

**GOVERNANCE POLICIES AND PROCEDURES  
OF THE HERITAGE CROSSING AT THE GONDOLA CONDOMINIUMS**

Effective Date: \_\_\_\_\_, 2018

These Governance Policies and Procedures (“**Policies**”) of The Heritage Crossing At The Gondola Condominiums (“**Community**”) have been adopted and implemented to protect the investment of the members and to enhance the values of the properties subject to regulation by The Heritage Crossing at the Gondola Condominium Owners Association, Inc., a Colorado nonprofit corporation (“**Association**”).

These Policies are promulgated in accordance with applicable law and the “**Governing Documents**” of the Community consisting of the Declaration of Grants, Covenants, Conditions and Restrictions for Heritage Crossing at the Gondola Condominiums recorded on March 26, 2002 in Reception No. 347962 (“**Declaration**”), the Condominium Map recorded on March 26, 2002 in Reception No. 347963 (“**Map**”) and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, as each have been amended and 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 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. 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. 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. **DIRECTOR CONFLICT OF INTEREST.**

2.1. **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 the 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.

2.2. **Conflicting Interest Transactions.**

2.2.1. 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 an officer, director or other partner, member or manager or has a financial interest.

2.2.2. Notwithstanding to provisions of C.R.S. §7-128-501 and C.R.S. §38-33.3-310.5, a Director shall not participate in actions by the Board with respect to the negotiation, review, approval or voting on a transaction that would be considered a Conflicting Interest Transaction. The Director with the conflict shall disclose such conditions and circumstances to the other Directors. The remaining Directors, in the exercise of their reasonable discretion, may undertake a transaction that would have constituted a Conflicting Interest Transaction, provided that the Director whose participation would have resulted in the creation of a Conflicting Interest Transaction, refrains from voting and does not engage in discussions with the Board concerning the transaction and the transaction is otherwise fair and commercially reasonable 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.

2.3. **Recusal of Directors or Design Review Board Members.** For purposes of this section, the term “design/use Application” shall mean an application presented to the Board of Directors, involving reviews that include, but are not limited to, design reviews, alterations to units and/or related common elements and matters concerning the use of a Unit and appeals of such actions. A conflict of interest shall exist in the event that a Director in the review of an Design/use Application which involves: (a) property that is owned by the Director or their immediate family (ie. husband/wife, parents, children, siblings) , (b) property owned by a person or an entity to whom the Director has a business relationship, and (c) instances where the Director would receive notice of the pending Design/use Application because of proximity to the property for which the Design/use Application has been submitted. Directors shall recuse themselves and not participate in the voting on an application for which the Director has a conflict of interest. Such Director, after disclosing the conflict of interest, may participate in the discussion of the item, but shall not vote on the action. The minutes of the meeting shall reflect the disclosures and recusals made, the composition of the quorum and record who voted for and against.

### 3. **DIRECTOR’S LIABILITY.**

3.1. 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.

3.2. 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.

3.3. 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.

4. **RIGHT TO INDEMNIFICATION.**

4.1. 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 Directors right to indemnification is dependent on state law.

4.2. 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.

5. **CONDUCT OF MEETINGS.** Meetings of the Owner/Members and the Board of Directors 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.*), as well as in accordance with Roberts Rules of Order and these policies.

5.1. **Owner Meetings.** Annual Meetings or Special Meetings of the Owners/Members of the Association shall be called pursuant to the Bylaws of the Association.

5.1.1. **Notice.** In addition to any notice required in the Bylaws, notice of any meeting of the Owners shall be mailed to each owner to the address on file with the Association at least 30 days prior to each such meeting, or as may otherwise be required by Colorado law. A copy of the notice and agenda shall also be posted on the Association Website and at Association mail-box buildings at least 10 days prior to each such meeting, or as may otherwise be required by Colorado law.

5.1.2. **Conduct.** All Annual Meetings or Special Meetings of the Owners/Members of the Association shall be governed by the following rules of conduct and order:

- A. The President of the Association or designee shall chair all Owner meetings.
- B. All Owners and persons who attend a meeting of the Owners will sign in, present any proxies and receive ballots as appropriate. (See section below regarding voting).
- C. Anyone wishing to speak must first be recognized by the Chair.
- D. Only one person may speak at a time.
- E. Each person who speaks shall first state his or her name and Unit address.
- F. Any person who is represented at the meeting by another person, as indicated by a written instrument, will be permitted to have such person speak for him/her.
- G. Those addressing the meeting shall be permitted to speak without interruption from anyone as long as these rules are followed.

