

**GOVERNANCE POLICIES AND PROCEDURES
OF THE SPRUCE MOUNTAIN OWNERS ASSOCIATION, INC.,
A COLORADO NONPROFIT CORPORATION**

These Governance Policies and Procedures of Spruce Mountain (“**Policies**”) have been adopted and implemented to protect the investment of the members and to enhance the values of the properties subject to regulation by Spruce Mountain Owners Association, Inc., a Colorado non-profit corporation (“**Association**”).

These Policies are promulgated in accordance with the authority of the Association as provided for in the governing documents for Spruce Mountain subdivision (“**Community**”), which include, without limitation, the Declaration, Plat, Articles of Incorporation, Bylaws, Rules and Regulations and Guidelines for the Community (collectively, “**Governing Documents**”) as the same may be amended or supplemented from time to time.

In the event of a conflict between these Policies and the terms and conditions of the Declaration, the terms and conditions of the Declaration shall control.

1. **BOARD GOVERNANCE AND COMPOSITION**

- The affairs of most nonprofit corporations are managed by its Board of Directors composed of uncompensated, volunteer leaders (each, a “**Director**”). Although the Board has the power to delegate authority, the ultimate responsibility for the governance of the corporation resides with the Board of Directors.
- Directors should be aware that the organization’s assets are dedicated to the purposes set out in the organization’s articles of incorporation and must be treated with a high degree of care. Directors must protect the interest of the organization and refrain from doing anything to cause injury to the organization or to deny it the advantage of their skills and abilities.
- The Board of Directors acts only as a group at duly-convened meetings at which a quorum is present - i.e., participates in person, by video conference or telephonically - or without a meeting by unanimous written consent of all the Directors, provided the Directors at a duly convened meeting would have had the power to take such action.
- The bylaws typically state the number of Directors required to have a quorum. For purposes of calculating the quorum, the organization considers the number of individuals elected to and serving as Directors at the time of any meeting. Vacancies of Directors which could have been but have not been filled are not considered when determining the quorum. Unless the articles or bylaws specifically provide for it, Directors may not vote by proxy.
- No individual Director, as such, has the power to control, make decisions for or act on behalf of the organization. An informal consensus of the Directors is not valid unless approved (before action is taken) or ratified (after action is taken) by the Board. When a quorum participates in a meeting, action by the Board usually requires only a simple majority vote of the Directors present, though a greater vote may be required by Robert’s Rules of Order or other controlling authority, such as the state nonprofit corporation act, the articles of incorporation or the bylaws.
- A Director may resign from the Board of Directors at any time by delivering written notice to the chair of the Board or to the secretary. Resignation is effective upon receipt of the notice or at such future time as is stated in the notice. A Director may be removed from office at a meeting specially

called for that purpose with or without cause by such vote as would suffice for his or her election.

2. DUTIES AND RESPONSIBILITIES OF DIRECTORS

The obligations of Directors can be divided into three broad categories: (a) a duty of loyalty; (b) a duty of care; and (c) duty of obedience.

- **Duty of Loyalty.** The duty of loyalty requires Directors to put the interest of the organization above any individual interests. It incorporates the basic principle of corporate law that Directors must not use their position for personal profit or other personal advantage. Directors must (1) avoid conflicts of interest, (2) ensure that any dealing between themselves and the organization is fair, (3) avoid preempting any business opportunity available to the organization, and (4) maintain the confidentiality of information made available to them as Directors until such time as that information has become a matter of public record or common knowledge. Directorship is a responsibility, not just an honor. A Director may make a valuable contribution through relevant inquiry and focused discussion of proposals initiated by management. However, lack of objectivity and putting personal status and aspirations ahead of the needs of the organization may result in the misdirection of Board activity. Directors should be prepared to oppose, if necessary, the position of dominant members of the Board. An individual should seek to become, or consent to be, a Director only if he or she is sufficiently qualified and is prepared to devote the attention and effort necessary to fulfill the substantial responsibilities involved.

- **Duty of Care.** The duty of care requires Directors to perform their duties, including service as a member of any committee, in good faith, in a manner they reasonably believe to be in the best interest of the organization, and with the care an ordinarily prudent person in a like position would use under similar circumstances.

