

**RESOLUTION OF  
AGATE CREEK PRESERVE HOMEOWNERS ASSOCIATION  
TO ENACT  
RESPONSIBLE GOVERNANCE POLICIES**

Agate Creek Preserve Homeowners Association, a Colorado nonprofit corporation (the “Association”), for the purpose of complying with C.R.S. §38-33.3-209.5, hereby adopts the following responsible governance policies. Unless otherwise defined in these governance policies, terms defined in the Declaration of Covenants, Conditions, Restriction and Easements for Agate Creek Preserve A Land Preservation Subdivision Exemption, as amended (“Declaration”), the Association’s Articles of Incorporation (“Articles”), and the Association’s Bylaws (“Bylaws”), shall have the same meaning herein. The Declaration, Articles, and Bylaws shall hereafter be collectively referred to as the “Governing Documents.”

**A. Procedures for the Adoption and Amendment of Policies, Procedures and Rules.**

Under Section 3.2 of the Bylaws, the Executive Board (the “Board”) shall have power and duties necessary for the administration of the affairs of the Association and the Common Interest Community, including the power and duties to adopt and amend Bylaws and Rules and Regulations. Article (4)(3) of the Articles grants the Association the power to make and enforce rules. Furthermore, Section 4.9 of the Declaration states that the Association shall be authorized to and shall have the power to adopt, amend and enforce Rules and Regulations applicable within Agate Creek Preserve with respect to any Common Area or Function and to implement the provision of this Declaration and the Executive Board may, by a majority of the voting Directors, make and amend reasonable rules and regulations governing the use and operation of the Common Area.

Pursuant to the above-referenced authority, and for the purpose of adopting a standard procedure to be used when adopting policies, rules, regulations and guidelines (hereafter “Policies” or “Policy”), the Association hereby adopts the following procedures to be followed in adopting Policies of the Association:

1. The Board shall consider the following in drafting any Policy:
  - (a) whether the Governing Documents or Colorado law grants the Board the authority to adopt the proposed Policy;
  - (b) the need for the Policy based on the scope and importance of the issue and whether the Governing Documents currently address the issue adequately; and
  - (c) the immediate and long-term impact of the Policy.
2. Notice of any proposed Policy shall be posted on the Association’s website or sent via First Class mail or email to each Owner. Owners shall be allowed at least thirty (30) days from the earlier of mailing, e-mailing, or posting on the Association’s website to provide

comments to the Board regarding the proposed Policy. After the thirty (30) day period for Owner's comment has elapsed, the Board may adopt the proposed Policy.

3. 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.
4. After adoption of any Policy, a copy of the Policy or notice of the Policy, including the effective date, shall be provided to all Owners by any reasonable method as determined in the sole discretion of the Board, including but not limited to posting on the Association's website. A copy of the Policy shall also be placed in the binder containing the records and documents of the Association, which shall be available for inspection and copying pursuant to the Board's policy regarding inspection and copying of documents.

#### **B. Policy Regarding Board of Directors Conflicts of Interest**

1. As used in this Policy, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between the Association and a member of the Association's Board ("Director"), or between the Association and party related to a Director, or between the Association and an entity in which the a Director is a director or officer or has a financial interest.
2. As used in this Policy, "Officer" shall mean any person designated as an officer of the Association or any person to whom the Board delegates responsibilities under Article 38-33.3 of the Colorado Revised Statutes, including, without limitation, a managing agent, attorney or accountant employed by the Board.
3. As used in this Policy, "party related to a Director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director, officer, or has a financial interest.
4. 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 such loan until the repayment thereof.
5. No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by an owner or by or in the right of the Association, solely because the conflicting interest transaction involves a Director of the Association or a party related to a Director or Officer 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 or of the committee of the Board that authorizes, approves, or ratifies the conflicting interest transaction or solely because the Director's vote is counted for such purpose if:

(a) the material facts as to the Director's relationship or interest as to the conflicting interest transaction are disclosed or are known to the Board or the committee, and Board or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors are less than a quorum; or

(b) the material facts as to the Director's relationship or interest and as to the conflicting interest transaction are disclosed or known to the owners entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the owners entitled to vote thereon; or

(c) the conflicting interest transaction is fair as to the Association.

6. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

### **C. Assessment Collection Policy**

The Owner of each Lot shall pay the Owner's share of the Common Expenses allocated to such Lot as Annual Assessments and the full amount of any Special or Default Assessments assessed specifically against such Owner's Lot.