H. Comments are to be offered in a civilized manner and without profanity, personal attacks or shouting. Comments are to be relevant to the purpose of the meeting. Questions or comments should be directed to the Board, not to other owners or guests at the meeting.

I. Each person shall be given up to a maximum of two minutes to make a statement or to ask questions. The Board may decide whether or not to answer questions during the meeting. Each person may only speak once. Yielding of time by a speaker to another individual shall not be permitted. Such time limit may be increased or decreased by the Chair, in his or her sole discretion, but shall be uniform for all persons addressing the meeting.

J. All actions and/or decisions will require a motion and a second, followed by a vote, with a majority of those authorized to vote sufficient to carry the motion, unless otherwise required by the Governing Documents.

K. Once a vote has been taken, there will be no further discussion regarding that topic.

L. Anyone disrupting the meeting, as determined by the Chair, shall be asked to “come to order.” Anyone who does not come to order will be requested to immediately leave the meeting.

M. The Chair may establish such additional rules of order as may be necessary from time to time.

5.1.3. **Voting.** All votes taken at Owner meetings shall be taken as follows:

A. Each Owner of a Unit in the Community shall have the voting rights as established in the Declaration.

B. If title to a Unit is held by an entity, including, without limitation, a firm, corporation, partnership, trust, limited liability company, association or other legal entity or any combination thereof (hereinafter “entity”), that entity must appoint a “delegate” to represent such Included Property. The moderator of the meeting may require reasonable evidence that a person voting on behalf of an entity is qualified to vote. A delegate may serve on the Board or as an officer for the Association.

C. Election of Board members in a contested election shall be conducted by secret ballot. Each Owner entitled to vote pursuant to the Bylaws shall receive a ballot. The ballot shall contain identifying information concerning the ballot holder in order to verify voting accuracy, but such information shall be kept confidential by the Association and not part of the public record of the vote or the meeting. In the event an Owner holds a proxy for another Owner, upon presentation of such proxy to the Secretary of the Association or the Secretary’s designee, the Owner shall receive a secret ballot to cast the vote of the Owner who provided the proxy. The proxy shall be kept and retained by the Association.

D. All other votes taken at a meeting of the Owners shall be taken in such method as determined by the Board of Directors including acclamation, by hand, by voice or by ballot, unless otherwise required by law. At the discretion of the Board or upon request of twenty percent (20%) of the Owners who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the Association on which all Owners are entitled to vote shall be by secret ballot.

E. Written ballots shall be counted by a neutral third party or by 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 for such position.

F. The individual(s) counting the ballots shall report the results of the vote to the Chair by indicating how many votes were cast for each individual or how many votes were cast in favor and against any issue, without reference to the names, addresses or other identifying information of Owners participating in such vote.

5.1.4. **Proxies.** Proxies may be given by any Owner as allowed by C.R. S. 7-127-203. All proxies shall be reviewed by the Association's Secretary or designee as to the following:

- A. Validity of the signature;
- B. Signatory's authority to sign for the Unit Owner;
- C. Authority of the Unit Owner to vote;
- D. Conflicting proxies; and
- E. Expiration of the proxy.

5.2. **Board Meetings.** Meetings of the Board of Directors shall be called and noticed in accordance with the Bylaws of the Association.

5.3. **Executive (or Closed) Session.**

5.3.1. When executive or closed sessions are permitted by law, the board should move into executive (closed) session before formal adjournment. All Members must be asked to leave except for those having a reason to participate (such as witnesses at a rule violation hearing). Only the statutory exceptions are good cause for moving into executive session. The board should announce to the Members the purpose of the executive session. The members of the board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session or closed 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; and
- (f) Review of or discussion relating to any written or oral communication from legal counsel.

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

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

5.3.4. No rule or regulation of the board or any committee thereof shall be adopted during an executive session. A rule or regulation may be validly adopted only during a regular or special meeting or after the body goes back into regular session following an executive session.

