

After recording, please return to:
Cold Smoke Investments, LLC
5841 Autumnwood Dr.
Billings, MT 59106-9707

BYLAWS
OF
SHOP WORLD 406
OWNERS' ASSOCIATION, INC.
A Montana Nonprofit Mutual Benefit Corporation

ARTICLE I
NAME and PRINCIPAL OFFICE

The name of the corporation is Shop World 406 Owners' Association, Inc. ("Association"). The principal office of the Association shall be located initially at 5841 Autumnwood Drive, Billings, Yellowstone County, MT 59106-9707, which shall be the Association's official address until such time as it is changed by the Board of Directors of the Association.

ARTICLE II
DEFINITIONS, PURPOSES AND ASSENT

2.1 "Declarant" shall mean Cold Smoke Investments, LLC.

2.2 "Declaration" or "Covenants" shall mean and refer to the *Declaration of Covenants, Conditions, Restrictions and Easements for Shop World 406*, recorded on the ____ day of _____, 2023, as Document Number _____, records of Yellowstone County, Montana, as such may be amended from time to time. The Declaration restricts the property defined and described therein.

2.3 "Governing Documents" shall mean these Bylaws, the Articles of Incorporation for the Association, the Declaration and any Rules promulgated by Declarant, the Architectural Review Committee, or the Board of Directors of the Association.

2.4 All terms used in these Bylaws will have the same meaning as the same defined terms used in the Declaration, unless the use of such defined terms in these Bylaws or the context of these Bylaws clearly indicate otherwise.

2.5 The Association’s purposes include, but are not limited to: (i) to serve as the governing organization for the commercial property owners in the development known as Shop World 406, located in Yellowstone County, Montana; (ii) to provide for the maintenance, preservation, and control of the common areas and facilities, including without limitation the any monument signs and the storm drainage system, and paying all costs thereof; (iii) to promote the health, safety, and welfare of the owners and users of the Lots within the Shop World 406 subdivision; (iv) administer and enforce the Declaration; (v) promulgate, and enforce duly adopted rules of the Association; (vi) assess and collect assessments or fees as set forth in the Declaration; and (vii) such other and further matters as may be for the common good and welfare of the members.

2.6 All present or future Owners, present or future tenants, Occupants, customers, clients, guests and invitees, and any other person using the property within the Shop World 406 subdivision in any manner are subject to the Governing Documents.

ARTICLE III DECLARANT TO INITIALLY CONTROL

3.1 Declarant Control Period. Declarant shall control all rights and privileges set forth in these Bylaws until the earlier of (i) the date on which 80% of the Lots have been sold by Declarant or (ii) 3 years from the date the Declaration is first recorded in the office of the Clerk and Recorder of Yellowstone County, Montana, unless sooner terminated by Declarant by the Declarant filing a notice of termination of Declarant Control Period in the office of the clerk and recorder of Yellowstone County, Montana.

3.2 Architectural Review Committee. During the Declarant Control Period, Declarant reserves the right to act as the sole member of the Architectural Review Committee (“ARC”) or to appoint all members of the ARC as set forth in the Declaration.

ARTICLE IV MEETINGS OF MEMBERS AND VOTING

4.1 Membership and Voting. Membership shall be held as provided in the Declaration. Members of the Association (“Members”) shall be entitled to one vote for each Lot owned within the Shop World 406 subdivision as set forth in the Declaration. There shall be no fractional voting.

4.2 Annual Meeting. The annual meeting of the Members shall be held at any time within the first four months of the year, on a date and at a time and place to be set by the Directors. The Directors shall provide a report to the Members at the annual meeting on the condition and affairs of the Association. Members shall have the voting rights set forth in the Declaration and may participate in the annual meeting by the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting, including in person or by telephone conference call or similar remote communication.

4.3 Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Directors in response to a majority vote of the Directors or upon a request by the President, or upon written request of at least 50% of the votes of the Members.

