

**POLICIES AND PROCEDURES**

**OF**

**THE**

**RIVERWALK CRYSTAL BUILDING**

**ASSOCIATION**

## **RECITALS**

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

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

**WHEREAS**, the following policies and procedures have been duly adopted by The Riverwalk Crystal Building Association (the “Association”) at a regular meeting of the Board of Directors.

## **POLICIES AND PROCEDURES**

### **I. Collection of Unpaid Assessments**

The Association has adopted the following procedures and policies for the collection of assessments and other charges of the Association.

A. Due Dates. The annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable in twelve (12) monthly installments due on the first day of each month. Assessments or other charges not paid to the Association by the 10<sup>th</sup> day of the month in which they are due shall be considered past due and delinquent.

B. Invoices. The Association may, but shall not be required to invoice an Owner as a condition to an Owner's obligation to pay assessments or other charges of the Association. If the Association provides an Owner with an invoice for monthly installments of the annual assessments, although invoices are not

required, the invoice should be mailed *or* sent to the owner between the 15<sup>th</sup> and 20<sup>th</sup> day of the month preceding each due date.

C. Late Charges Imposed on Delinquent Installments. A monthly installment of the annual assessment shall be past due and delinquent if not paid by the 10<sup>th</sup> day of the month in which it is due. The Association shall impose a twenty dollar (\$20.00) late charge on the outstanding or past due balance then due the Association. An additional twenty-dollar (\$20.00) late charge shall accrue during each and every subsequent 10-day period that the assessment remains unpaid.

D. Interest. Delinquent assessments, fines or other charges due the Association shall bear interest at the rate of eighteen percent (18%) 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. Attorney's Fees on Delinquent Accounts. As an additional expense permitted under the Declaration, Articles and Bylaws, the Association shall be entitled to recover its reasonable attorney's fees incurred in the collection of assessments or other charges due the Association from a delinquent owner.

F. Collection Letters.

1. After an installment of the annual assessments or other charge due the Association, becomes 30 days past due, the Association may cause, but shall not be required to send, a collection letter to be sent to the Owners who are delinquent in payment.

2. Additionally, the Association may, but shall not be required to send a letter to the Owner advising that their account has been referred to the Association's attorneys for collection.

G. 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.

H. 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.

I. 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 Unit with the delinquent

account shall be responsible for, and pay as an assessment on such Unit, any attorney's fees incurred in this instance.

J. 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.

K. 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.

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

### A. DEFINITIONS

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

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

(3) "Party related to a Director" means a spouse, a descendant, an ancestor, a sibling, the spouse or descendant of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director or officer or has a financial interest.

### B. POLICY

(1) Loans. No loans shall be made by the Association to its Directors or officers. Any Director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of the loan until it is repaid.

(2) If any contract, decision, or other action taken by or on behalf of the Board would financially benefit any Director or Party related to a Director, then, in advance of entering into that contract, making the decision or taking the action, that interested Board Member shall declare at an open meeting of the Board, that a conflict of interest exists and shall describe in detail all of the particular facts of the conflict of interest.

(3) After the interested Board Member makes such a declaration, the interested Board Member may participate in a discussion of the matter giving rise to the conflict of

interest. However, the interested Board member may not vote on the issue giving rise to the conflict of interest.

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

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

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

ii. The facts about the conflicting interest transaction are disclosed to the Owners entitled to vote on the matter, and the conflicting interest transaction is authorized in good faith by a vote of the Owners entitled to vote on the matter; or

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

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

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

B. Executive Board Meetings. All meetings of the Executive Board are open to every Member, or to any person designated by a Member in writing as the Member's representative. At an appropriate time determined by the Board, but before the Board votes on an issue under discussion, Members or their designated representatives shall be permitted to speak regarding the issue. The Board may place reasonable time restrictions on persons speaking during the meeting, to allow sufficient time for as many members as possible to comment within the time permitted. Unless otherwise determined by the President or acting chair, the time limit will be three minutes per member. Members will only be allowed to speak more than once at the discretion of the Board. If more than one person desires to address an issue and there are opposing views on that issue, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

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

- (1) Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
- (2) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- (3) Investigative proceedings concerning possible or actual criminal misconduct;
- (4) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- (5) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
- (6) Review of or discussion relating to any written or oral communication from legal counsel.

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

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

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

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

#### **IV. Enforcement of Covenants and Rules**

**A. Notice of Violation.** A Notice of Violation of any provisions of the Declaration, Bylaws or Rules shall be provided to the applicable Owner as soon as reasonably practicable following discovery by the Board of such violation. The notice shall describe the nature of the violation and shall further state that the Board may seek to protect its rights as they are specified in the governing legal documents.