- The Directors' primary responsibility is to maintain reasonable vigilance over corporate transactions. The Board of Directors is not expected to operate the organization, but it is responsible for providing oversight of the operation of the organization. Actual operation of the organization is the function of the president (or the executive Director or other chief executive officer) and the staff. Directors must, of course, pay attention to the affairs of the organization. In general, this obligation can be met by (1) regular attendance at meetings of the Board and any committees of which they are a member, and (2) reviewing information regarding matters requiring Board action. (Since a great deal of material may be supplied to the Directors for their general information, special attention should be given to the budget and other communications directed to them by the president or secretary, to materials supplied to any committee they are on, and to agenda materials prepared for meetings.) Directors should also try to be informed on important issues related to the organization's mission.

- Directors should use common sense, practical wisdom and their informed judgment in fulfilling their responsibilities. The nature and extent of the role played by an individual Director will, as a matter of law, vary depending on the special background and qualifications of the Director. For example, if a Director has experience in financial affairs, he or she is expected to bring that experience to bear in making decisions as a Director and may be expected to exercise greater skill with regard to financial matters than a Director who has no special experience in that area. This does not mean the Director with special qualifications has special duties; merely that in the exercise of duties which are common to all of the Directors, Directors with special skills and experience must utilize those special skills and experience in reaching decisions. Thus, for example, a Director inexperienced in financial affairs might accept and act on a financial report without liability even if the report turned out to be erroneous while another Director who has more knowledge or expertise in financial affairs might be found negligent in failing to note the errors in the report and bringing those errors to the attention of the full Board.

○ Directors can usually fulfill their responsibility by reviewing periodic reports from the president and staff. In general, Directors are not personally responsible for the actions or omissions of the president and the staff if the president and staff have been prudently selected. However, the Directors are required to take corrective action in the event that the president or staff takes action which is not in the organization's best interest. Directors may rely upon financial statements presented to them as correct by appropriate officers of the organization or as set forth in reports or statements made by or certified by the organization's independent certified public accountants. A Director is obligated to study and understand to the best of the Director's ability the organization's financial condition and to review submitted materials. If a Director has knowledge that such materials are inaccurate or incomplete but goes ahead and relies upon them, he or she is not exercising good faith. A Director must make some reasonable, critical inquiry as to whether there is any basis to disbelieve information that is being presented. A Director has the right to inspect all the books and records of the organization and to receive reports from its officers, employees and agents. Such requests for information or inspection should be directed to the president. Refusal to honor a Director's reasonable request for information should be reported to the chair. In a severe situation, a Director may have an obligation to bring certain matters to the attention of state regulatory agencies or officials; but, before taking such extreme action, a Director should first discuss the matter with the chair, the president, or the organization's legal counsel.

- **Duty of Obedience.** Directors are obliged to follow the Association's Governing Documents, including these policies, applicable Colorado law, and any policies that have been adopted by the Board. Directors can meet this duty by being familiar with the Governing Documents. They should seek legal advice when appropriate before taking action as a Board.

3. **DIRECTOR CONFLICT OF INTEREST.**

- **General Duty.** The Board of Directors shall use its commercially reasonable and good faith efforts at all times to make decisions that are consistent with high principles, and to protect and enhance the value of properties of the members and Association. All Directors shall exercise their power and duties in a commercially reasonable and good faith manner and in the best interest of the Association, consistent with the so called "business judgment rule". All Directors shall comply with all lawful provisions of the Declaration and the Association's Articles, Bylaws, and Rules and Regulations. As of the date of adoption of this Policy, Conflicting Interest Transactions of Directors and officers of the Association are governed by C.R.S. §7-128-501, pursuant to C.R.S. §38-33.3-310.5, and the provisions of this Policy are intended to comply with such statutes.

- **Definition.** A "**Conflicting Interest Transaction**" is defined as a contract, transaction or other financial relationship between the Association and a Director of the Association, or between the Association and a party related to a Director, or between the Association and an entity in which a Director of the Association is a Director or officer or has a financial interest.

- **Disclosure of Conflicting Interest Transaction.** Any Conflicting Interest Transaction on the part of any Director shall be verbally disclosed to the other Directors in open session at the first open meeting of the Board of Directors at which the interested Director is present prior to any discussion or vote on the matter. After disclosure, the interested Director may participate in the discussion of the matter, and may vote on the matter, in compliance with the Director's duties to the Association. The minutes of the meeting shall reflect the disclosure made, the composition of the quorum and record who voted for and against.