The Association shall send notices of Assessments (whether Annual, Special or Default) and other charges via invoices. All invoices are due and payable on the date or dates specified in the invoice, or if payment date(s) are not specified, within 30 days of the date of the invoice. Assessments or other charges not paid within thirty (30) days after the due date shall be considered past due and delinquent and the Association may assess interest on the past due amount from the date due until paid at a rate the lower of eighteen percent (18%) or the Association's bank's prime rate plus eight (8) points and may be assessed a late payment fee of \$50.00 pursuant to Section 11.8.1 of the Declaration. All checks returned by the Owner's bank for any reason whatsoever, including, but not limited to, insufficient funds, shall incur a \$30.00 returned check charge. All late fees, interest, returned check charges and costs of collection, including court costs and attorneys' fees, shall be a Default assessment against the delinquent Owner and such Owner's Lot.

#### **Collection Process:**

1. After any assessment or other charge becomes delinquent, the Association may send a written notice of non-payment to the Owner.

2. After any assessment or other charge becomes thirty (30) days delinquent, the Association may record a statement of lien against the Owner and the Owner's Lot in the Routt County real property records, for the delinquent amount, late payment fees, interest and costs of collection. The Association's failure to record any such statement of lien or any error or

omission in the content of such statement of lien shall not defeat such lien of the Association nor affect its priority.

3. After any assessment or other charge becomes thirty (30) days delinquent, the Association may refer the matter to the Association's attorney who may file a lawsuit against the Owner or institute a foreclosure action against the Owner's Lot to collect all amounts due to the Association. The cost of any lawsuit and/or foreclosure action shall include the costs of collection, including without limitation attorney fees. Additionally, pursuant to Sections 11.8.3 and 6.1.4 of the Declaration, the Association may also suspend the delinquent Owner's voting rights in the Association and the right of an owner to use facilities within the Common Areas for any period which any charge or Assessment against such Owner's Lot remains delinquent. The foregoing Policy shall in no way operate to limit the Association's other and additional rights as set forth in the Association's Governing Documents.

#### **D. Policy Regarding the Inspection and Copying of Documents.**

The Association shall permanently retain the following records as required by Colorado law: (1) Minutes of all Board and Owner meetings, (2) all actions taken by the Board or Owners by written ballot in lieu of a meeting, (3) all actions taken by a committee on the behalf of the Board acting on behalf of the Association, (4) all waivers of the notice requirements for Lot Owner meetings, Board member meetings or committee meetings, (5) a record of each Owner's name, address and number of votes each Owner is entitled to vote and (6) the records as set forth in Section 7.3 of the Bylaws .

Within ninety (90) days after assuming control from the Declarant and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Owners: (1) the date on which the Association's fiscal year commences, (2) the operating budget for the current fiscal year, (3) a list, by Lot type, of the Association's current assessments, including both regular and special assessments, (4) the Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure, (5) the results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure, (6) a list of all Association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies (this list shall also include the company names, policy limits, policy deductibles, additional named insured and expiration dates of the policies), (7) the Association's Declaration, Articles, Bylaws and Rules and Regulations, (8) the Minutes of any Board meeting or meeting of the members for the fiscal year immediately preceding the current annual disclosure and (9) the responsible governance Policies, adopted pursuant to C.R.S. §38-33.3-209.5.

Further, the Association shall keep a copy of each of the following records (1) Resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations and obligations of Owners or any class or category of Owners, (2) the Minutes of all Owners' meetings, and records of all actions taken by Owners without a meeting, for the past three (3) years, (3) all written communications within the past three (3) years to Owners generally as Owners, (4) a list of the names and business or home addresses of the Association's current

directors and officers, (5) the Association's most recent annual report, if any, and (6) all financial audits or reviews conducted during the immediately preceding three (3) years.

In order to provide the greatest latitude of disclosure to the Owners, the Association may maintain a website containing some or all of the documents/records listed above. The website may consist of a public area, available to the public, and a private area, limited to Owners and requiring a password to enter. The Board shall use its discretion as to which documents/records are posted on the website and therefore, some of the above listed documents/records may not be available on the website.

