association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting, or as otherwise required by the Colorado Common Interest Ownership Act. The notice of any meeting of the Members shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices.

- 4.5 Waiver of Notice. Written waiver of notice signed by a Member or attendance at a meeting by a Member shall constitute a waiver of notice of such meeting, except where attendance is for the express purpose of objecting to the failure to receive such notice or to defects in the notice.
- 4.6 Quorum. The presence at the meeting of Members entitled to cast, or of Members holding proxies and entitled to cast, fifty (50%) of the votes of Members shall constitute a quorum for any action. If, however, such quorum is not present or represented at any meeting, the Members entitled to vote shall adjourn the meeting, from time to time, without notice other than announcement at the meeting until a quorum shall be present or be represented.
- 4.7 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary at or before the meeting of Members at which such proxy is sought to be utilized. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot and shall also cease upon attendance in person by the Member who previously gave a proxy. A proxy shall be valid only for the specified meeting. A proxy shall not be valid if obtained through fraud or misrepresentation.
- 4.8 Right to Revoke. The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation if the Secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of signature on it or about the signatory's authority to sign for the Owner. The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.
- 4.9 Voting Rights of Members. Each Lot shall be entitled to one (1) vote (i.e., one vote per Member/Owner). If title to a Lot is owned by more than one person, such persons shall collectively vote their interest in a single vote. If only one of the multiple owners is present at a meeting, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the owners.
- 4.10 Majority Vote. At any meeting of Members at which a quorum is present, the affirmative vote of Members representing one (1) vote more than fifty percent (50%) of the votes present in person or by proxy and entitled to be voted shall be the act of the Members.
- 4.11 Order of Business. The order of business at all meetings of Members shall be as follows:
- a. Roll call.
 - b. Statement of compliance with procedures for notice of meeting or waiver of notice.
 - c. Reading of minutes.
 - d. Reports of officers.
 - e. Reports of committees.
 - f. Election of Directors (annual meetings only).
 - g. Unfinished business.
 - h. New business; and
 - i. Adjournment.

ARTICLE 5
MEETINGS OF DIRECTORS – NOTICE, QUORUMS, PROXIES, and VOTING

- 5.1 Initial Board Meeting. There shall be a meeting of the Board of Directors immediately following the Annual Meeting of the Members of the Association if all elected Directors are present at the meeting, but not longer than two (2) weeks following the Annual Meeting.
- 5.2 Regular Meetings. Regular meetings of the Board of Directors shall be held from time to time, as the Board of Directors, by vote, may determine with written or e-mail notice to the general membership and at such place and hour as may be fixed, from time to time, by resolution of the Board.
- 5.3 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than seventy-two (72) hours' notice to each Director.
- 5.4 Open Meetings. All meetings (regular and special) of the Association and Board of Directors are open to every Owner of the Association, or to any person designated by a member in writing as the Member's representative. Before the Board votes on an issue under discussion, Owners or then designated representatives shall be permitted to speak regarding that issue.
- 5.5 Meetings via Teleconference. The Directors may hold special meetings, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. Any action taken by the Board at such teleconference meeting shall have the same force and effect as such action taken at a meeting at which a quorum of the Board was physically present. Any actions taken will be included in the minutes of the next meeting.
- 5.6 Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Any actions taken will be included in the minutes of the next meeting.
- 5.7 Quorum. The presence, in person or by proxy, at all meetings of the Board entitled to cast fifty percent (50%) of the votes shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting, the Director(s) entitled to vote shall adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.
- 5.8 Waiver of Notice. Before, at, or after any meeting of the Board of Directors, any Director may waive, in writing, notice of such meeting and such waiver shall be deemed equivalent to the giving and receipt of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him, except when a Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting was not lawfully called or convened.
- 5.9 Executive/Closed Door Meetings. The Board may hold an executive or closed-door session only if approved by a vote of two-thirds (2/3) or more of the Board. The Board may restrict attendance at an Executive/Closed Door Meeting to Board members and such other persons requested by the Board. The ONLY matters that may be discussed at such an executive session are:
- a. matters pertaining to employees of the Association or the managing agent's contract

or involving the employment, promotion, discipline or dismissal of an officer, agent or employee of the Association.

- b. consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client.
- c. investigative proceedings concerning possible or actual criminal misconduct.
- d. matters subject to specific constitutional, statutory, or judicially imposed requirements protecting proceedings or matters from public disclosure.
- e. any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.
- f. review of or discussion relating to any written or oral communication from legal counsel.