- **Failure to Disclose Conflicting Interest Transaction.** No Conflicting Interest Transaction entered into in violation of this policy shall be void or voidable or be enjoined, set aside, or

give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the Association, solely because the Conflicting Interest Transaction involves a Director or a party related to a Director or an entity in which a Director 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 Association's 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:

- 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 and the Board of Directors in good faith authorized, 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
- 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 of the Association 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
- The Conflicting Interest Transaction is fair as to the Association.

4. **PUBLIC STATEMENTS.** The complexities of modern public relations, the complex interrelationships of various issues, and the importance of consistent policy expression suggest that, whenever possible, Directors should contact the president before making any public statements as a Director of the organization. Typically Directors are not authorized to make public statements on behalf of the organization. Directors should be mindful that when they are a member of a Board, what they may consider to be their personal comments will, if made publicly, most likely be attributed to the organization.

5. **DIRECTOR'S LIABILITY.**

- A Director who behaves fairly and honorably and who, acting in good faith, is diligent in discharging his or her duties is not likely to be subjected to personal liability. Courts recognize that business judgment inevitably involves risk evaluation and that Directors are not normally committed to full-time involvement in the affairs of the organization. Courts further recognize that Directors must make important decisions which, in retrospect, may prove to be erroneous. If it turns out the decision of the Board was a mistake, the question of whether or not the Directors have been careless is decided in terms of the facts as they were or reasonably appeared to be when the decision was made and not in terms of 20-20 hindsight.

- Directors are generally protected from honest mistakes if they (1) exercised their good faith judgment without carelessness, (2) acted within the power granted to the organization by state law and the organization's articles of incorporation and bylaws, and (3) executed such judgment after due consideration of what they reasonably believed to be the relevant facts. If, however, a Director violates his or her duty of loyalty to the organization, a court may hold the Director responsible for such willful neglect.

- A Director who votes for or concurs in an improper action of the Board of Directors may be jointly (with the other Directors) and severally (individually) liable. Making sure that the written record indicates good faith is one method of protection. When a matter in which any doubt regarding personal conduct of a Director may arise, a Director should insist that his or her views and acts be reflected in the minutes.

- The absence of a Director at a Board meeting usually does not excuse the Director from personal liability for actions taken at the meeting. If the Director is absent from a Board meeting, he or she is responsible for obtaining the minutes of the meeting, and if he or she objects to any action taken, promptly dissent, preferably in writing, to the entire Board. If this is not done, the Director may be deemed to have acquiesced in the action.

6. RIGHT TO INDEMNIFICATION.

- The bylaws of the Association sometimes authorize the Association, under certain circumstances, to indemnify its officers and Directors for costs and expenses incurred by them as a result of legal proceedings brought by a third party. The right to indemnification is governed by statute, however, and the organization may indemnify its officers and Directors only to the extent permitted by the state law. A bylaw or agreement which extends this right is unenforceable. In the absence of any right to indemnification in the organization's bylaws or an agreement entered into between the organization and each Director, a Director's right to indemnification is dependent on state law.

- Many organizations also maintain a fairly broad coverage association professional liability insurance policy that includes Directors and officers liability coverage. Directors may also want to consult with their personal insurance agent to see if a homeowner's umbrella liability policy provides any coverage for their actions as a nonprofit Director.

7. CONDUCT OF MEETINGS. Meetings shall be conducted in accordance with all applicable provisions of the Colorado Nonprofit Corporation Act (C.R.S. § 7-135-100 *et. seq.*) and the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 *et. seq.*), and in accordance with Roberts Rules of Order as such rules are applied to small Associations that do not need full parliamentary procedure. With respect to Lot Owner participation in a Board meeting, after a motion and second has been made on any matter to be discussed, but prior to a vote by the Directors, Owners present at such time shall be afforded an opportunity to speak on the motion as follows: The Chair will ask those Owners present to indicate by a show of hands who wishes to speak in favor or against the motion. The Chair will then determine a reasonable number of persons who will be permitted to speak in favor of and against the motion and for how long each person will be permitted to speak. The Chair shall also announce the procedure for who shall be permitted to speak if not everyone desiring to speak will be permitted to speak. Following Owner input, the Chair will declare Owner input closed and there shall be no further Owner participation on the motion at hand unless a majority of the Board of Directors votes to open the discussion to further Owner participation.