The Association (or its managing agent) shall also have available for inspection and copying, at a location within Routt County as set forth by the Executive Board, a binder containing all of the above listed documents. The Board encourages Owners to access the documents via the website, but will allow copying and inspection subject to the following conditions:

- (a) The inspection and/or copying of the records shall be at the Owner's expense.
- (b) The inspection and/or copying shall be by appointment only, such appointment to set forth the time and location the documents will be made available. The binder containing the Association's documents and records shall remain under the control and supervision of the person appointed by the Executive Board to supervise the copying of the documents.
- (c) Owners shall complete, sign and submit a written request for inspection and/or copying ("Association Request Form") at least ten (10) business days prior to inspection/copying. A copy of the Association Request Form may be downloaded from the Association's website or will be provided to the requesting Owner by the Association upon verbal or written request. Certain privileged documents of the Association may not be available for inspection/copying including, documents and records protected by the attorney-client privilege, and those records that are confidential or protected by federal or state privacy laws.
- (d) Association documents/records, including membership lists, shall not be used by Owners for (1) any purpose unrelated to an Owner's interest as an Owner, (2) any commercial purpose, (3) the purpose of distributing or selling such records to any person, (4) used to solicit 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 (4) any other improper purpose, determined in the sole discretion of the Board.
- (e) The cost of copying any record is \$.10 per page. The cost of copying must be paid in full prior to the Association releasing the copies to an Owner. There shall be no cost for downloading and printing any document provided on the Association's website.

#### **E. Policy Regarding Investment of Reserves of the Association:**

Section 11.4 of the Declaration authorizes the Association to create a reasonable contingency or other reserve or surplus fund for maintenance, repairs, and replacement of improvements within the Common Area on a periodic basis as needed. The contingency or other reserve or surplus fund, and any other separate fund or account created or established by the Board pursuant to the above-referenced authority are hereafter referred to as the "Reserve Accounts."

In order to preserve and protect the principal of the Reserve Accounts:

1. All Reserve Accounts shall be deposited in a FDIC insured interest bearing (when possible) savings or checking account segregated from the general operating funds of the Association.
2. Reserve Accounts shall only be used for the purposes for which the Reserve Account in question was established as more fully detailed in Section 11 of the Declaration.
3. Withdrawal of funds from the Reserve Accounts shall require the prior authorization and approval of the Board.
4. When investing Association reserve funds, board members are held to the standards of care set out in §7-128-401 of the Colorado Revised Nonprofit Corporation Act. These require board members to discharge their duties in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in the best interests of the Association.

#### **F. Policy Regarding Procedures for Conducting Owner and Board of Directors Meetings**

The purpose of this Policy is to establish a uniform and systematic protocol for conducting meetings of the Association, including Owners and Board meetings; to ensure notice of meetings is given pursuant to Colorado law; to ensure equitable participation by Owners while permitting the Board to conduct the business of the Association; and to memorialize the circumstances under which the Board may meet in executive or closed door sessions.

1. Meetings. Meetings of the Owners, as the members of the Association, shall be held at least once a year on a date and at a time to be set by the Board. Special meetings of the Owners may be called by the President, by a majority of the Board, or upon written request of Owners having at least twenty percent (20%) of the total votes of the members of the Association.
2. Notice. Notice of Owner meetings shall be hand delivered or sent prepaid by US Mail at least ten (10) days prior to but not more than fifty (50) days in advance of any meeting of the Owners or as required by C.R.S. §38-33.3-308, as amended. Notice of any meeting shall also be given in the following manner:
  - a) Notice shall be posted on the Association's website within twenty-four (24) hours of the mailing of notice to Owners.

- b) Notice shall be physically posted in a conspicuous place on the Property.
- c) Notice shall be provided via email to any Owner who has requested that the Association provide notice via email and has provided the Association with a valid email address. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four (24) hours before the meeting.

All notices shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendments to the Declaration or Bylaws, any budget changes, and any proposal to remove an Officer or member of the Board.

3. Voting. All votes taken at Owner meeting shall be taken as follows:

- a) Votes for contested positions on the Board shall be taken by secret ballot. Also, at the discretion of the Board or upon the request of twenty percent (20%) of Owners present at a meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the common interest community on which all Owners are entitled to vote shall be by secret ballot. The secret ballot shall contain no identifying information concerning the ballot holder. In the event an Owner holds a proxy for another Owner, upon presentation of such proxy to the secretary of the Association, the Owner shall receive a secret ballot to cast the vote of the Owner who has provided the proxy. The proxy shall be kept and retained by the Association.
- b) All votes, other than those taken by secret ballot, shall be taken in such method as determined by the Board and pursuant to the Bylaws, including by hand, voice or by ballot, unless otherwise required by law.
- c) Written ballots, including secret ballots, shall be counted either by (1) a neutral third party or (2) a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the chair 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. The results of any vote by secret ballot shall be reported without reference to names, addresses or other identifying information.