5.10 Attorney-Client Privilege. Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate matter, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

5.11 Conflict of Interest. If any contract, decision, or other action taken by or on behalf of the Board of Directors would financially benefit any member of the Board of Directors or any person who is 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, that member of the Board of Directors shall declare a conflict of interest for that issue.

5.12 Duty to Disclose. A Director has a duty to disclose the existence of any actual or potential conflict of interest and all material facts relating to the actual or potential conflict in an open meeting prior to any discussion or action on that issue. After making such disclosure, the Director may participate in the discussion but shall not vote on that issue.

ARTICLE 6

BOARD OF DIRECTORS

6.1 Election of the Board of Directors. The Board of Directors must be elected by a majority of the Members as set forth in Article 4. If an annual meeting of the members is not able to be conducted due to a failure to achieve quorum, and thus the election of new directors at the annual meeting is unable to take place, the directors then in office generally continue to serve on the board until successors have been formally elected and qualified (typically at the next year's annual meeting). Any vacancies on the board which were unable to be filled through membership vote at the annual meeting may generally be filled by approval of a majority of the Board.

6.2 Number of Board of Directors. The affairs of this Association shall be managed by a Board of at least three (3) Managers or Directors who shall be Members of the Association ("Board of Directors or "Board"). "Director" shall have the same meaning as "Manager," as that term is defined in the Declaration.

6.3 Term of Office of Directors. The term of office for the Board of Directors shall be staggered where one Manager will serve a two (2) year term and the other two Managers will serve a one (1) year term.

6.4 Removal of Directors & Vacancies. Directors may be removed and vacancies on the Board may be

filled as follows:

- a. By the Members. Any Director may be removed, with or without cause, at any regular or special meetings of the Members by a vote of two-thirds (2/3) or more of votes of all persons present and entitled to vote. A successor to any Director removed may be elected at such meeting to fill the vacancy created by removal of the Director. A Director whose removal is proposed by the Members shall be given notice of the proposed removal at least ten (10) days prior to the date of such meeting and shall be given an opportunity to be heard at such meeting.
- b. By the Board. Any Director who has three (3) consecutive unexcused absences from Board of Directors meetings or who is delinquent in the payment of any Assessment for more than thirty (30) days may be removed by a majority vote of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, resignation or removal of a Director by the Board, as set forth in this subsection (b), a vacancy may be declared by the Board, and the Board may appoint a successor. Any successor appointed by the Board shall serve for the remainder of the term of the Director replaced.

6.5 Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Cleveland Place HOA subdivision. The Board of Directors shall have all the powers, authority and duties granted or delegated to it by the Declaration, the Articles, these Bylaws and the Colorado Common Interest Ownership Act. These powers shall include the power of the Board to act in an emergency to protect the interests of the Association and maintain and protect the Cleveland Place HOA subdivision.

6.6 Manager. The Board of Directors may employ for the Association a Bookkeeper, Accountant and/or Manager (at a compensation established by the Board of Directors) to perform such duties and services as it shall authorize. The Board of Directors may delegate, by resolution, any of the powers and duties granted to it but, notwithstanding such delegation, shall not be relieved of its responsibility under the Declaration, the Articles or these Bylaws.

ARTICLE 7 **OFFICERS**

7.1 General. There shall be three (3) Directors of the Association who shall hold the following four (4) positions: President, Vice President, Secretary. One (1) person may hold two (2) offices, except that no person may simultaneously hold the offices of President and Secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the President. The officers shall be elected by a majority of the Board of Directors. The Board may appoint such other assistants as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board.

7.2 Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

7.3 Vacancies. A vacancy in any office, however occurring, may be filled by an affirmative vote of a

majority of members of the Board for the unexpired portion of the term.

- 7.4 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees.
- 7.5 Vice President. The Vice President shall assist the President and shall perform such duties as may be assigned to them by the President or by the Board. In the absence of the President, the Vice President designated by the Board or (if there be no such designation) designated in writing by the President shall have the powers and perform the duties of the President. If no such designation shall be made the Vice President may exercise such powers and perform such duties.
- 7.6 Secretary. The Secretary shall keep the minutes of the proceedings of the Members, executive committee (if any) and the Board. The Secretary shall see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration and as required by law. The Secretary shall be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board. The Secretary shall keep at its registered office or principal place of business a record containing the names and registered addresses of all Members and the designation of the lot owned by each Member. The Secretary shall, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board.
- 7.7 Treasurer. The Treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidence of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. The Treasurer shall receive and give receipts and acquittances for monies paid in on account of the Association and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The Treasurer shall perform all other duties incident to the office of the Treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. The Treasurer shall, if required by the Board, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of the Treasurer's duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Association. The Treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the President.