4.4 Notice and Place of Meetings. Written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary or manager to all Members by personal delivery; electronic transmission; or by mailing a copy of such notice, first class mail, postage prepaid, at least 10 days before such meeting, addressed to the Member's physical, postal or electronic address last appearing on the books of the Association or as otherwise supplied by such Member to the Secretary. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If action is proposed to be taken at any meeting for approval of any proposals, the notice shall also state the general nature of the proposal. Member action to be taken during special meetings is invalid unless the notice states the general nature of the proposal. Meetings may be held within the Property or at a meeting place within Yellowstone County.

4.5 Quorum. The presence either in person or by proxy at any meeting of Members representing at least 25% of the total number of Lots shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the Members shall have power to adjourn the meeting to a date not less than 5 days later. Notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for special meetings.

4.6 Proxies. A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment form, either personally or by an attorney-in-fact. An appointment of a proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(a) An appointment of a proxy is revocable by the Member.

(b) The death or incapacity of the Member appointing a proxy does not affect the right of the Association to accept the proxy's authority unless notice of the death or incapacity is received by the Secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(c) Appointment of a proxy is revoked by the person appointing the proxy:

(i) Being present at any meeting and voting.

(ii) Signing and delivering to the Secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(d) Subject to Mont. Code Ann. § 35-2-542 and any express limitation on the proxy's authority appearing on the face of the appointment form, the Association is entitled to accept the proxy's vote or other action as that of the Member who made the appointment.

4.7 Conduct of Meeting. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure adopted by the Directors.

4.8 Action Without Meeting. Any action that may be taken at any annual or special meeting of Members (except for the election or removal of Directors) may be taken without a meeting in accordance with the provisions of Mont. Code Ann. § 35-2-529. Any action without a meeting must be approved by at least 80% of the Members.

4.9 Action by Written Ballot. Any action requiring Member approval that may be taken at a meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter and conducts the vote in accordance with Mont. Code Ann. § 35-2-533. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. The Association may deliver a written ballot by electronic communication. Any form of written ballot distributed by any persons to the Members shall afford the opportunity to specify a choice between approval and disapproval of each matter to be acted upon.

ARTICLE V DIRECTORS

5.1 Number and Qualification. Following the adoption of these Bylaws by the initial Director, the Manager of Cold Smoke Investments, LLC, the affairs of the Association shall be managed by a Board of not less than 3 nor more than 5 Directors, the number of which shall be determined by a resolution approved by Declarant. During the Declarant Control Period, Declarant shall appoint all Directors, who need not be Members. After the termination of the Declarant Control Period, all Directors shall be Members in good standing and shall constitute the Board of Directors of the Association. For Members that are an entity, rather than an individual, members, officers, directors, trustees or owners of the Member, may serve as a Director. For the purposes of this section, “in good standing” means current in the payment of Assessments and in compliance with the Governing Documents.

5.2 Election. The initial Board of Directors shall be appointed by the Declarant. After termination of the Declarant Control Period, the election of the Board shall be conducted at the annual meeting of the Members. The Members receiving the largest number of votes shall be elected. Voting for Directors or for their removal shall be by written ballot.

5.3 Term. Initially, 2 Directors shall be elected for a term of 2 years, and 1 Director shall be elected for a term of 1 year. The term of each additional Director, if any, shall be 2 years. Unless vacated sooner, each Director shall hold office until the Director’s term expires and a successor is elected.

5.4 Removal; Vacancies. A Director may resign by giving written notice to the Board. Any Director, except a Director appointed by the Declarant, may be removed by the vote of a majority of the Members. Notwithstanding anything to the contrary contained in this paragraph, any Director, except a Director appointed by the Declarant, who becomes 90 days delinquent in the

payment of assessments may be removed from office by a vote of the Board, and a successor Director shall be appointed by the Board. If a Director dies or resigns, the vacancy shall be filled by the remaining Directors. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. A vacancy created by the removal of a Director by the Members can only be filled by election by the Members. A successor Director shall serve for the unexpired term of his or her predecessor.