5.3.5. The minutes of all meetings at which an executive session was held shall indicate that an executive session was held, and the general subject matter of the executive session.

## 6. **COLLECTION POLICIES.**

6.1. **Dues Dates.** The Annual Assessment shall be paid in \_\_\_\_\_ equal installments and is due and payable on the 1<sup>st</sup> day of every calendar month, with or without notice. Assessments or other charges not paid to the Association by thirty (30) days after being due and payable shall be consider past due and delinquent. Payments must be paid to \_\_\_\_\_ by check, credit card or direct bank payment.

6.2. **Invoices.** The Association will endeavor to send each Owner an invoice prior to the payment date, but the failure of the Association to send or the Owner to receive the invoice shall not relieve the obligation for the Owner to timely and fully make their payment.

6.3. **Receipt Date.** A payment by check will be considered received/posted based on the date it is received.

6.4. **Late Charges Imposed on Delinquent Installments.** The Association shall impose a \$25 late charge, as a penalty and not interest, on the outstanding or past due balance due the Association. An additional \$25.00 late charge shall accrue during each and every subsequent thirty (30) day period that the Assessment or charge remains unpaid. Late charges shall be considered a “common expense” for each delinquent Owner.

6.5. **Interest.** Delinquent Assessments, fines and other charges due the Association shall bear interest at a rate of 18% per annum and will be assessed monthly on the unpaid balance, including any accrued interest and fees.

6.6. **Returned Check Charges.** In addition to any and all charges imposed under the Governing Documents, a reasonable fee, not to exceed \$\_\_\_\_ plus any charges assessed by the bank shall be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank and is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. This returned check charges shall be a “common expense” for each Owner who tenders payment by check or other instrument which is not honored by the bank upon which it is drawn. Such return check charges shall be due and payable immediately, upon demand. Retuned check charges shall be the obligation of the Owner(s) of the unit for which payment was tendered to the Association. This return check charge shall be in addition to any late fees or interest incurred by an Owner. Any returned check shall cause an account to be past due if full

payment of the quarterly installment of the annual assessment is not timely made within thirty days of the due date.

6.7. **Attorney Fees on Delinquent Accounts.** As an additional expense permitted under the Declaration and by Colorado law, the Association shall recover its attorney fees, accounting/bookkeeping fees and other collection costs incurred in the collection of assessments or other charges due the Association from a delinquent Owner, whether or not litigation has been commenced. The attorney fees incurred by the Association shall be due and payable immediately when incurred, upon demand.

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

6.9. **Cure of Delinquent Account.** The cure for a delinquent account is payment in full of all outstanding past due assessments, interest charges, late fees, returned check charges, attorney fees and any other reasonable charges assessed by the Association related to the collection of the delinquent account.

6.10. **Collection Process.**

6.10.1. **First Written Notice.** After an installment of an annual assessment or other charges due to the Association becomes 30 days past due, the Association will send a letter, email or other written notification to the Owner, stating the following:

- A. That the Owner's account is past due on assessments and that the past due amounts are due and payable immediately;
- B. The total amount of the arrearage, with an accounting of how the total arrearage was determined;
- C. Whether the opportunity to enter into a payment plan exists and instructions for contacting the Association to enter into the payment plan;
- D. The name and contact information for the individual the Owner may contact to request a copy of the Owner's ledger to verify the amount of the debt; and
- E. That action is required to cure the delinquency and failure to do so within 30 days may result in the account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the owner's property and other remedies available under Colorado law; and

6.10.2. **Second Written Notice** After an installment of an annual assessment or other charges due to the Association becomes 60 days past due, the Association will send another written notice to the Owner, giving the past due balance (including late fees and interest), stating that the past due balance is immediately due and payable, repeating all of the information referenced in 10.a above and informing the Owner that the notice is the 2<sup>nd</sup> past due notice.