ARTICLE 8 **COMMITTEES**

- 8.1 The Board may create one or more committees of the Board and appoint one or more directors and/or Members to serve on them.
- 8.2 The creation of a committee of the Board and appointment of directors and/or Members to such committee shall be approved by a majority of Board.
- 8.3 The provisions in these Bylaws for actions taken without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees of the board and their members as well.

- 8.4 Each committee of the Board shall have the authority of the Board except that a committee of the Board shall not:
- a. Authorize payments.
 - b. Approve or propose to the Members action that is required to be approved by Members.
 - c. Elect, appoint, or remove any director.
 - d. Amend articles of incorporation; or
 - e. Adopt, amend, or repeal bylaws.

ARTICLE 9

INDEMNIFICATION

- 9.1 Definitions. For purposes of this Article 11, the following terms shall have the meanings set forth below:
- a. Proceeding. Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.
 - b. Indemnified Party. Any person who is or was a party or is threatened to be made a party to any Proceeding by reason of the fact that he is or was a director or officer of the Association or, while a director or officer of the Association, is or was serving at the request of the Association as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.
- 9.2 Indemnification. The Association shall indemnify any Indemnified Party in any Proceeding to the fullest extent permitted by law.
- 9.3 Insurance. By action of the Board, notwithstanding any interest of the Directors in such action, the Association may purchase and maintain insurance, in such amounts as the Board may deem appropriate, on behalf of any Indemnified Party against any liability asserted against him or her and incurred by him or her in his or her capacity of or arising out of his or her status as an Indemnified Party, whether or not the Association would have the power to indemnify him or her against such liability under applicable provisions of laws.
- 9.4 Right to Impose Conditions to Indemnification. The Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article 11, such reasonable requirements and conditions as to the Board may deem appropriate in each specific case and circumstances including, without limitation, any one or more of the following.
- a. that any counsel representing the person to be indemnified in connection with the defense or settlement of any Proceeding shall be counsel mutually agreeable to the person to be indemnified and to the Association.
 - b. that the Association shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the person to be indemnified; and
 - c. that the Association shall be subrogated, to the extent of any payments made by way of indemnification, to all the indemnified person's right of recovery, and that the person to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Association.

ARTICLE 10
AMENDMENT OF BYLAWS

10.1 Amendment by the Members. These Bylaws may be amended by the affirmative vote of a majority of the Members at any regular or special meeting, provided that a quorum is present at any such meeting. However, notwithstanding the foregoing, no provisions of these Bylaws may be amended by a number of Members which is less than the number of Members that is required within that particular provision to take certain action. Amendments may be proposed by the Board of Directors or by petition signed by the holders of at least a majority of the votes. A statement of any proposed amendment shall accompany the notice of any regular or special meetings at which such proposed amendment will be voted upon.

10.2 Amendment by the Board. These Bylaws may be amended by the unanimous vote of the entire Board at any regular or special meeting, provided that a quorum is present at such meeting. A statement of any proposed amendment shall accompany the notice of any regular or special Board meeting at which such proposed amendment will be voted upon.

10.3 Scope of Amendments, These Bylaws may not be amended in a manner inconsistent with the Articles, the Declaration, or any applicable provision of Colorado law.

ARTICLE 11
CORPORATE SEAL

11.1 The Board of Directors may provide a suitable corporate seal containing the name of the Association, which seal shall be in the custody and control of the Secretary. The corporate seal shall be circular and shall have inscribed thereon the name of the Association and the word "Colorado" in the circle and the word "Seal" in the middle. When so directed by the Board of Directors, a duplicate seal may be kept and used by such officer or other person as the Board of Directors may name.

ARTICLE 12
ANNUAL BUDGET AND AUDIT

12.1 Annual Budget. The Board of Directors shall prepare or cause to be prepared an annual recommended operating budget which shall be presented at the annual meeting. The proposed budget must be approved by a majority of the Members. In the event the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors. The Board will review the budget annually.

