

**GUNNISON RIVER HOMEOWNERS ASSOCIATION
POLICY AND PROCEDURE
REGARDING ENFORCEMENT
C.R.S. §38-33.3-209.5(1)(b)(IV)**

SUBJECT: Enforcement of the Governing Documents
PURPOSE: To adopt policies and procedures regarding the enforcement of the Governing Documents
AUTHORITY: The Declaration, Articles and Bylaws of the Association and Colorado Law ("Governing Documents")
EFFECTIVE DATE: On the date approved by the Board of Directors
RESOLUTION: The Association hereby adopts the following procedures and policies regarding enforcement:

1. Definitions. Unless otherwise defined in this Policy, initially capitalized or terms used in this Policy have the meanings set forth in the Governing Documents.

1.1 Impartial Decision Maker. A person or group of persons who have the authority to make a decision regarding the enforcement of the Association's covenants, conditions, and restrictions, including its architectural requirements, and the other Governing Documents and do not have any direct personal or financial interest in the outcome which may include, without limitation, the Board of Directors or a committee, at the discretion of the Board of Directors. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the Association.

1.2 Owner. The owner of any Lot or Parcel located within the Association.

2. Enforcement of Governing Documents. Any complaint which alleges a violation of the Declaration or the Governing Documents by an Owner against another Owner will be made in writing by the complaining Owner and will contain substantially the same information as set forth in the "Violation Complaint – Witness Statement" attached hereto as Exhibit A. At a minimum, the complaint must set forth:

2.1 The name, Lot number, and phone number of the complaining Owner.

2.2 The name and Lot number of the alleged violator.

2.3 The specific details or description of the alleged violation, including the date, time, and location where the alleged violation occurred.

2.4 A statement by the complaining Owner that he or she will cooperate in the enforcement procedures and will provide testimony at any proceedings, hearings, or trial which may be necessary.

2.5 The signature of the complaining Owner and the date on which the complaint is made.

3. Notice of Violation. The Owner alleged to have caused or committed the violation must be notified of the complaint and alleged violation by the Association or by its manager. If the complaint is based on conduct of an Owner's occupant or invitee, Owner must notify such person of the alleged violation. The notification must be in a manner prescribed by the Board of Directors in a form similar to that which is attached hereto as Exhibit B ("Notice of Violation").

4. Right to Hearing. Any Owner charged with an alleged violation of the Governing Documents is entitled to an opportunity for a hearing before an Impartial Decision Maker. If the Owner desires a hearing, the Owner must proceed as follows:

4.1 If the Owner desires to have a hearing regarding the Notice of Violation, within fourteen (14) days after the Notice of Violation has been delivered to the Owner, the Owner must complete the "Request for a Hearing" form, which is attached as Exhibit C, and return it to the Association or its manager.

4.2 If a request for a hearing is timely filed, a hearing on the complaint will be held before an Impartial Decision Maker. The hearing will be conducted no later than twenty-one (21) days after receipt of the Request for a Hearing, as determined by the Board of Directors.

4.3 At any such hearing, the Impartial Decision Maker will hear and consider arguments, evidence, and/or statements regarding the alleged violation. Following the hearing, the Impartial Decision Maker will issue its determination regarding the alleged violation. The decision of the Impartial Decision Maker will be final and binding on the Owner and Association.

4.4 The Owner shall have the right to appeal a decision made by the Impartial Decision Maker to the Board of Directors if the Impartial Decision Maker is other than the Board of Directors.

4.5 Notification of the Board of Directors' determination shall be made with the "Notice of Determination" regarding the violation, attached as Exhibit D.

5. Deemed Default. If no Request for a Hearing is filed within fourteen (14) days by the Owner, a hearing will be considered waived, the allegations in the Notice of Violation is deemed admitted by default, and appropriate sanctions will be imposed at a meeting of the Board of Directors or a committee. The Owner will be notified by the Association of any such determination using the same form and in the same manner as if a hearing had been conducted.