6.10.3. **Final Written Notice and Payment Plan.** After an installment of an annual assessment or other charges becomes 90 days past due, the Association will send another written notice to the Owner, giving the past due balance (including late fees and interest), stating that the past due amounts are immediately due and payable, providing all of the information referenced in 10.a above and stating that the Owner has 30 days to contact the Bear Creek Lodge General Manager to discuss and finalize a mutually acceptable and reasonable payment plan. An acceptable payment plan shall provide that the Owner shall pay any and all outstanding, delinquent balances of assessments, fees, costs, interest and other expenses in equal installments, payable within six or more months and that during the period that the payment plan is in place, the Owner is responsible for paying all such other assessments that otherwise become due and payable during that period that the payment plan is in place. The failure to make payments becoming under the payment plan or the payment of assessments otherwise becoming due, shall invalidate the payment plan and enable the Association, at its election, to terminate the payment plan and proceed with collections. The foregoing notwithstanding, a payment plan is not available to an Owner who: (i) is not residing in their unit as their primary residence, (ii) has previously been delinquent in their payments of assessments and entered into a previous payment plan with the Association within three years of the current delinquency, or (iii) who acquired title to the unit as a result of a mortgage foreclosure or foreclosure on an Association lien. In the event that the Owner fails to meet with the Association and endeavor in good faith to enter into a reasonable payment plan within the timelines contemplated in Section 10.C or otherwise fails to comply with a payment plan, the Association may proceed with collections and pursue all available remedies. The remedies include, without limitation, the following:

A. **Recordation of Statement of Lien.** The Association may prepare and record a written statement of lien, signed by an officer of the Association or Managing Agent. A copy of the recorded statement of lien may, but need not, be sent to the Owner and any lender with a recorded lien on Owner's property.

B. **Suspension of Association Privileges.** The Association may suspend the rights and privileges of an Owner and any guests, short-term or longer term renters or other occupants of the Owner's Unit for the use of common elements and amenities for the period during which any Assessment owed by an Owner remains unpaid and delinquent, which includes, without limitation, use of the pool/hot tub, exercise area, van shuttle, funicular, parking, WiFi, food and beverages, and such other and similar services and facilities which are funded by the Association through assessments.

C. **Commencement of Collections Proceedings.** The Association may turn the account over to an attorney for collection and/or commence foreclosure proceedings or other appropriate proceedings, provided that the Association may commence foreclosure proceedings against a unit only in the event that the past due balances exceeds six months of assessments.

6.10.4. **Referral of Delinquent Accounts to Attorneys.** Upon referral to the Association's attorney, the attorney shall take all appropriate action to collect the accounts referred. After an account has been referred to an attorney, the account shall remain with the attorney until the account is settled, has a zero balance or is written off. The attorney, in consultation with the Association's agent, is authorized to take whatever action is necessary and determined to be in the best interests of the Association, including, but not limited to:

- A. Filing of a suit against the delinquent Owner for a money judgment;
- B. Notifying other parties of interest of the deficiency;
- C. Instituting a judicial foreclosure action of the Association's lien, subject to the limitations contained herein;



D. Filing necessary claims, documents and motions in bankruptcy court in order to protect the Association's interests; and

E. Filing a court action seeking the appointment of a receiver.

6.10.5. **Foreclosure Proceedings.** Once the balance of past due assessments equals or exceeds six months of assessments, in order for Foreclosure proceedings to be commenced against the Association's lien on the Owner's property, the Board MUST resolve, by recorded vote, to authorize foreclosure against the Owner's specific property and file that authorization with the foreclosure documents.

6.10.6. **Appointment of a Receiver.** The Association may seek and obtain the appointment of a trustee, receiver, liquidator or conservator of the Owner's Unit if an Owner becomes delinquent in the payment of assessments pursuant to the Declaration and Colorado law from and by any court of competent jurisdiction. A receiver is a disinterested person, appointed by the court that manages the rental of the property, collects the rent and disburses the rents according to the court's order. The purpose of a receivership for the Association is to: obtain payment of current assessments, reduce past due assessments; and prevent the waste. The Court may authorize the appointment without any requirement that a receiver post bond for faithful performance of its duties). All costs of any receivership hereunder advanced by Association, and all attorneys', legal assistants' and consultants' fees, expert's evidence, stenographer's charges, publication costs, costs of procuring all such abstracts of title, title searches, title insurance policies, and similar data with respect to title as Association may deem reasonably necessary to prosecute such action which have been incurred by Association, shall constitute a part of the obligations secured hereby and may be included as part of the amount owing from Owner to Association. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred shall be immediately due and payable by Owner, with interest thereon at the default rate described herein.