5.5 Compensation. No Director shall receive compensation for any service rendered to the Association as a Director. However, any Director may be reimbursed for actual expenses, if reasonable, incurred in the performance of the Director's duties.

5.6 Indemnification. The Association shall indemnify any present or former Director or officer of the Association to the fullest extent authorized under Mont. Code Ann. §§ 35-2-447 through 35-2-452 or any successor statutes.

ARTICLE VI MEETINGS OF DIRECTORS

6.1 Regular Meetings. Regular meetings of the Board shall be held as often as deemed necessary by the Board at such time as may be fixed from time to time by resolution of the Board. The annual meeting of the Board shall be held immediately after the annual meeting of the Members.

6.2 Special Meetings. Special meetings of the Board may be called by the President, Vice President or any 2 Directors.

6.3 Notice and Place. Board meetings shall be held on the Property or a meeting place within Yellowstone County, as close to the Property as possible. Notice of the time and place of regular and special meetings of the Board shall be given to each Director at least 10 days by first class mail or 72 hours by personal delivery, telephone or electronic means prior to the meeting. For a special meeting, the notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by 1 of the following methods: (a) personal delivery; (b) written notice by first class mail, postage prepaid; (c) telephone communication, including a voice message system or other system or technology designed to record and communicate messages; (d) electronic mail or other electronic means, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director. All such notices shall be given or sent to the Director's address, email address, or telephone number as shown on the records of the Association. Notice of all Board meetings, except emergency meetings, shall be given to the Members by electronic mail at least 5 days prior to the meeting. In addition, notice shall be mailed at least 5 days prior to the meeting to any Member who has requested notification of Board meetings by mail, at the address requested by the Member.

6.4 Manner of Acting.

- (a) Quorum. A majority of the Directors in office immediately before a meeting shall constitute a quorum for the transaction of business at that meeting of the Board.
- (b) Vote. The act of the majority of the voting Directors present at a meeting at which a quorum is present shall be the act of the Board unless otherwise specified in these Bylaws or required by law. Each Director shall have one vote.
- (c) No Proxy Voting. Directors may not vote or sign Board resolutions or consents by proxy.
- (d) Participation. Directors may participate in a regular or special meeting through the use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting, including in person or by telephone conference call or similar remote communication.

6.5 Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such action may be taken by electronic means if an electronic copy of the resolution is signed by each Director and returned to the Secretary by all Directors. Such consent shall have the same effect as a unanimous vote and shall be placed in the minutes book by the Secretary.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 Powers and Duties. It shall be the exclusive duty of the Board to exercise all powers and duties of the Association as expressed in the Governing Documents, and to manage and conduct the affairs of the Association, except as expressly reserved to a vote of the Members. Such powers and duties shall include, but are not limited to, the following:

- (a) To enforce the provisions of the Governing Documents by appropriate action.
- (b) To levy Assessments as allowed by the Declaration, these Bylaws and the State of Montana, and to provide for the collection, expenditure and accounting of said Assessments.
- (c) To pay for the expenses of the maintenance, repair and upkeep of the common areas and facilities, Association signs and other areas to be maintained by the Association.

- (d) To provide a means of hearing grievances of Owners.
- (e) To levy and collect special Assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operation or maintenance expenses, costs, or additional capital expenses, or because of emergencies; provided however, that the Board must follow the any restrictions or procedures that may be set forth in the Declaration.
- (f) To take appropriate legal action (including the filing of liens) to collect any delinquent Assessments, payments or amounts due from Owners or from any person or persons owing money to the Association, and to levy a penalty and to charge interest on unpaid amounts due and owing.
- (g) To defend in the name of the Association any and all lawsuits wherein the Association is a party defendant.
- (h) To enter into contracts with third parties to carry out the duties herein set forth, for and on behalf of the Association.
- (i) To establish bank accounts and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only by such persons as are authorized by the Board.
- (j) To establish rules and regulations for use of the Property, consistent with the Declaration and these Bylaws.
- (k) To exercise all the powers generally granted to a Montana nonprofit corporation under Mont. Code Ann. § 35-2-118.