**B. 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.

**C. 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, 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.

**D. 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.

E. 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.

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

G. Hearing. Each hearing shall be held at the scheduled time, place and date, provided that the Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board by Reading the notice of hearing. The general procedure for hearing shall consist of opening statements by each party; presentation of testimony and evidence, including cross-examination of witnesses by each party; and closing statements by each party. Notwithstanding the foregoing, the Board may exercise its discretion as to the specific manner in which a hearing shall be conducted and shall be authorized to question witnesses, review evidence and take such other reasonable action during the course of the hearing which it may deem appropriate or desirable to permit the Board to reach a just decision in the case. Rules of law regarding trials and presentation of evidence and witnesses shall be applicable to the hearing insofar as the Presiding Officer deems adherence to such rules of law to be in the interests of justice; provided that any relevant evidence should be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the course of serious affairs. Neither the complaining parties nor the Owner must be in attendance at the hearing. However, 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.

H. 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.

I. 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 by any and all means available to the Association at law or in equity, and to seek recovery and reimbursement of all attorney's fees, Association expenses and costs incurred by the Association in connection therewith.

## **V. Inspection and Copying of Records**

A. The Association shall keep as permanent records the following documents:

- (1) Minutes of all meetings of Owners and the Board.
- (2) A record of all actions taken by the Owners or the Board by written ballot or written consent in lieu of a meeting.
- (3) A record of all actions taken by a committee of the Board in place of the Board on behalf of the Association.
- (4) A record of all waivers of notices of meetings of Owners and of the Board or any committee of the Board.
- (5) A record of Owners in a form that permits preparation of a list of the names and addresses of all Owners, showing the number of votes each Owner is entitled to vote.

In addition to the above, the Association shall keep a copy of each of the following records at its principal office:

- (1) Articles of Incorporation, Declaration, Covenants and Bylaws.
- (2) Resolutions adopted by the Board.
- (3) The minutes of all Owners meetings and records of all actions taken by Owners without a meeting for the past three (3) years.
- (4) All written communications within the past three (3) years to Owners generally as Owners.
- (5) A list of the names and business or home addresses of the Association's current directors and officers.
- (6) The Association's most recent annual report.
- (7) All financial audits or reviews conducted pursuant to Section 38-33.3-303(4)(b) during the immediately preceding three years.

B. So the Association can have the desired books, records and personnel available, a written Notice of Intent to Inspect must be submitted to the Association's Manager or to the Board of Directors at least five (5) business days prior to the planned inspection. The Notice must describe with reasonable particularity which records are to be inspected and the purpose of the inspection.

C. All records shall be inspected at the following location, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday: \_\_\_\_\_  
\_\_\_\_\_.

D. At the discretion of the Association's Manager, certain records may only be inspected in the presence of a Board member or employee of the Manager. No records may be removed from the office without the express written consent of the Board of Directors. Further, if a Member requests to inspect records, the Association may photocopy and provide the requested records to the Member in lieu of the Member's inspection of the records if consented to by the Member.

E. The Association may charge a fee, not to exceed the Association's actual cost per page for copies of the Association records.

F. Consistent with individual member's right to privacy, attorney-client confidentiality and other considerations, the following records will not be made available without the express written consent of the Board of Directors:

- (a) Confidential personnel records.
- (b) Confidential litigation files and matters covering consultation with legal counsel concerning disputes that are subject of pending or imminent court proceedings or are privileged or confidential between attorney and client.
- (c) Files dealing with investigative proceedings concerning possible or actual criminal misconduct.
- (d) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.
- (e) Inter-office memoranda, preliminary data, working papers and drafts, and general information or investigations which have not been formally approved by the Board of Directors.

G. In determining whether records may be inspected, the Association shall consider among other things:

- (a) Whether the request is made, in good faith and for a proper purpose;
- (b) Whether the records requested are relevant to the purpose of the request;
- (c) Whether disclosure is for an illegal or improper purpose, or would violate a constitutional or statutory provision or public policy; and
- (d) Whether disclosure may result in an invasion of personal privacy, breach of confidence or privileged information as set forth above.

H. The Association reserves the right to pursue any individual for damages or injunctive relief or both, including reasonable attorneys fees, for abuse of these rights, including, but not limited to, use of any records for a purpose other than what is stated in the Notice of Intent to Inspect.

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

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

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

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

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

The 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.

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

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

The Association hereby adopts the following policy regarding Alternative Dispute Resolution which 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 shall submit the dispute to 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, shall be pursued by the Owner and/or the Association.

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.

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

F. *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.

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

## **IX. Miscellaneous.**

1. 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.

2. 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.

3. 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.

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