12.2 Audit. The books and records of the Association may be subject to an audit at the discretion of the Board. An audit will be required if one-third (1/3) of the Members or one-third (1/3) of the Board request an audit. The audit will be conducted pursuant to generally accepted auditing standards by an independent and qualified person selected by the Board. The person selected for the audit shall be a certified public accountant.

ARTICLE 13
ACCOUNTING RECORDS

13.1 The Association shall maintain accurate and complete accounting records in accordance with generally accepted accounting principles.

13.2 Two (2) members of the Board of Directors members shall be given access to every bank or financial account held or administered the Association.

13.3 All invoices to the Association shall be provided to the Treasurer. Two (2) members of the Board of Directors must approve each invoice before it is paid by the Association.

ARTICLE 14
COLLECTION OF UNPAID ASSESSMENTS

Assessment Obligations. All Owners are obligated to pay Assessments as established by the Board.

A. *Due Dates.* All assessments, fees and deposits charged pursuant to the authority of the Association, and other charges levied by the Association against a Lot (collectively, "Assessment" or "Assessments"), as determined by the Association and as allowed for under the Declaration, Bylaws, Articles of Incorporation, or other governing documents, shall be due and payable in full on or before the first day of each calendar quarter (i.e., January 1, April 1, July, October 1) or on such date otherwise indicated in the invoice to the Owner by the Association. Assessment of other charges not paid in full to the Association on or before the due date shall be considered past due and delinquent. Assessment or other charges not paid in full to the Association when due shall incur interest and late charges as provided below.

B. *Receipt Date.* The Association shall post payments effective the day that the payment is received by the Association.

C. *Late Charges Imposed on Delinquent Installments.* A quarterly installment of the annual assessment shall be past due and delinquent if not paid within thirty (30) days after the due date, as shown on the invoice. The Association shall impose a twenty-five dollar (\$25.00) late charge on the outstanding or past due balance then due the Association. An additional fifty-dollar (\$50.00) late charge shall accrue during each 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 ten percent (10%) 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 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 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. *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 attorneys' fees incurred in the collection of assessments or other charges due the Association from a delinquent Owner.

G. *Notice of Delinquency.* Within forty-five (45) days of the Due Date, the Association shall issue a courtesy notice (the "Notice of Delinquency") reminding such Owner the Due Date has passed and the account is late, and that an interest charge of no more than ten percent (10%) of the Assessment is then due, which the Association is authorized and directed to charge to and collect from any delinquent Owner on behalf of the Association. The Notice of Delinquency sent by the Association to the delinquent Owner shall also state:

1. The total amount due, with an accounting of how the total was determined.
2. Whether the opportunity to enter into a payment plan exists pursuant to C.R.S. § 38-33.3-316.3 and instructions for contacting the Association to enter into such a payment plan.
3. The name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger to verify the amount of the debt; and
4. That action is required to cure the delinquency and that failure to do so within thirty (30) days may result in the Owner's delinquency account being turned over to the Association's attorneys, a lawsuit being filed against the Owner, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado law.

H. *Circumstances and Terms of Payment Plan.* Unless the Owner does not occupy the Lot and has acquired the Lot because of (a) a default of a security interest encumbering the Lot or (b) foreclosure of the Association's Lien, the Association shall make a good-faith effort to coordinate with the Owner to set up a payment plan. However, in the event the Association and the Owner have previously entered into a payment plan, the Association is under no obligation to negotiate another payment plan. Any payment plan must permit the Owner to pay off the deficiency in equal installments over a period of at least six (6) months. The Owner shall sign a document describing the payment plan and the effective date of the first payment. In the event an Owner fails to comply with the terms of his or her payment plan, the Association may immediately begin pursuing legal action against such Owner. An Owner's failure to remit payment of an agreed-upon installment, or to remain current with the 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.

I. *Use of Certified Mail/Regular Mail.* In the event the Association shall cause a collection letter or notices to be sent to a delinquent Owner by regular mail, the Association may also cause, but shall not be required to send, an additional copy of that letter or notice by certified mail.

J. *Liens.* 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.

K. *Referral of Delinquent Accounts to Attorneys.* The Association may but shall not be required to refer delinquent accounts to its attorneys for collection. Upon referral to the attorneys, the attorneys shall take all appropriate action to collect the accounts referred. The Owner(s) of the Lot with the delinquent account shall be responsible for, and pay as an assessment on such Lot, any attorney's fees incurred in this instance.