4. Proxies. Votes allocated to an Owner's Lot may be cast pursuant to a proxy duly executed by that Owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the Declaration, Bylaws, Articles or Rules and Regulations of the Association, appointment of proxies may be made substantially as provided in C.R.S. §7-127-203. All proxies shall be reviewed by the Association's secretary as to the validity of the signature, signatory's authority to sign for the Owner, authority of the Owner to vote, conflicting proxies and expiration of the proxy.

5. Open Meetings. All regular and special meetings of the Association and Board, or any committee thereof, shall be open to attendance to all Owners of the Association or to any person designated by an Owner in writing as the Owner's representative. All Owners or designated representatives shall be permitted to attend, listen and speak at an appropriate time during the deliberations and proceedings. Owners who desire to speak are requested to notify the Board in advance of the meeting, or on the meeting sign-in sheet, so the Board can plan the agenda accordingly. Owners will be recognized to speak at the appropriate point on the agenda; either during discussion of an agenda item or, for items not on the agenda, during open forum. Owners who have not signed up to address an item will be allowed to speak at the end of the meeting, time permitting. The President or acting chair shall, to the best of his/her ability, allocate time to each Owner for comment so as to allow as many Owners as possible to speak.
6. Meeting Sign-in. In order to manage the meeting effectively, Owners are asked to list any item(s) they wish to address when they sign-in at the meeting. The Owners' sign-in sheet will be available at the meeting and include: name, address, and any items they wish to address.
7. Open Forum. The agenda for all meetings shall follow the order of business determined by the Board, which shall include an Owner open forum during which any Owner who wishes to speak will have the opportunity to do so, subject to the provisions of this Policy. The Board shall have the right to determine the length of time of the open forum. The open forum should be used by Owners to speak about items that are not on the agenda.
8. Agenda Items. During the discussion of an agenda item, the President or acting chair will recognize Owners who have signed-up to address that item. The Board may place reasonable time restrictions on those persons speaking during the discussion and shall provide for a reasonable number of persons to speak on each side of an issue.
9. Owner's Right to Speak Before Board Action. The Board shall permit Owners to speak before the Board takes formal action on any item under discussion, in addition to any other opportunities to speak. The Board may place reasonable time restrictions on those persons speaking during the meeting and shall provide for a reasonable number of persons to speak on each side of an issue. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue.
10. Additional Owner Input. At the end of the meeting, at the Board's discretion, Owners who did not sign up to speak may be given the opportunity to address items that were discussed at the meeting.
11. Time Limit to Speak; Protocol. The President or acting chair of the meeting may place reasonable limitation upon the time given to each Owner seeking to comment, to allow sufficient time for as many Owners as possible to comment within the time permitted. Unless otherwise determined by the President or acting chair, the time limit will be



three (3) minutes per Owner. Owners should refrain from repeating other Owner's comments. Owners will only be allowed to speak one (1) time per agenda item.

12. Extended Discussion. If it becomes evident that discussion of a particular issue will exceed the time allocated on the agenda, the Board may schedule a special session to further address the issue. Time will not be taken during the meeting to repeat information previously discussed. If an Owner requires history or other background information on a complex topic that has been previously discussed, an Association representative will contact the Owner after the meeting. Owners requesting additional information on a topic shall leave a name, phone number and/or email address with a Board member.
13. Conduct of Participants. No Owner is entitled to speak until recognized by the President or acting chair. Owners will be asked to identify themselves by their name, address and lot number. There shall be no interruptions of anyone who has been recognized by the chair, except by the chair. All Owners and/or Owner's delegates should avoid side conversations. 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 to other individual participants. All comments are to be restricted to the agenda items being discussed. Meeting participants must behave courteously and be respectful to others.
14. Curtailment of Member Conduct. Should the President or acting chair determine that any Owner has spoken for the allocated amount of time or longer, or determine that the Owner is in violation of the provisions of this Policy, the President or acting chair shall have the authority to instruct that Owner to yield the floor, and that Owner will be obligated to comply with the President's or acting chair's instruction.
15. Disruptive or Unruly Behavior. If an Owner refuses to stop talking after his/her allotted time has ended, or otherwise disrupts the meeting, or is otherwise in violation of the provisions of this Policy, the following procedure will be followed:
  - (a) The President or acting chair will issue an oral warning that if the Owner continues to speak, disrupt the meeting, or otherwise act in violation of the provisions of this Policy than that person will be asked to leave the meeting.
  - (b) If the Owner continues to speak, disrupt the meeting, or otherwise act in violation of the provisions of this Policy, than the President or acting chair will call a recess and have the Owner escorted out of the meeting. The meeting will than resume as normal.
16. Executive or Closed Door Sessions. 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 C.R.S. §38-33.3-308(4), as amended, or other

