

**POLICIES AND PROCEDURES  
FOR  
VISTA DE ORO PROPERTY OWNERS ASSOCIATION INCORPORATED  
[Amended March 18, 2012]**

WHEREAS, in order to come into compliance with newly adopted legislation (namely, Senate Bill 05-100 and Senate Bill 06-89) the Vista de Oro Property Owners Association Incorporated (the Association), hereby adopts the following responsible governance policies and procedures pursuant to C.R.S. 38-33.3-209.5 of the Colorado Common Interest and Ownership Act (CCIOA),

And on or about February 2, 2007, the Board amended and restated its Bylaws in order to comply with additional conditions and restrictions required by Senate Bill 05-100 and 06-89 for the governance of common interest communities within the State of Colorado and all references herein are to the Amended and Restated By-Laws of the Association.

**ARTICLE 1  
COLLECTION OF UNPAID ASSESSMENTS**

The Association's policy and procedures on the collection of unpaid assessments shall be as set forth in Article XVIII of the Declaration of Protective Covenants for Vista de Oro dated June 29, 1998, recorded as Reception No. 748662 (the "Declaration"), and Article III, Section 1(f) and (o)(3) of the By-Laws, and shall be further supplemented as follows:

a. The due date for the payment of annual common expense assessments (unless otherwise determined by the Board) shall be: January 31st of each calendar year. Payments received after January 31st shall be considered delinquent and shall accrue interest, as of February 1st, at the rate of 21% per annum (1.75% per month).

b. The due date for payment of special assessments shall be as determined by the Board and as set forth in the proposal for the special assessment as established by the Board. Payments received after the payment deadline shall be considered delinquent and shall accrue interest at the rate of 21% per annum (1.75% per month).

c. Assessments shall also include default assessments which are comprised of monetary fines assessed against an Owner pursuant to this Declaration, the By-Laws or any Rules and Regulations (the Governing Documents). A Default Assessment shall become a lien against an Owner's Lot and may be foreclosed or otherwise collected in the same manner as an annual assessment as provided in the Declaration and By-Laws. Notice of the amount and due date of such Default Assessment shall be sent to the Owner according to the procedures set forth below.

**ARTICLE 2  
HANDLING OF CONFLICTS OF INTEREST INVOLVING BOARD MEMBERS**

Conflicts of Interest shall be as proscribed in Article III, Section 16 of the By-Laws for the Vista de Oro Property Owners Association.

### **ARTICLE 3**

#### **CONDUCT OF MEETINGS**

Conduct of meetings of the Board of Directors and of the Owners shall be as provided for in Article II, Sections 2,3,4,5,9,11 & 12 of the Bylaws of the Association. Additionally, costs associated with attending any meeting of the Board of Directors—including but not limited to travel costs and costs associated with telephonic participation—shall be the responsibility of the individual member(s).

Board members may miss one meeting due to business or personal constraints. If more than one meeting is missed, the Board may choose to remove the member, as outlined in our Bylaws (“Any officer or agent may be removed by the Board of Directors whenever in its judgment, the best interests of the Association will be served thereby.”)

### **ARTICLE 4**

#### **ENFORCEMENT OF COVENANTS AND RULES, INCLUDING NOTICE AND HEARING PROCEDURES AND SCHEDULE OF FINES**

The following procedures for notice and hearing shall apply in the enforcement of the Declarations, By-Laws and any applicable Rules and Regulations (the “Governing Documents”).

a. Request To Cease. Any Owner and the Board of Directors has the authority to request that an Owner or an Owner’s guests or tenants cease or correct any act or omission which appears to be a violation of the Governing Documents (“Alleged Violation”). Such informal request may be made in person, in writing, or by telephone (and is encouraged) before the formal process (as described herein) is initiated.