7.2 Enforcement (Notice and Hearing). The Board shall have the power to enforce the Governing Documents, provided that any Owner charged with violating the Governing Documents, except for default in payment of Assessments, shall be entitled to make a written response to the Board, prior to any Board enforcement action.

ARTICLE VIII OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers. The officers of the Association shall be a President, Vice-president, Secretary, and Treasurer. The same person may be both the Secretary and Treasurer. At the option of the Board, notwithstanding Section 5.1 hereof, the Treasurer may be a certified public accountant who is not a Member. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

8.2 Election and Term. The officers of the Association shall be elected annually by the Board and each shall hold office for 1 year and until a successor is elected.

8.3 Resignation and Removal. Any officer may be removed from office by the Board of Directors for cause (but not from the Board, if he or she is also a Director). Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of

receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of such resignation by the Board shall not be necessary to make it effective.

8.4 Vacancies. A vacancy in any office may be filled by the Board. The officer appointed to such vacancy shall serve the remainder of the term of the officer he or she replaces.

8.5 Duties. The duties of each of the offices shall be as follows:

- (a) President: The President shall preside over all meetings of the Association and Board of Directors. The President shall be the general administrative and executive officer of the Association and shall perform such duties as may be specified by the Board or Members and exercise such powers as may be delegated to the office of President by the Board of Directors.
- (b) Vice President: The Vice President shall exercise the powers of the President in the absence of the President and shall perform such duties as directed by the Board.
- (c) Secretary: The Secretary shall give notice of all meetings of the Association and the Board and shall keep a record of the proceedings of all such meetings. The Secretary shall be authorized to sign on behalf of the Association all records, documents and instruments when such are authorized to be signed by the Association, except for banking and financing documents. The Secretary shall keep and maintain adequate and correct records of the business of the Association, including the names and addresses of all Members.
- (d) Treasurer: The Treasurer shall keep all financial records of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains and losses of the Association and is authorized to sign all financial and banking records and documents. The Treasurer shall prepare and report such periodic accountings as shall be required by the Association or the Board.

ARTICLE IX BOOKS AND RECORDS

9.1 Books and Records. The Association shall keep and maintain books and records of account, minutes of the proceedings of all meetings of its Members and Board of Directors, and a record of all actions taken by the Members or Board of Directors without a meeting (collectively “books and records”).

9.2 Inspection by Members. The Association’s books and records shall be available for inspection by a Member or its representative during regular business hours upon at least 3 days’ notice given to the Secretary.

ARTICLE X
MISCELLANEOUS

10.1 Amendment of These Bylaws. During the Declarant Control Period, Declarant may unilaterally amend these Bylaws for any purpose, provided that the amendment has no material adverse effect on the vested right of any Member. After termination of the Declarant Control Period, these Bylaws may be amended by the affirmative vote or written consent, or any combination thereof, of at least 51% of the Members. Any such amendment shall be recorded in the office of the Clerk and Recorder of Yellowstone County, Montana.

10.2 Conflicts. In the case of any conflict between the Declaration and the Bylaws, the Declaration shall control.

10.3 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the thirty-first day of December of every year.

DATED this ____ day of _____, 2023.

CERTIFICATE OF ADOPTION

The Officers signing below certify to the Association's adoption of the Bylaws to which this Certificate of Adoption is attached. The Officers are making this certification as of the ____ day of _____, 2023.

SHOP WORLD 406 OWNERS' ASSOCIATION,
a Montana nonprofit corporation

By _____
_____, President

By _____
_____, Secretary

STATE OF MONTANA)
 :SS
County of Yellowstone)

This instrument was acknowledged before me on _____, 2023, by _____, as President of Shop World 406 Owners' Association, and _____, as Secretary of Shop World 406 Owners' Association.

[Seal]