applicable laws. The matters to be discussed at such an executive session are limited to:

- (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 particular 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.

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 (a) to (f) above. No rule or regulation of the Board shall be adopted during the executive session. A rule or regulation may be adopted only during a regular or special meeting or after the Board goes back into regular session following an executive session.

#### **G. Policy and Procedures for the Enforcement of Covenants and Rules and Regulations.**

Pursuant to Article 3.2 of the Articles grants the Association the power to enforce the terms, covenants, restrictions, conditions, uses, limitation and obligations set forth under the Declaration and Bylaws, and to make and enforce rules as provided therein. Section 3.2(m) of the Bylaws grants the Board the power, after notice and hearing, to levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and Regulations of the Association. Additionally, Section 15.9 of the Declaration provides that the Association may take such action as it deems advisable to enforce the covenants as provided in the Declaration.

The Board may determine enforcement action on a case by case basis and take other actions as it may deem necessary and appropriate to ensure compliance with the Governing Documents. These enforcement provisions may be in addition to other specific provisions outlined in the Governing Documents, and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

The following procedures shall be followed when the Association enforces the Governing Documents as a result of complaints regarding Owners or occupants made to the Board by an Owner, occupant or management company.

1. Complaint. All complaints, whether by an Owner, occupant or by the management company shall be in writing and submitted to the Board. The complaint shall state the specific provision(s) of the Governing Documents alleged to have been violated and as many specifics as are available as to the date, time, location and persons involved (“Respondent(s)”). The complaint shall also state the name of the complainant.
2. Investigation. Upon receipt of a complaint, the Board shall determine whether the allegations in the complaint are sufficient to constitute a violation of the Governing Documents and whether action by the Association is warranted. The Board may, in its sole discretion appoint an individual or committee to investigate the matter.
3. Association Action. If the Board determines that the allegations in the complaint are sufficient to constitute a violation of the Governing Documents and that action is warranted, the Board shall send a notice (“Demand for Abatement”) to the Respondent, by certified mail, return receipt requested addressed to the mailing address of the Respondent of file in the records of the Association at the time of such mailing. The Demand for Abatement shall advise the Respondent of (1) the alleged violation, (2) the action required to abate the violation, and (3) a time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any additional similar violations may result in the imposition of a sanction after notice and hearing, if the violation is not continuing. This subsection 3 shall also apply to any complaint(s) initiated by the Board.
4. Notice of Hearing. If the Respondent does not comply with the Demand for Abatement, within the time allotted by the Demand for Abatement or if the same violation occurs within eighteen (18) months from the date of the Demand for Abatement, the Board shall mail the Respondent a written notice of hearing (“Notice of Hearing”) to be held by the Board. The Notice of hearing shall contain (1) the nature of the alleged violation, (2) the time and place of the hearing, which time shall not be less than ten (10) days from the date of the Notice of Hearing, (3) an invitation to attend the hearing and produce statements, evidence and witnesses on Respondent’s behalf, or provide a written response prior to the date of hearing, and (4) the proposed sanction to be imposed.
5. Hearing. The hearing shall be held pursuant to the Notice of Hearing affording the Respondent a reasonable opportunity to be heard. Prior to imposing any sanction, proof that the Notice of Hearing was duly given to the Respondent shall be included in the minutes of the hearing. Such proof shall be deemed adequate if a copy of the Notice of Hearing, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the Respondent appears at the hearing.

The Board may: (a) exercise its discretion as to the specific manner in which a hearing shall be conducted, (b) question witnesses and review evidence and (c) act as it may deem appropriate or desirable to permit the Board to reach a just decision. Each hearing shall be open to attendance by all members of the Association.