6.11. **Communication with Owners.** All communication with a delinquent Owner shall be handled through the Association's attorney once a matter has been referred to the attorney. Neither the manager nor any member of the Board of Directors shall discuss the collection of the account directly with an Owner after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact.

6.12. **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.

6.13. **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.

## 7. **INSPECTION AND COPYING OF ASSOCIATION RECORDS.**

7.1. **Record Retention.** The Association shall permanently retain the following records as required by Colorado law:

7.1.1. Records specifically defined in the Association's declaration or bylaws;

7.1.2. Records the Association is required to disclose within 90 days after the end of the fiscal year as required by CCIOA;

7.1.3. Detailed records of receipts and expenditures affecting the operation and administration of the Association;

7.1.4. Records of claims for construction defects and amounts received pursuant to settlement of those claims;

7.1.5. 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;

7.1.6. 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;

7.1.7. 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;

7.1.8. The Association's current declaration, covenants, bylaws, articles of incorporation, rules and regulations, responsible governance policies and other policies adopted by the board;

7.1.9. Financial statements for the past 3 years and tax returns of the Association for the past 7 years;

7.1.10. A list of the names, email addresses and physical mailing addresses of the current board members and officers;

7.1.11. The most recent annual report (if any) delivered to the Secretary of State;

7.1.12. 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;

7.1.13. The Association's most current reserve study (if any);

7.1.14. Current written contracts to which the Association is a party and contracts for work performed within the past 2 years;

7.1.15. Records of board or committee actions to approve or deny any requests for design or architectural approval from owners;

7.1.16. Ballots, proxies and other records related to voting by owners for 1 year after the election, action or vote;

7.1.17. Resolutions adopted by the board relating to the characteristics, qualifications, limitations, and obligations of members;

7.1.18. All written communications within the past 3 years sent to all owners.

7.2. **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:

7.2.1. 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;

7.2.2. 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;

7.2.3. Inspections may be made by the Owner or a duly appointed agent, for which a written authorization is presented to the Association;

7.2.4. 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;

7.2.5. 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;

7.2.6. 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.

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

7.3.1. Architectural drawings, plans, and designs, except to the extent such materials and documents are required to be posted on the Association website as part of its review of an application submitted to the Association. Other documents shall not be released upon the written consent of the legal owners of the drawings, plans, or designs;

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

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

7.3.4. Disclosure of information in violation of law;

7.3.5. Records of an executive session of an Association board;

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

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

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

7.4.1. Personnel, salary, or medical records relating to specific individuals; or

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

7.5. **Use of Records.** Association records shall not be used by any Owner for:

7.5.1. Any purpose unrelated to an Owner's interest as an Owner;

7.5.2. 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;

7.5.3. Any commercial purpose;

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

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

7.6. **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 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.

7.7. **Use of Membership Lists.**

7.7.1. 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.

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

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

## 8. **ENFORCEMENT.**

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

8.2. **Complaints.**

8.2.1. Complaints by Owners 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.

8.2.2. 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 Association's Manager.

8.3. **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.

8.4. **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.

8.5. **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.

8.6. **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.

8.7. **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.

8.8. **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.

8.9. **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.

8.10. **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.

8.11. **Fine Schedule.**

8.11.1. All fine assessments shall be due and payable immediately upon notice of such fine or assessment, as described above. Notwithstanding anything to the contrary in these Policies, the Association shall be entitled to take such action and perform such work as specified in these Rules or as otherwise permitted or required by law, the Declaration or the Bylaws, prior to, in the absence of, or during the pendency of any hearing. If any fine assessment is not paid within ten days after the due date, a late charge in the amount of \$100 shall be assessed to compensate the Association for the expenses, costs and fees involved in handling such delinquency. Owners shall be personally, jointly, and severally liable for all fines/penalty assessments.