8. COLLECTION POLICIES

- **Invoices; Due Date.** The Association may send assessment invoices by mail or email at the address on file with the Association. All assessments shall be due as determined by the Board of Directors, but in no event less than ten (10) business days from the date invoiced. Failure to receive an invoice does not relieve an owner of his or her obligation to pay the assessment.

- **Application of Payments.** The Association will apply Owner payments of outstanding balances first to collection costs, then to interest, then to the most recent invoices for assessments, and finally to the oldest assessment balance.

- **Collection of Less Than \$250.** For outstanding balances less than \$250 that are thirty (30) days or more past due, the Association may send the delinquent owner a letter advising that the amount is thirty (30) days past due, that interest is accruing on the balance, and requesting payment. The

letter shall also advise that, if not paid, the amount past due will be added to the delinquent owner's next statement with interest. The Association will not charge the delinquent owner for this letter.

• **Collection of \$250 or More.** For outstanding balances of \$250 or more, the Association has adopted the following collection policy.

○ For balances that are thirty (30) days or more past due, the Association may send a collection letter to the delinquent owner advising that the amount is thirty (30) days past due, that interest is accruing on the balance, and requesting payment. There is no charge for this letter.

○ For balances that are sixty (60) days or more past due, the Association may send a collection letter to the delinquent owner advising that the amount is sixty (60) days past due, that the Association intends to record a lien against that owner's lot, that there is an administrative charge for the letter and that there will be an administrative charge for recording the lien. The Association will invoice this charge to the delinquent owner.

○ For balances that are more than ninety (90) days past due, the Association may record a lien against the delinquent owner's lot. If the Association records a lien, then the Association will send a copy to the delinquent owner via certified mail. The Association will invoice the administrative and legal charges for recording the lien and sending the certified mailing to the delinquent owner. The Association may also notify mortgagees of the lot of the delinquency and request payment.

○ For balances that are more than one hundred twenty (120) days past due, after notice to the delinquent owner and an opportunity to be heard before the board, the board may:

▪ cause the total amount of such delinquent Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable, and/or

▪ file a foreclosure action against the delinquent Owner's lot and file suit against the delinquent Owner personally for collection of all outstanding amounts.

○ **Returned Checks.** There is a \$25 charge for returned checks.

○ **Interest.** All amounts past due to the Association shall bear interest at eighteen percent (18%) *per annum*.

○ **Attorneys Fees and Costs of Collection.** Delinquent owners are responsible for payment to the Association of all costs of collection, including the costs of collection letters, charges by the Association's manager, reasonable attorneys fees and collection agency fees.

○ **Association Good-Faith Effort to Coordinate a One-Time Payment Plan.** In the course of collecting past-due assessments, the Association shall make a good-faith effort to coordinate with the delinquent owner to set up a one-time payment plan in accordance with these policies. To this end, the Association shall refer to the ability to enter into a one-time payment plan in its 30, 60, and 90-day late letters. The Association is not obligated to offer a payment plan to a delinquent owner who has previously entered into a payment plan.

○ **Notice Prior to Referring for Collection Action.** Prior to using a collection agency (for these purposes, the association's manager is not a collection agency) or taking legal action to collect unpaid assessments, including recording lien, the Association shall send the delinquent owner a notice stating:

- determined;
- The total amount due as of the date of the notice and how it was determined;
 - Offering the delinquent lot owner one-time opportunity to enter into a 6-month payment plan;
 - Listing the legal remedies, including foreclosure, available to the Association;
 - Instructions (including the name and contact information) for communicating with the Association's manager to a) request a copy of the lot owner's ledger to verify the amount of the past-due amounts, or b) submit a request for a payment plan;
 - That "action is required to cure the delinquency and that failure to do so within thirty (30) days may result in the 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 lot owner's property, or other remedies available under Colorado Law";
 - The method by which the owner's payments may be applied;
 - The legal remedies available to the Association to collect on the delinquent account under the governing documents and Colorado law.

○ **Owner Request for One-Time Payment Plan.** A delinquent owner who seeks to enter into a payment plan with the Association as set forth herein shall deliver a written request to the Association's manager via pre-paid U.S. mail, return receipt requested, or via courier such as Fedex with signature required.