b. Written Statement to Board. If the request described above proves unsuccessful, the procedures described in this Article 4 shall be initiated upon an Owner or Board member filing a written statement with the Association Board. The written statement shall set forth in ordinary and concise language the acts or omissions which the author believes occurred and shall include as many specifics as are available as to time, date, location and persons involved, so that the complaint may be investigated and verified.

c. Contact With the Owner. If (based upon receipt of the above-described information) there appears to be sufficient evidence that an Alleged Violation has occurred, the Board (acting through one of its directors or an agent appointed by the Board) shall contact the Owner regarding the violation. Contact may be made verbally or by written correspondence. Verbal contact shall be followed up with written correspondence. The Board shall request that the Alleged Violation cease within such period of time as the Board deems reasonable, based upon the nature of the Alleged Violation. Any written correspondence shall be mailed to the last known address of the Owner, via certified and regular mail.

d. Special Meeting To Impose Fine. If the Alleged Violation has not ceased within the manner and period of time set forth in the letter to Owner, and if the Board has not received evidence from Owner that conclusively proves that the Alleged Violation has not occurred, the Board shall hold a Special Meeting to determine whether the Alleged Violation is occurring and to impose a fine and charge attorney fees or take such other actions (including suspension of

voting rights) as authorized by the Governing Documents. The Owner shall be sent a notice of Special Meeting which shall set forth the time and place of the special meeting at which time the Board will hear the matter. The notice shall be sent to Board Members and the Owner at least 14 days prior to the date of the Special Meeting. The Owner shall have an opportunity to attend (in person or by telephone) the Special Meeting and be heard at such meeting. At such meeting, the Board has the authority, upon determination by the Board that a Violation has occurred, to levy fines, charges, attorney's fees and other monies, and to take such other action as is authorized by the Association's Governing Documents and Colorado law. Rather than hold a Special Meeting to determine the foregoing, the Board may opt to address the Alleged Violation at prior "regularly scheduled" meeting of the Board so long as the notice procedures of this paragraph are followed.

e. Constraints on the Board. It shall be incumbent upon each member of the Board to make a determination as to whether he or she is able to function at the hearing in a disinterested fashion. If such member is incapable of objective consideration in the case, he or she shall disclose such to the committee and remove himself or herself from the proceedings and have it so recorded in the minutes.

f. Hearing. The hearing which takes place at the meeting described in paragraph 4.d above will not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

g. Decision of the Board. Decisions of the Board may be made "under advisement," i.e. at a later date and time but not to exceed 7 days from the date of the hearing. All decisions of the Board are effective three days after written notice is sent to the Owner (via regular, first class mail). Decisions must be rendered by a majority of the Board at which a quorum of the Board is present. Fines shall be imposed as of the date of the Board's decision and shall continue until the Alleged Violation is cured or corrected. At the request of the Owner, the Board has the discretion to waive or suspend its fines which have been imposed so long as the violation has been corrected.

h. Failure to Attend. If the Owner fails to attend the hearing (in person or by telephone), the violation shall be deemed to have occurred and the Board shall be authorized to impose the fine, charges and/or attorney's fees.

i. Joint and Several Liabilities. If there are multiple Owners, each shall be jointly and severally liable for any fine or other monetary penalty imposed pursuant to the enforcement of the Governing Documents, including, but not limited to, all attorney's fees, expert witness fees and costs incurred by the Association resulting from or in any way related to the violation or the collection of fines.

j. Remedy. Each remedy set forth in this notice and hearing policy and procedure shall be in addition to all other remedies, whether available at law or in equity and all such remedies, whether or not set forth in the Governing Documents, shall be cumulative and nonexclusive. For example, when appropriate, in addition to the imposition of a fine, the Board may file suit to enjoin an Owner from continuing with a prohibited activity.

k. Schedule of Fines. The Board shall determine applicable fines based upon the nature and frequency of the violation. The following is a schedule of fines for violations of certain categories of restrictions within the Governing Documents:

<b>Violation Category</b>	<b>Fine</b>
Non-compliance with building restrictions, Setbacks, Architectural design guidelines	\$1000 per incident
Failure to submit to the Board a change in building plans	\$100 per incident with a \$50 increase for each additional incident
Non-approved commercial activity, trash, rubbish, motor vehicle, temporary residence or other land-use related restriction	\$10 per day each day the violation continues
Animals, nuisance	\$10-\$50 per day each day the violation continues

The above schedule of specific fines may be amended and expanded upon by the Board from time to time as described in Article 7 below. In the event that a specific fine-per-violation has not been adopted by the Board, the Board shall impose a fine of **\$10.00** per day for each day a violation persists. Animal and nuisance fines will be within a range of \$10 to \$50 dollars and shall be applied by the Board in its discretion based upon the circumstances of the violation. Fines which have been imposed as a result of this procedure shall be collected in the manner of a default assessment. Imposition of a fine does not preclude the Board from taking additional action as may be available at law or in equity to enforce the terms and conditions of the Governing Documents.

## **ARTICLE 5**

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

The policy and procedure for the inspection and copying of Association Records is set forth in Article VII, Section 1(a) of the By-Laws. The copying of Association records shall be at the expense of the person examining the records or requesting copies.

## **ARTICLE 6**

### **RESERVE FUNDS**

a. Maintenance and Investment of Reserve Funds. The policies and procedures for the maintenance of Reserves are as set forth in Article VIII, Section 1(d) of the Bylaws. The Reserve Fund established by the Vista de Oro Board of Directors can be deposited with national or state banks or with any state chartered or federally chartered savings and loan association doing business in Colorado

b. Reserve Study Policy. The Board has determined to establish policies on reserve studies as required under House Bill 09-1359 as follows: (1) the Board of Directors shall

determine whether to have a reserve study prepared and the timing of any such study; (2) the Association may have any reserve study updated or revised periodically; (3) reserve studies may be performed by an outside consultant or may be prepared internally; (4) reserve studies are preferred to be based on a physical examination of the Community by the person preparing the reserve study. During the physical analysis, the common elements will be inspected and evaluated so as to determine the state of each common element, the life expectancy of the common element, and the repair/replacement cost of the major common area components.

c. Reserve Funding Policy. Funding for replacement/repair of major common area components is preferred to be based on a physical analysis as outlined above in combination with a financial analysis performed by the Board of Directors. Funding for replacement/repair is planned and projected to be from the following sources: (1) cash then on hand, including the operation account and the emergency fund, (2) annual assessments of owners, (3) special assessments of owners, and/or (4) any combination of the above.

## **ARTICLE 7**

### **PROCEDURES FOR THE ADOPTION AND AMENDMENT OF POLICIES, PROCEDURES AND RULES AND REGULATIONS**

Before the Board adopts or amends its policies, procedures and rules and regulations, the Board shall provide the Owners with notice of the proposed action and the right to comment orally or in writing. Notice shall be given to Owners via a posting in the bulletin board at the community mailbox and in a written notice (via mail, email or facsimile) to each Owners or, if available, via an Association website posting. The cost of such distribution shall be accounted for as a common expense of the Association. The notice shall be given not more than 50 days and not less than 10 days before the proposed action is to be taken. The notice shall invite comment to the Board, orally or in writing, no less than 10 days prior to the scheduled time of any meeting at which the amendment or adoption shall occur.

Rules and regulations governing the use of the common elements (i.e., the roads and mailbox area) of the Association and property restrictions comprising the Vista de Oro community may be adopted, amended and repealed by the Board from time to time; provided however, that the rules and regulations shall not be inconsistent with the Declaration, By-Laws or these Policies and Procedures.

## **ARTICLE 8**

### **PROCEDURES FOR ADDRESSING DISPUTES ARISING BETWEEN PROPERTY OWNERS AND THE ASSOCIATION**

This Association shall adopt an alternative dispute resolution (ADR) policy as required by CCIOA, Section 38-33.3-124(b).