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. Upon referral to a collection agency, the agency shall take all appropriate action to collect the accounts referred.

M. *Application of Payments.* All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied to payment of any and all legal fees and costs (including attorneys' fees), expenses of enforcement and collection, late charges, returned check charges, lien fees, and other costs owing or incurred with respect to such Owner pursuant to the Declaration and Rules and Regulations, prior to application of the payment to any special or regular assessments due or to become due with respect to such Owner.

N. *Ongoing Evaluation.* Nothing in this procedure shall require the Association to take specific actions other than to notify Owners of the adoption of these procedures. The Association has the option and right to continue to evaluate each delinquency on a case-by-case basis.

O. *Voting Rights.* In addition to the steps outlined above, the Association may elect to suspend the rights of any Owner whose account is past due at the time of such voting.

ARTICLE 15

ENFORCEMENT OF DECLARATION 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, 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 Executive Board.

B. *Notice of Violation.* After the initial warning letter, should the Owner not cure the violation to the satisfaction of the Board, a Notice of Violation of any provisions of the Declaration, Bylaws or Rules shall be provided to the applicable Owner. The notice shall describe the nature of the violation, the fine and notice of the opportunity for a hearing and shall further state that the Board may seek to protect its rights as they are specified in the governing legal documents.

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 personal delivery to the Owner; or by U.S. Mail, postage prepaid, addressed to the last registered address of the Owner 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 will result in a fine per day and/or occurrence according to the following schedule:

| | |
|---|----------------|
| First violation: | Warning letter |
| Second violation (Of same covenant or rule): | \$50.00 |
| Third violation (Of same covenant or rule): | \$200.00 |
| Fourth and subsequent violations (Of same covenant or rule): | \$500.00 |

OR a monthly fine to be imposed at the discretion of the Board if the nature of the violation is continuous.

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

After the violation has been cured by the Owner to the satisfaction of the Board, the per day fine will cease to accrue and remaining any unpaid balance, will be subject to a one and one-half (1 ½ %) monthly finance charge and may begin the date the charges are imposed.

E. *Request for Hearing.* In the event any Owner desires to attend a hearing or Board meeting to challenge or contest any alleged violation and possible fine, said Owner must, within 14 days from receipt of the Notice of Violation, 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 shall determine if there was a violation, and if so, may continue to assess a reasonable fine within the guidelines contained in these Rules, all within 60 days of the expiration of the aforementioned 14-day period. 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. 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.

H. *Conflicts*. It shall be incumbent upon each Board member to decide 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 regarding 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 way 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 relying during 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 members of the Association.

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. *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 provisions by of the Documents 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.

ARTICLE 16

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; and
 - p. All written communications within the past three years to all owners generally as owners.
- 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."

ARTICLE 17
RESERVE REQUIREMENTS and INVESTMENT OF RESERVE FUNDS

The Cleveland Place HOA has no need for a Reserve Study or Reserve funding as there are no major components that require funding. Due to this The Cleveland Place HOA has no need, requirement or policy for the investments of Reserve Funds.

ARTICLE 18
ADOPTION AND AMENDMENT OF POLICIES, PROCEDURES AND RULES

The Executive 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.

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.

ARTICLE 19

RESOLVING DISPUTES BETWEEN ASSOCIATION AND OWNERS

The following policy regarding Alternative Dispute Resolution is applicable 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:

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 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 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.

ARTICLE 20

CONFLICTS BETWEEN DOCUMENTS

In the event of any conflict or inconsistency between any provision of these Bylaws and the Declaration, the provisions of the Declaration shall govern and control and these Bylaws shall be amended to the extent necessary to conform to the Covenants.

ARTICLE 21

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 always in effect.

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.

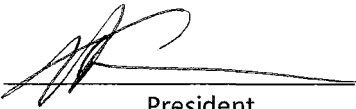
D. The Provisions of these Policies and Procedures shall be deemed to be independent and several, and the invalidity of anyone or more of the provisions hereof, or any portion thereof, by judgment or decree of any court of competent jurisdiction, shall in no way affect the validity or enforceability 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 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 30 day of March, 2022 by resolution of the Board of Directors of the CLEVELAND PLACE HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation.

CLEVELAND PLACE HOMEOWNERS ASSOCIATION

By: 
President

ATTESTED: By: 
Secretary