○ **Contents of One-Time Payment Plan.** Minimally, the one-time payment plan offered by the Association to the delinquent owner shall:

- Permit the delinquent owner to payoff the past-due assessments in equal installments over at least a 6-month period;
- Not waive interest on past-due amounts, which shall continue to accrue and be part of the payment plan;
- Not waive collection charges or attorneys' fees;
- Require the delinquent owner to remain current on regular assessments as they come due during the period of the payment plan ("assessments" in this context include regular and special assessments and associated fees, charges, late charges, attorney fees, fines and interest charged);
- Provide that if the delinquent owner fails to comply with the plan, the Association may pursue collection;
- Be formally approved by the Board on an individual basis.

○ **Failure to Comply With Payment Plan.** If the delinquent owner fails to comply with the approved payment plan, including by failing to remit payment of an agreed-upon installment or to remain current with regular assessments (which includes regular and special assessments

and any associated fees, charges, late charges, attorney fees, fines and interest charged) as they come due during the payment plan period, then the Association may pursue legal action against the delinquent owner.

- **Certificate of Status of Assessment.** The Association shall furnish to an Owner or such Owner's designee upon written request, first class postage prepaid, return receipt, to the Association's agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's property for a \$50.00 fee.

- **Bankruptcies and Foreclosures.** Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any lot within the Association, the manager or president shall notify the Association's attorney of the same and turn the account over to the Association's attorney, if appropriate

- **Judicial Foreclosure.** The Association may choose to foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment. The purpose of foreclosing is to obtain payment of all assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action. The Association shall not foreclose its lien for past-due assessments unless a) the total amount past due is at least equal to six (6) months of regular assessments, and b) the Board has formally approved the foreclosure action of that lot on an individual basis.

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

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

9. INSPECTION AND COPYING OF ASSOCIATION RECORDS.

- **RECORD RETENTION.** The Association shall permanently retain the following records as required by Colorado law:

- Records specifically defined in the association's declaration or bylaws;
- Records the association is required to disclose within 90 days after the end of the fiscal year as required by CCIOA;
- Detailed records of receipts and expenditures affecting the operation and administration of the association;
- Records of claims for construction defects and amounts received pursuant to settlement of those claims;
- Minutes of all meetings of its owners and board, a record of all actions taken by the owners or board without a meeting, and a record of all actions taken by any committee of the board;
- Written communications among, and votes cast by, board members that are: (i) directly related to an action taken by the board without a meeting pursuant to the Colorado Revised Nonprofit

Corporation Act; or (ii) directly related to an action taken by the board without a meeting pursuant to the association's bylaws;

- A list of the 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;
- The association's current declaration, covenants, bylaws, articles of incorporation, rules and regulations, responsible governance policies and other policies adopted by the board;
- Financial statements for the past 3 years and tax returns of the association for the past 7 years;
- A list of the names, email addresses and physical mailing addresses of the current board members and officers;
- The most recent annual report (if any) delivered to the Secretary of State;
- Financial records sufficiently detailed to enable the association to provide an owner with a written statement stating the amount of unpaid assessments currently levied against the owner's lot;
- The association's most current reserve study (if any);
- Current written contracts to which the association is a party and contracts for work performed within the past 2 years;
- Records of board or committee actions to approve or deny any requests for design or architectural approval from owners;
- Ballots, proxies and other records related to voting by owners for 1 year after the election, action or vote;
- Resolutions adopted by the board relating to the characteristics, qualifications, limitations, and obligations of members;
- All written communications within the past 3 years sent to all owners.

• **INSPECTION/COPYING ASSOCIATION RECORDS.** An Owner or his/her authorized agent is entitled to inspect and copy any of the books and records of the Association, subject to the exclusions, conditions and requirements set forth below:

- The inspection and/or copying of the records of the Association shall be conducted during the regular business hours of 9:00 a.m. to 4:00 p.m; at the offices of the Association's manager, from time to time;
- The Owner shall give the Association's manager a written demand, stating the specific Records for which the inspection and/or copying is sought, at least ten days before the date on which the Owner wishes to inspect and/or copy such records;
- Inspections may be made by the Owner or a duly appointed agent, for which a written authorization is presented to the Association.

○ The Association reserves the right to have a third party present to observe during any inspection of record by an Owner or the Owner's representative.

○ No Owner shall remove any original book or record of the Association from the place of inspection nor shall any Owner alter, destroy or mark in any manner, any original book or record of the Association.