6. Remedies of Association. The Association, acting through the Board of Directors, may enforce all applicable provisions of and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

6.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard has been given to the Owner or other violator. A Owner

shall be responsible for payment of any fine levied or imposed against any person who is an invitee or tenant of the Lot;

6.2 Suspending an Owner's right to vote;

6.3 Suspending any person's right to use any facilities within the common elements; however, nothing in this Policy authorizes the Board of Directors to limit ingress or egress to or from a Lot;

6.4 Exercising self-help of taking action to abate any violation of the Governing Documents in an emergency situation;

6.5 Requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board of Directors or its designee has the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

6.6 Without liability to any person, prohibiting any contractor, subcontractor, agent, employee, or other invitee who fails to comply with the terms and provisions of the Governing Documents from continuing or performing any further activities at the Lot;

6.7 Towing vehicles which are parked in violation of the Governing Documents;

6.8 Filing a suit at law or in equity to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover monetary penalties or money damages, or to obtain such other relief as to which the Association may be entitled, including, without limitation, recovery of all attorney fees and other out of pocket costs and expenses, with interest thereon, as permitted by this Policy; and

6.9 Recording a written notice of a violation by any Owner of any restriction or provision of the Governing Documents. The notice must be executed and acknowledged by an officer of the Association and contain substantially the following information: (i) the name of the Owner; (ii) the legal description of the Lot against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Policy; and (v) a statement of the specific steps which must be taken by the Owner to cure the violation. Recordation of a "Notice of Violation" serves as a notice to the Owner and to any subsequent purchaser of the Lot that there is a violation of the provisions of the Governing Documents.

7. Fines. If an Owner is found to have violated personally or is otherwise liable for a violation, the following with respect to the levying of fines shall occur:

7.1 If found to be guilty of a first violation, the Owner will be notified of the finding by the Association or its manager that a first violation has occurred. The first violation, at the discretion of the Board of Directors, may be considered a warning that if any further violations occur a fine for the violation will be imposed. In the alternative, the Board of Directors may elect to assess a fine.

7.2 If found to be guilty of a second or continuing violation, the Owner will be notified of the finding by the Association or its manager. The Owner will be assessed a fine.

7.3 Where a fine is imposed, it will be in the amount of one hundred dollars (\$100) for a single incident of violation of a Governing Document, five hundred dollars (\$500) for a second single incident of the same violation, and five hundred dollars (\$500) for a third or subsequent single incident of the same violation; or in any case, the sum of five hundred dollars (\$500) per day for a violation of a continuing nature. A FINE FOR A VIOLATION OF A CONTINUING NATURE WILL CONTINUE UNTIL THE VIOLATION HAS BEEN ELIMINATED AND THE ASSOCIATION HAS CONFIRMED THE VIOLATION HAS BEEN CURED. OWNER MUST PROVIDE THE ASSOCIATION OF NOTICE IF THE VIOLATION HAS BEEN CURED.

7.4 If found to be guilty of any violation, including a first violation, the Notice of Determination may also require the Owner to pay for any damage or any unauthorized condition on the property for which the Owner has been found responsible, to pay the costs of any repairs which have previously been made or will be made by the Association, or to pay any legal expenses and costs incurred by the Association as a result of the violation. The cost of such inspection and any necessary repairs shall be assessed to the Lot.

7.5 All amounts required to be paid by an Owner under this Policy will bear interest at the higher of the amount permitted by law or by 18% per annum until paid.

7.6 Notwithstanding the foregoing, nothing in this Policy will be deemed to limit the Association's rights and remedies set forth in any of the other Governing Documents.

8. Charges. Any Owner assessed under this Policy must pay any charges imposed within thirty (30) days of notification that such charges are due. Failure to make the payment on time shall subject the Owner to all of the legal or equitable remedies necessary for the collection thereof, including, without limitation, the Association's right to assert a lien as an Assessment against the Lot in accordance with the Act. All charges imposed in accordance with this Policy will be added to the Owner's account and are collectible as an Assessment in the same manner as any regular or special assessment against the Lot.

9. Time of the Essence. Time is of the essence in this Policy.

10. Notices. Notices are deemed delivered either (a) at the time of delivery, if by personal delivery, or (b) on the second business day after deposit in the United States Mail.

11. Right of Action. The Association on behalf of itself and any aggrieved Owner is granted a right of action against any Owner for failure to comply with the provisions of the Governing Documents, or with decisions of the Board of Directors made pursuant to authority granted to the Association in the Governing Documents. In any action covered by this Section, the Association has the right to enforce Governing Documents by any proceeding at law or in equity, or as set forth in the Governing Documents, or by mediation or binding arbitration to the extent authorized by this Declaration or the Act. The prevailing party in any arbitration or judicial relief or other civil action shall be awarded from the non-prevailing party or parties, all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief, including interest as set forth in this Policy, on such amount until paid. Failure by the Association to enforce compliance with any provision of the Governing Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

12. Failure to Complete Maintenance. In addition to any other enforcement rights, if an Owner fails to properly perform its maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as an Enforcement Assessment.