### **ALTERNATIVE DISPUTE RESOLUTION**

1. Alternative Dispute Resolution. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to this Declaration, the By-Laws, Policies and Procedures, Development Standards, and Rules and

Regulations (the “Governing Documents”), or a breach thereof, or any other dispute between the Association or any Owner shall be resolved as set forth herein.

2. Prerequisite. The parties to a dispute shall exhaust all remedies and procedures required by the Governing Documents, including the notice and hearing procedures set forth in Article 4 above, prior to resolving the dispute through this ADR policy. Moreover, this ADR policy and compliance with the procedures set forth herein, is a prerequisite to the filing of a complaint or other court action, in any applicable court of competent jurisdiction.

3. Direct Communication. If the dispute is not governed by a procedure for resolution as otherwise provided in the Governing Documents, the parties to the disagreement shall set forth their respective positions in the dispute in correspondence. Each party shall respond within seven days after receipt of a letter from the other until agreement is reached.

4. Mediation. If the dispute cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. Both parties shall participate in the mediation in good faith until the dispute is resolved for a period not to exceed thirty days with the consent of all parties. The cost of the mediation shall be divided equally among the parties.

5. Arbitration.

(a) Method. If the dispute cannot be resolved through mediation, either party may request appointment of one or more neutral and properly credentialed arbitrators with expert knowledge and experience regarding the subject in dispute. The initiating person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The initiating person shall be responsible for all filing requirements and the payment of any fees according to the rules of the Uniform Arbitration Act, Part 2 of Articles 22 of Title 13, C.R.S. The parties shall have an equal and fair opportunity to present their respective positions to the arbitrators, orally or in writing, as the arbitrators may specify depending on the nature of the dispute. The arbitrators may require such testimony, materials and documentation as they may determine to be appropriate. The arbitrators shall provide a written resolution within thirty days after the conclusion of the presentations of the parties and receipt of requested materials and documents. Any dispute shall be settled by binding arbitration administered according to the Uniform Arbitration Act, Part 2 of Articles 22 of Title 13, C.R.S.

(b) Costs. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including any attorney’s fees, arbitrator’s fees and out-of-pocket expenses of any kind. The term “prevailing party” shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00.)

- (c) Binding Nature; Applicable Law. The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.
- (d) Location. The alternative dispute resolution proceeding shall be held within La Plata County, Colorado unless otherwise mutually agreed by the parties.
- (e) Sole Remedy; Waiver of Judicial Rights. The Association and each Owner expressly consent to these procedures established in this Article as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any dispute contemplated by this Article in any court of law or equity, and any right to trial by judge or jury. If a dispute involves the Association, no person shall file a memorandum of lis pendens or similar instrument that would encumber or create a lien upon the land owned by the Association.
- (f) No Agreement by Association. Notwithstanding any provision in this ADR policy to the contrary, the Association shall have the right to enforce all covenants and restrictions within the Declaration, the Governing Documents, and the Association does **not** agree to mediate or arbitrate its claims against Owners in such enforcement actions.
- (g) No Conflicts. This ADR Policy is not intended to modify or alter any portion of the Declaration or any “notice and hearing procedure” (as described in Article 4 above) established by the Board for the resolution of covenant violations. If any part of this alternative dispute resolution conflicts with any provision of the Declaration or the Policies and Procedures, the provisions of the Declaration and/or the Policies and Procedures shall be controlling.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 11<sup>th</sup> day of May, 2012.

**BOARD OF DIRECTORS:**

Stephanie Burgoyne, President & Treasurer	_____
Barb Bales, Vice President & Secretary	_____
Mike Calcagno, Member	_____
Will Gray, Member	_____
Roger Lemons, Member	_____
Travis Luz, Member	_____
Elisa Sterling-Vega, Member	_____