○ Nothing contained herein shall be construed to require the Association to create records that do not exist or compile records in a particular format or order.

• **The following Records may be withheld from copying and inspection:**

○ Architectural drawings, plans, and designs, unless released upon the written consent of the legal owners of the drawings, plans, or designs;

○ Contracts, leases, bids or records related to transactions to purchase or provide goods or services *that are currently in or under negotiations*;

○ Communications with legal counsel that are otherwise protected by attorney-client privilege or the attorney work product doctrine;

○ Disclosure of information in violation of law;

○ Records of an executive session of an HOA board;

○ Records relating to or concerning individual lots other than those of the requesting owner;

○ The names and physical mailing addresses of lot owners if the lot is a time-share lot.

• **The following Records must be withheld from copying and inspection:**

○ Personnel, salary, or medical records relating to specific individuals; or

○ Personal identification and account information of members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers.

• **USE OF RECORDS.** Association records shall not be used by any Owner for:

○ Any purpose unrelated to an Owner's interest as an Owner;

○ The purpose of 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;

○ Any commercial purpose;

○ For the purpose of giving, selling, or distributing such Association records to any person; or

○ Any improper purpose as determined in the sole discretion of the Board.

- **FEES/COSTS.** Any Owner requesting copies of Association records shall be responsible for all actual costs incurred by the Association for the costs of labor and material for gathering and copying the Records. The Association may require prepayment of the actual cost of the requested Records. Failure to pay such prepayment of costs shall be valid grounds for denying an Owner copies of such Records. If after prepayment it is determined that the actual cost was more than the prepayment, Owner shall pay such amount prior to delivery of the copies. If after prepayment it is determined that the actual cost was less than the prepayment, the difference shall be returned to the Owner with the copies. There shall be no cost to any Owner accessing records which are required to be disclosed by Colorado law at no cost to Owners.

- **USE OF MEMBERSHIP LISTS**

- Without the consent of the board of directors, a membership list (or any part of that list) may not be obtained or used by any person for any purpose unrelated to a lot owner's interest as a lot owner.

- A membership list may not be used to solicit money or property from owners, *unless* that money or property is used solely to solicit the votes of the lot owners in an election to be held by the association.

- A membership list may not be used for any commercial purpose.

- A membership list may not be sold to or purchased by any person.

10. **ENFORCEMENT. DISPUTE RESOLUTION.**

- **Reporting Violations.** Complaints regarding alleged violations of the Governing Documents may be reported by an Owner or resident within Association, a group of Owners or residents, the Association's management company, Board member(s) or committee member(s) by submission of a written complaint.

- **Complaints.**

- Complaints by Owners or residents shall be in writing and submitted to the Board of Directors through the Association's manager. The complaining Owner or resident shall have observed the alleged violation and shall identify the complainant ("**Complainant**"), the alleged violator ("**Violator**"), if known, and set forth a statement describing the alleged violation, referencing the specific provisions which are alleged to have been violated, when the violation was observed and any other pertinent information. Non-written complaints or written complaints failing to include any information required by this provision may not be investigated or prosecuted at the discretion of the Association.

- Complaints by a member of the Board of Directors, a committee member, or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed by the Director or Manager.

- **Investigation.** Upon receipt of a complaint by the Association, if additional information is needed, the complaint may be returned to the Complainant or may be investigated further by the Association's manager or a member of public safety staff.

- **Initial Warning Letter.** If a violation is found to exist, a warning letter shall be sent to the Violator explaining the nature of the violation. The Violator will have fifteen (15) days from the date of the letter to come into compliance. With respect to matters which are an immediate nuisance or capable of immediate cure, the Violator may be given such shorter period of time to come into compliance and the Association's manager or public safety staff may reasonably determine.

- **Continued Violation After Initial Warning Letter.** If the alleged Violator does not come into compliance within the period of time stated in the first warning letter, this will be considered second violation for which a fine may be imposed following notice and opportunity for a hearing. A second letter shall then be sent to the alleged Violator, providing notice and an opportunity for a hearing, and explaining if a violation is found to exist, a fine may be imposed pursuant to this Policy. The letter shall further state that the alleged Violator is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing within ten (10) days of the date on the second violation letter. If the alleged Violator does not timely request a hearing, he or she shall be deemed to have waived any and all rights to a hearing with respect to the matter.