6. Decision. If the Respondent appears at the hearing or provides a written response, after all testimony and other evidence has been presented to the Board at a hearing, the Board shall render its decision(s), taking into consideration all of the relevant facts and circumstances. The decision of the Board shall be final and shall be effective on the date specified by the Board. If the Board does not inform the Respondent of its decision at the time of the hearing, the Board will provide a written decision to the Respondent's address of record, via first class mail, within twenty (20) days after the hearing. The minutes of the hearing shall contain a written statement of the results of the hearing and sanction, if any, imposed.
7. Enforcement, Attorney's Fees and Fines/Sanctions. The provisions of this Policy shall not limit, or be a condition precedent to, the Association's right to enforce the Association's Governing Documents by any means available, including but not limited to, commencement of a lawsuit to force compliance or seeking injunctive relief or damages. The Association shall be entitled to reimbursement of all reasonable attorneys' fees and cost incurred by the Association in connection with any enforcement action, including any proceeding under this policy. However, if at the conclusion of any proceeding between the Association and an Owner, the Owner is the prevailing party, then the Owner shall be entitled to an award of attorney's fees and the Association cannot allocate any portion of its attorney's fees and costs to that Owner. If a violation involves damages to Association property, the violator shall pay the cost of repair or replacement. The procedures set forth in this policy shall not be necessary in order to impose any sanction or penalty for nonpayment of a delinquent assessment.

The Board hereby adopts the following fine schedule for all violations or infractions of any rule or regulation, or any provision of the Declaration, or any other applicable Governing Document:

First Violation	Warning Letter
Second Violation (of same rule or provision of the Declaration)	\$50.00

Where the violation or infraction is a continuing one, the continuation thereof for each day shall be deemed a separate and distinct violation and infraction resulting in a separate fine of \$50.00, commencing on the date of commencement of such violation and increasing to \$50.00 per day if such violation or infraction does not cease within fourteen (14) days following commencement. The Association shall promptly notify the Owner of a Lot in writing of the assessment of any fine, and such assessment shall be promptly

paid by such Owner. The Association shall have a lien upon the Lot of the Owner who, or whose tenants, guests or invitees, violated any such rule or regulation or provision of the Declaration, Bylaws, Articles, or any other applicable Governing Document, to secure payment of fines assessed to such Lot, and the Association may foreclose such lien, all in the manner as described in the Governing Documents and/or the Association's Collection Policy.

8. Violations of Offenses that Constitute a Present Danger. If, in its sole discretion, the Board deems that any violation is or may be an immediate or substantial threat to the health, safety or welfare of the community, Project or an individual, the Board may impose any appropriate sanction as necessary to abate the threat to health, safety or welfare of the community, Project or individual without prior compliance with Sections 1 through 7 above.
9. Business Judgment Rule. The decision of the Board to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and not to be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further actions; (ii) the covenant, rule, regulation or restriction being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interest, based on hardship, expense or other reasonable criteria, to pursue the enforcement action.
10. No Waiver. Failure by the Board to enforce any covenant, restriction, rule or regulation, or any other provision of any of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter or preclude the Association from enforcing any other covenant, restriction, rule or regulation or provision of the Governing Documents.
11. Owner's Right to Enforcement. Action taken by the Association in accordance with this Policy, or a decision to not take action, shall not affect an Owner's right, if any, to bring his own enforcement action under the Association's Governing Documents and/or any applicable law.

#### **H. Policy and Procedures for Addressing Disputes Arising Between the Association and Owners.**

The Association for the purpose of (i) encouraging the Association and Owners to work together in an attempt to resolve disputes without litigation, (ii) facilitating the prompt resolution of such disputes in a manner that respects and builds upon the relationship between the Association and Owners, and (iii) complying with C.R.S. §38-33.3-124, hereby adopts the following policy setting forth the Association's procedures for addressing disputes arising between the Association and the Owners ("ADR Policy").

Unless otherwise defined in these responsible governance Policies, terms defined in the Governing Documents, and the Dispute Resolution Act, C.R.S. §13-22-301 et seq. (“Dispute Resolution Act”), shall have the same meaning herein.