13. Owner Not Responsible. If, as a result of the fact finding process described in this Policy, it is determined that the Owner should not be held responsible for the alleged violation, the Association will not allocate to the Owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or hearing the claim. If it is determined that the allegations were arbitrary or capricious, the complaining Owner will be responsible for the Association's costs or attorney fees incurred related to the claim.

14. Cumulative Remedies. All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party will be awarded all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. The amount of any such attorneys' fees, court costs, and interest constitute a lien against the Owner's Lot that may be foreclosed in accordance with applicable law.

15. Deviations. The Board of Directors may deviate from the procedures set forth in this Policy if in its sole discretion such deviation is reasonable under the circumstances.

16. Supplement to Law. The provisions of this Policy are in addition to and in supplement of the terms and provisions of the Governing Documents and the laws of the State of Colorado.

17. Inconsistencies. If and to the extent that any provision of this Policy is inconsistent with the Declaration or Bylaws, the applicable provisions of the Declaration or Bylaws prevail, unless otherwise required by applicable law.

18. Amendment. This Policy may be amended from time to time by the Board of Directors.

PRESIDENT'S CERTIFICATION: The undersigned, being the President of the Gunnison River Homeowners Association, a Colorado nonprofit corporation, certifies that the foregoing Resolution was approved and adopted by the Board of the Directors of the Association, at a duly called and held meeting of the Board of Directors of the Association on 4/26/23 and in witness thereof, the undersigned has subscribed his/her name.

GUNNISON RIVER HOMEOWNERS
ASSOCIATION, a Colorado nonprofit
corporation

By: Seth R. Manning
Seth R. Manning, President

EXHIBIT A
to
GUNNISON RIVER HOMEOWNERS ASSOCIATION
POLICY AND PROCEDURE
REGARDING ENFORCEMENT

Violation Complaint – Witness Statement

To be attached.

**GUNNISON RIVER HOMEOWNERS ASSOCIATION
VIOLATION COMPLAINT/WITNESS STATEMENT**

TO: _____

Date: _____

PLEASE PRINT OR TYPE. Complete all the information you know. If unknown, please state so. Attach additional sheets if necessary.

INFORMATION CONCERNING WITNESS(ES) TO VIOLATION

Reporting Witness Name

Reporting Witness Lot #

Phone Number (including area code)

ADDITIONAL WITNESSES

Name & Address

Phone Number (including area code)

Name & Address

Phone Number (including area code)

INFORMATION CONCERNING THE VIOLATOR

Violator's Name

Phone Number (including area code)

Lot #

Owner's Name, Address, & Phone Number, if different than the Violator

INFORMATION CONCERNING THE VIOLATION

Violation Date

Time

Location

Section(s) of Governing Documents that was/were violated

Reporting Witness' Observations: _____

Were any photographs or sound recordings made? _____ Yes _____ No

By whom: _____ Include any audio or videotapes or photographs with this form or forward as soon as possible. Include the name of the person who made the tape or photograph(s), the date it was made, the location where it was made, and the name of anyone else who was present.

I HAVE MADE THE ABOVE STATEMENT BASED ON MY PERSONAL KNOWLEDGE AND NOT UPON WHAT HAS BEEN TOLD TO ME. I WILL FULLY COOPERATE WITH THE ASSOCIATION AND ITS ATTORNEYS TO PROVIDE ADDITIONAL STATEMENTS OR AFFIDAVITS, AND IN THE EVENT A HEARING OR TRIAL IS NECESSARY I _____ WILL _____ WILL NOT APPEAR TO TESTIFY AS A WITNESS.

Signature

Date

Print Name

EXHIBIT B
to
GUNNISON RIVER HOMEOWNERS ASSOCIATION
POLICY AND PROCEDURE
REGARDING ENFORCEMENT

Notice of Violation

To be attached.