- **Continued Violation After Second Letter.** If the alleged Violator does not come into compliance within the later of thirty (30) days of the second letter, or, in the event the alleged Violator has requested a hearing after receipt of the second letter, thirty (30) days after that hearing if the merits of the matter are determined against the alleged Violator at the hearing, this will be considered a third violation for which a fine may be imposed. A third letter shall then be sent to the alleged Violator, explaining that a violation has been found to exist, and that a fine is imposed pursuant to this Policy. The alleged Violator shall not be entitled to advance notice of the fine or an opportunity for a hearing because, in connection with delivery of the second letter to the Violator, Violator shall have either not requested a hearing and therefore waived any right thereto, or shall have had a hearing at which the merits of the matter were determined against the alleged Violator.

- **Notice of Hearing.** If a hearing is requested by the alleged Violator, the Board, committee or other person conducting such hearing as may be determined in the sole discretion of the Board (the "**Hearing Panel**"), may serve a written notice of the hearing to all parties involved at least ten (10) days prior to the hearing date. The Hearing Panel must be composed of "**Impartial Decision Makers**". An Impartial Decision Maker but must be a person who does not receive any greater benefit or detriment from the outcome of the hearing than any other member of the Association.

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

- **Failure to Timely Request Hearing.** If the alleged Violator fails to request a hearing within ten (10) days of any letter, or fails to appear at any hearing, the Hearing Panel may make a decision with respect to the alleged violation based on the Complaint, results of the investigation, and any other available information without the necessity of holding a formal hearing if a violation is found to exist, the alleged Violator may be assessed a fine pursuant to these policies and procedures.

- **Notification of Decision.** The decision of the Hearing Panel, shall be in writing and provided to the Violator and Complainant within ten (10) days of the hearing, or if no hearing is requested, within ten (10) days of the final decision.

- **Fine Schedule.** The following fine schedule has been adopted for all recurring covenant violations:

- (a) First violation: Warning letter
- (b) Second Violation (of same covenant or rule): \$500.00
- (c) Third Violation (of same covenant or rule): \$1000.00

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

- **Waiver of Fines.** The Board may waive all, or any portion, of the fines if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Violator coming into and staying in compliance with the Articles, Declaration, Bylaws or Rules.

- **Other Enforcement Means.** This fine schedule, and enforcement process is adopted in addition to all other enforcement means which are available to the Association through its Declaration, Bylaws, Articles of Incorporation and Colorado law. The use of this process does not preclude the Association from using any other enforcement means.

- **DRB Violations.** Notwithstanding any provisions contained in this Resolution, in the event of any specific violations of DRB rules and regulations or design guidelines, then enforcement provisions of the design guidelines or DRB rules and regulations shall apply if they are inconsistent with the provisions of this Resolution.

- **Intent to Avoid Litigation.** The Association, its officers, directors and committee members, all persons subject to the Declaration including Owners, and any person not otherwise subject to the Declaration who agrees to submit to this Policy (collectively, "**Bound Parties**") agree to encourage the amicable resolution of disputes involving Association, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described herein ("**Claims**") prior to filing suit in any court.

- **Claims.** Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents shall be subject to the provisions of this Section. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

○ Any suit by the Association against any Bound Party to enforce the provisions of the Declaration relating to Assessments and the collection of Assessments.

○ Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the architectural standards and use restrictions and rules;

○ Any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

○ Any suit in which any indispensable party is not a Bound Party; and

○ Any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required below.

• **Mandatory Procedures.**

○ **Notice.** Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (collectively, the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), stating plainly and concisely:

i. The nature of the Claim, including the Persons involved and Respondent's role, in the Claim;

ii. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

iii. Claimant's proposed remedy; and

iv. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

○ **Negotiation and Mediation.**

i. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation.

ii. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of a reputable and knowledgeable mediation group providing such services in Ouray and/or Montrose County, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Ouray and/or Montrose County, Colorado area.

iii. If Claimant does not submit a claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have

waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

iv. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“**Termination of Mediation**”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that the mediation was to be mediated.

v. Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand (“**Settlement Demand**”) to the Respondent and the Respondent shall make a final written settlement offer (“**Settlement Offer**”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

vi. If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Parties may proceed with litigation or, if mutually agreed upon by the Parties, the Parties may proceed with Arbitration as provided for below.