(a) First violation: Warning letter

(b) Second Violation (see Fine Schedule)

(c) Third Violation (see Fine Schedule)

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

8.11.2. All fine assessments shall be due and payable immediately upon notice of such fine or assessment, as described above. Notwithstanding anything to the contrary in these Policies, the Association shall be entitled to take such action and perform such work as specified in these Rules or as otherwise permitted or required by law, the Declaration or the Bylaws, prior to, in the absence of, or during the pendency of any hearing. If any fine assessment is not paid within ten days after the due date, a late charge in the amount of \$100 shall be assessed to compensate the Association for the expenses, costs and fees involved in handling such delinquency. Owners shall be personally, jointly, and severally liable for all fines/penalty assessments.

8.11.3. All fine assessments shall be due and payable immediately upon notice of such fine or assessment, as described above. Notwithstanding anything to the contrary in these Policies, the Association shall be entitled to take such action and perform such work as specified in these Rules or as otherwise permitted or required by law, the Declaration or the Bylaws, prior to, in the absence of, or during the pendency of any hearing. If any fine assessment is not paid within ten days after the due

date, a late charge in the amount of \$100 shall be assessed to compensate the Association for the expenses, costs and fees involved in handling such delinquency. Owners shall be personally, jointly, and severally liable for all fines/penalty assessments.

8.11.4. Each day that the violation remains uncured shall constitute a continuing violation and the fine shall be assessed for each day that the violation continues. All fines constitute an Assessment against the Owner and may be collected in accordance with the Declaration.

8.11.5. In the event a fine assessment is not paid within ten days, the Association may thereafter commence an action at law, or in equity, or both, against any Owner personally obligated to pay the same, for recovery of said assessment plus late charges, as aforesaid.

8.12. **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.

8.13. **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.

## 9. **DISPUTE RESOLUTION ALTERNATIVE DISPUTE RESOLUTION.**

9.1. **General.** 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.

9.2. **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:

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

9.2.2. 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;

9.2.3. 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;

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

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

9.3. **Mandatory Procedures.**

9.3.1. **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.

9.4. **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 San Miguel County, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the San Miguel 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.

9.5. **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 San Miguel 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.

9.6. **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.

10. **RESERVE FUND AND RESERVE STUDY POLICIES.** Reserve funds may be held in a fiscally responsible, prudent investment account at the discretion Board of Directors. In evaluating the investment of reserve funds, the Board shall exercise ordinary care under the facts and circumstances prevailing at the time of the decision. In doing so, the Board should consider the long-range and short-range needs of the Association, the Association’s present and anticipated financial requirements, the expected return on investments, price level trends and general economic conditions. The Board shall invest and manage the Association’s funds as a prudent investor would, taking into consideration the purposes, terms, expenses and other circumstances of the Association. The Association will provide for the regular maintenance and repair of property, facilities, structures and other improvements owned, managed or controlled by the Association 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:

- 10.1. List the major improvements for which the Association is responsible.
- 10.2. Assign to each improvement an estimated useful life based on information available to the board, including a physical inspection where possible and appropriate.
- 10.3. Assign to each improvement an estimated replacement cost in current dollars
- 10.4. Calculate and budget an annual contribution to the reserve fund per the annual update of the reserve study

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.

## 11. **MISCELLANEOUS.**

11.1. **Conflict of Documents.** In the event of a specific conflict between the Governing Documents and these Policies, the Governing Documents shall prevail, unless the provisions of these Policies are required by applicable law.

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

11.3. **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:

11.3.1. **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.

11.3.2. **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.

11.3.3. **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.

11.3.4. **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.

11.4. **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.

11.5. **Definitions.** Unless otherwise defined in these Policies, initially capitalized or terms defined in the Declaration and Bylaws shall have the same meaning herein.

11.6. **Supplement to Law.** The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Governing Documents and the applicable laws of the State of Colorado governing Association.

11.7. **Deviations.** The Board may deviate from the procedures set forth in these Policies if in its sole discretion such deviation is reasonable under the circumstances.

11.8. **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.

The Board of Directors hereby approves the Governance Policies pursuant to the power, authority and requirements provided for in the Governing Documents and in accordance with applicable Colorado law and makes them effective as of \_\_\_\_\_, 2018.

The Governance Policies may periodically be revised or amended from time to time by the Association.

The Heritage Crossing at the Gondola Condominium Owners Association, Inc.,  
a Colorado nonprofit corporation

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

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

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