1. General Policy. It is the general policy of the Association to encourage the use of mediation as an Alternative Dispute Resolution (“ADR”) procedure to resolve disputes involving the Association and an Owner.
2. Negotiation. Unless either party determines that a meeting between them would serve no useful purpose, the parties to any dispute involving the Association and an Owner shall first make a reasonable effort to meet in person and confer for the purpose of resolving the dispute by good faith negotiation.
3. Mediation. Pursuant to C.R.S. §38-33.3-124, any controversy between the Association and an Owner arising out of the provisions of the Colorado Common Interest Ownership Act may be submitted to mediation by either party to the controversy prior to the commencement of any legal proceedings. Any such mediation shall be subject to the applicable provisions of the Dispute Resolution Act and C.R.S. §38-33.3-124. In addition to the foregoing:
  - (a) Subject to the limitations set forth in this policy, mediation shall be required if any party to the dispute requests mediation by giving notice to the other party at least fifteen (15) days prior to the commencement of litigation.
  - (b) Mediation shall not be required in connection with disputes involving the collection of assessments by the Association, including foreclosure of the Association’s lien or disputes involving the disapproval of any plans or specifications by the Board or the Association’s architectural control committee, if any.
  - (c) Mediation shall not be required if time constraints in resolving the dispute, such as the expiration of a statute of limitations, prevent accomplishing proper mediation.
  - (e) Either party to the mediation may terminate the mediation process without prejudice.
  - (f) Mediation shall be conducted through a mediator who is familiar with governance of Colorado common interest community associations or is otherwise acceptable to the parties
4. Selection of Mediator. If the parties to the mediation cannot agree on a mediator within fifteen (15) days of the request for mediation, there shall be no obligation to mediate.

5. Costs. All costs associated with mediation, including, but not limited to, filing costs, and the mediator's fees, shall be shared equally by the parties to the dispute unless otherwise agreed by the parties. Each party shall be responsible for their own attorney fees.
6. Deviations. The Association may deviate from the procedures set forth in this ADR Policy if in the sole discretion of the Board such deviation is reasonable under the circumstances.
7. Amendment. This ADR Policy supersedes and replaces any prior policy regarding ADR and may be amended from time to time by the Executive Board.

## **I. Reserve Study Policy**

1. A reserve study or an update of the prior completed reserve study shall take place every three (3) years or more frequently as determined by the Executive Board.

2. The reserve study shall contain both a physical analysis and financial analysis. The physical analysis shall address the physical condition of the Common Area and any real or personal property owned by the Association and any real or personal property at the Common Interest Community which the Association is required to maintain or has agreed to maintain on behalf of the Owners (collectively the "Reserve Property") to determine the current condition of the Reserve Property and the useful life and valuation estimates of the Reserve Property and a recommendation of when and in what manner the Reserve Property shall be maintained, improved or replaced by the Association. The financial analysis shall assess the Association's reserve balance and/or fund status (measured in cash or as a percent funded) to determine a recommendation for an appropriate reserve contribution rate necessary to adequately fund the maintenance, repair or replacement of the Reserve Property or determine other sources of funding for such work.

3. The reserve study shall be considered by the Executive Board in determining the amount of Assessments to be allocated and deposited in the reserve accounts pursuant to Article 11 of the Declaration. However, the amount and timing of reserve contributions shall be within the discretion of the Executive Board and the Executive Board may consider economic conditions and factors other than the reserve study in determining the appropriate reserve contributions in any year. Reserve contributions amounts shall be set forth in the annual budget approved by the Executive Board and submitted to the Owners pursuant to the procedures set forth in Article 11 Section 3 of the Declaration.

4. Within ninety (90) days after completion of a reserve study or an update of a reserve study, the study shall be posted on the Association's website, if available, and/or sent via First Class mail or email to each Owner.

*[The remainder of this page has been left blank intentionally]*

The foregoing Resolution to Enact Responsible Governance Policies was adopted by the Executive Board of the Association on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

AGATE CREEK PRESERVE HOMEOWNERS ASSOCIATION,  
a Colorado nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



The undersigned hereby certifies that he/she is the Secretary of the AGATE CREEK PRESERVE HOMEOWNERS ASSOCIATION, a nonprofit corporation organized and existing under the laws of the State of Colorado; that the foregoing is a true and correct copy of a resolution duly adopted at a meeting of the Executive Board of Directors of said corporation held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at which meeting a quorum was at all times present and acting; that the passage of said resolution was in all respects legal; and that said resolution is in full force and effect and is in accordance with the provisions of the charter and bylaws of the corporation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)