- **Final and Binding Arbitration.** If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, with the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth below.

- If agreed upon by the Parties, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the rules of arbitration as may be required by the agency providing the arbitrator. The arbitrator shall be a single arbitrator to be appointed by the Parties: If the Parties are unable to agree upon an arbitrator within thirty (30) days of the Claim being submitted to arbitration, a sitting judge for the District Court of Ouray and/or Montrose County, Colorado shall appoint a qualified arbitrator upon application of a Party. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration (“**Arbitrator Disclosure**”). If any Party objects to the service of any arbitrator within fourteen (14) days after receipt of that Arbitrator’s Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant. This subsection is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (“**Award**”) 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.

- If the Parties do not agree to arbitration, then the Claimant may proceed with litigation in a manner provided for by applicable law and the Declaration.

- **Enforcement of Resolution.** After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative

proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award including, without limitation, attorneys' fees and court costs.

11. **RESERVE FUND AND RESERVE STUDY POLICIES.** Reserve funds may be held either in a savings deposit account or certificate of deposit at the discretion of the Association's manager after consultation with the board president. The Association will provide for the regular maintenance and repair of common elements through its regular annual operating budget. At least every three years the Board will consider whether to conduct an internal reserve study for those portions of the community that the Association will eventually be responsible for replacing. Such reserve study shall:

- List the major improvements for which the Association is responsible
- Assign to each improvement an estimated useful life based on information available to the board, including a physical inspection where possible and appropriate
- Assign to each improvement an estimated replacement cost in current dollars
- Assess at least 5% of such estimated replacement cost each fiscal year and deposit such assessments in the Association's reserve fund

To the extent that there are insufficient operating funds or reserve funds available to pay for a necessary repair or replacement, then the Association will fund such repair or replacement through a special assessment to the owners or an association loan from reserves.

12. **MISCELLANEOUS.**

- **Conflict of Documents.** In the event of a specific conflict between the Governing Documents and these Policies, the Governing Documents shall prevail.

- **Email Notices.** Notices and invoices may be sent by the Association to Owners via email unless the Owner requests a different method.

- **Modification, Amendment, Repeal, Re-enactment.** Notwithstanding anything to the contrary contained in these Policies, the Association hereby reserves the right, at any time and from time to time hereafter, to modify, amend, repeal and/or re-enact these Policies. In order to encourage Owner participation in the development of such Policies and to insure that such Policies are necessary and properly organized, the Board shall follow the following procedures when adopting any Policy:

- **Drafting Procedure.** The Board shall consider the following in drafting the Policy: (a) whether the governing documents or Colorado law grants the Board the authority to adopt such a Policy; (b) the need for such Policy based upon the scope and importance of the issue and whether the governing documents adequately address the issue; and (c) the immediate and long-term impact and implications of the Policy.

- **Notice and Comment.** A copy of the proposed Policy shall be provided to all Owners and Owners shall, be allowed a minimum of thirty (30) days to provide comment and/or feedback on the proposed Policy. Actions regarding Policies shall also be listed on the agenda for the Board

meeting prior to adoption by the Board and any Owner who wishes to comment on the proposed Policy changes shall be afforded such opportunity in compliance with Colorado law.

○ **Emergency.** The Board may forego the notice and opportunity to comment in the event the Board determines in its sole discretion that providing notice and opportunity to comment is not practical given the emergency nature of such Policy.

○ **Adoption Procedure.** After the period for Owner comment expires, the Board may adopt, amend, modify, repeal or re-enact any Policy by majority vote. Upon adoption, amendment, modification, repeal or re-enactment of a Policy, the Policy or notice of such Policy (including the effective date) shall be provided to all Owners by any reasonable method as determined by the sole discretion of the Board.

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

• **Definitions.** Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration and Bylaws shall have the same meaning herein.

• **Supplement to Law.** The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration, Bylaws, and the law of the State of Colorado governing Association.

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

• **Severability.** The provisions of these Policies shall be deemed to be independent and several, and the invalidity of any one 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.

• **Construction.** 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.

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

APPROVAL AND EXECUTION

Spruce Mountain Owners Association, Inc.,
a Colorado non-profit corporation

By: Ronald Kurucz
Printed Name: RONALD KURUCZ
Title: PRESIDENT