GUNNISON RIVER HOMEOWNERS ASSOCIATION
NOTICE OF VIOLATION

TO: _____ Date: _____

Re: Violation of Declaration, Bylaws, or Rules and Regulations

You are hereby notified, as the Owner/Tenant of the Lot # _____ at _____
_____ (address), Gunnison, Colorado that you violated the
Association's Declaration, Bylaws, or Rules and Regulations. The actions complained of
occurred on or about _____, 20__ and are described as follows: ____

UNDER THE ASSOCIATION'S RULES, IF YOU FAIL TO REQUEST A HEARING
WITHIN FOURTEEN (14) DAYS OR FAIL TO APPEAR AT A HEARING ON THESE
CHARGES, YOU WILL BE FOUND GUILTY BY DEFAULT, AND FINES, CHARGES,
COSTS, EXPENSES, AND LEGAL FEES MAY BE ASSESSED AGAINST YOU AND
ADDED TO YOUR **MONTHLY/YEARLY** ASSESSMENT.

YOU MAY AVOID THE PROPOSED SANCTION BY CURING THE VIOLATION WITHIN
7 DAYS OF THE DATE OF THIS NOTICE.

IF A VIOLATION EXISTS, WHICH HAS NOT ALREADY BEEN CORRECTED AND YOU
FAIL TO MAKE AN APPROPRIATE CORRECTION, THE ASSOCIATION MAY
CORRECT THE VIOLATION AT YOUR EXPENSE. Please consult the Association's
rules for further details.

You may request a hearing by signing, dating, and returning the attached Request for a
Hearing form within fourteen (14) days to the Association at the address below.

Very truly yours,
GUNNISON RIVER HOMEOWNERS ASSOCIATION

By: _____

Title: _____

Address

City, State Zip

Phone Number (including area code)

EXHIBIT C
to
GUNNISON RIVER HOMEOWNERS ASSOCIATION
POLICY AND PROCEDURE
REGARDING ENFORCEMENT

Request for a Hearing

To be attached.

GUNNISON RIVER HOMEOWNERS ASSOCIATION
REQUEST FOR A HEARING

I hereby request a hearing on the statements made against me as contained in the Notice of Violation dated _____, 20____, alleging a violation of the Declaration, Bylaws, or Rules and Regulations of Gunnison River Homeowners Association.

Owner/Resident's Name (Printed)

Address

City, State Zip

Phone Number (including area code)

Signature

Date

EXHIBIT D
to
GUNNISON RIVER HOMEOWNERS ASSOCIATION
POLICY AND PROCEDURE
REGARDING ENFORCEMENT

Notice of Determination

To be attached.

GUNNISON RIVER HOMEOWNERS ASSOCIATION
NOTICE OF DETERMINATION REGARDING VIOLATION

TO: _____ Date: _____

On _____, 20____, you were notified of a violation of the Declaration, Bylaws, or Rules and Regulations of the Association. Pursuant to the Association rules:

- ☐ A hearing was held at your request regarding the alleged violation.
- ☐ You were found not guilty and *no action will be taken*.
- ☐ You have admitted to the violation by default and waived your right to request a hearing *or* you have been found guilty. After considering the complaint and evidence, the following determination has been made, and *the following action(s) will be taken*:

- ☐ A 2nd, 3rd, or subsequent violations (circle one) of the Association's Declaration, Bylaws, or Rules and Regulations has occurred and a fine in the amount of \$_____ is now due.
- ☐ A violation of the Association's Declaration, Bylaws, or Rules and Regulations of a continuing nature has occurred and a fine in the amount of \$_____ per day from _____, 20____ is now due. A FINE FOR A CONTINUING VIOLATION WILL CONTINUE UNTIL THE VIOLATION HAS BEEN ELIMINATED AND THE ASSOCIATION HAS BEEN NOTIFIED.
- ☐ Damages and expenses in the amount of \$_____ have accrued and are due.
- ☐ Legal expenses in the amount of \$_____ have been incurred by the Association and are due.
- ☐ Damages have occurred or an architectural violation exists, as charged in the complaint. The Association will proceed to have the damages or violation corrected or repaired at your expense.
- ☐ As a result of a second or subsequent violation, we have instructed our attorneys to inform you that legal proceedings will be instituted if further violations occur, and the fees and expenses incurred will be assessed to you.

GUNNISON RIVER HOMEOWNERS ASSOCIATION

By: _____
Name: _____
Title: _____