

**Minutes of Meeting of the Executive Board of  
Somerset Estates Homeowners Association (SEHOA)  
December 20, 2022  
Mountain View Fire Station, Niwot CO**

- 1. Call to Order and Quorum** - The meeting was called to order at 6:35 PM. Quorum met for Executive Board meeting with Scott Abrahamson (SA), Anthony Chirikos (AC), Paula Hemenway (PH), and Steve Lehan (SL) present. Pea Lawson was absent.

Property Manager present – Al Orendorff (AO)

ACC members present – None

Homeowners present – None

- 2. Approval of Prior Meeting Minutes** – MOTION to approve minutes from the Meeting of the Executive Board on November 15, 2022 made by AC, seconded by SL, no further discussion, approved unanimously.

- 3. Treasurer's Report** – Report for November 2022 attached. We should have year-end financials in early January and can approve draft 2023 budget at the January 17 board meeting for ratification by the homeowners in March. Discussion of taking advantage of higher interest rates at FirstBank to move reserves from Capital One to FirstBank. Will investigate and initiate move if favorable.

- 4. Property Manager's Report**

AO is still working to set up a meeting with Hydrologik to determine how much we can further automate the weir metering system and generate acre-feet reporting. Water has been transferred from Pond 1 to Pond 2 in preparation for re-lining of Pond 1. Pond 2 is holding water better than last year but may have a few cracks we need to fix in 2023 after it is warmer. AO doesn't anticipate the need for a major repair. Pond 3 has more leak issues, especially along the east side. We can decide on a plan before next spring.

We have bids for re-lining Pond 1 from Dubs (PVC) and Silverback (polyurea), including excavation. The bid is high from Iverson, Dub's excavation contractor. Dub's is taking photos in case Iverson will re-evaluate the rock and concrete work. Rather than removing all the cobble rock and replacing with larger rip rap, we are looking at adding a shelf to re-use the cobble but keep it from sliding into the pond once re-lined. The slope of sides will be reduced. Engineer engaged by SHOA has evaluated the project; SHOA is awaiting his report. Silverback and M&B Pond and Lagoon can start work as early as January. If the weather cooperates, will take about three weeks to complete. PH will contact Nilex and the company that built Pond 8 to see if they will also bid on the project. If we end up with Silverback, we need to talk to them about the Indian Pond at the entrance of Somerset Heights. They said that would be “free”, but as SEHOA has no obligation for that pond, we need to find out the actual incremental cost.

Christmas lights were installed before Thanksgiving. AC noted that the large pole light is out at the entrance at Highway 52. One of the garland lights at the large east monument may also be out. AO to check on lighting and repair ASAP for safety. Marc Arnold has offered to help with the new lighting project at this entrance. AC also noted that lights are out on at least two street monuments in the subdivision, on Daylilly Court and Strawberry Lane. AO to investigate repair of these lights.

Discussion of updated contract for 2023 for Trio Property Management, AO's company. His fee in 2023 will be \$15,900. MOTION to approve contract, with amendment that each party will give 60 days

written notice of termination instead of 30 days, made by SL, seconded by AC, no further discussion, approved unanimously.

## **5. Governing Documents Update**

- CCIOA-Required Policies
  - Proposed revised Collection Policy as required by changes to CCIOA was published in What's Up #81 and posted on the website with a request for comments. No comments were received. MOTION to approve revised Collection Policy made by AC, seconded by SL, no further discussion, approved unanimously. Approved policy is attached.
  - Proposed revised Enforcement and Fines Policy as required by changes to CCIOA was published in What's Up #81 and posted on the website with a request for comments. No comments were received. Board discussion that \$25 fine every other day for violations that threaten public safety or health should be escalated if the violation is not promptly cured. Agreement to increase the fine to \$200/week after two weeks, \$500/week after four weeks, and \$1000/week after six weeks. MOTION to approve revised Enforcement and Fines Policy with amended fines schedule for violations that threaten public safety or health made by AC, seconded by SA, no further discussion, approved unanimously. Approved policy is attached.
- Rental Rules Possible Revisions – PH proposed revisions to the rental rules that reflect the new Boulder County regulations on short-term rentals. Discussion about rental rule violations that threaten public safety or health. Proposed revised rules will be published in What's Up and posted on the website for homeowner comment prior to approval at the January meeting.

## **6. Advice from Counsel on Agreements Related to Lot 4, Block 5 and Lot 8, Block 4** – As part of the Board review of governing and legacy documents, Scott Osgood, Counsel to SEHOA, reviewed a number of documents created between 1998 and 2000 involving Somerset Homeowners Association (SHOA) and Longview Associates, the developer of Somerset Estates, or its principals, Martin Hart and John McGraw. Mr. Osgood has advised the Board that, in particular, a 1999 settlement agreement between these parties as to the provision about the water feature on Lot 4, Block 5 and Lot 8, Block 4 has expired and neither SEHOA nor the current owners of these lots are bound to the terms of this settlement agreement. Furthermore, Mr. Osgood advised the Board that the recorded "lot covenants" concerning such agreement were never valid covenants at any time. As such, Mr. Osgood recommended that any funds collected by SEHOA pursuant to these documents be returned to the current lot owners. These current owners were advised of Mr. Osgood's advice and recommendation and were invited to comment prior to or at this meeting. One owner contacted SA and agreed to such a refund. The other owner did not respond.

MOTION to return monies collected by SEHOA to owners of Lot 4, Block 5 and Lot 8, Block 4, amounting to \$1,500 each (\$500 in 2019, 2021, and 2022 – no funds were collected in 2020) pursuant to inapplicability of Boulder County Record #1931444 and #1944460, made by SL, seconded by AC, no further discussion, approved unanimously. SA to draft a cover letter to accompany the checks.

7. **ACC Update** – The ACC is continuing to work on changes to the Architectural and Landscaping Standards to propose to the Board.
8. **Social and Welcome Committee Update** – Paula Hemenway is hosting a party for neighborhood women on January 12. Diane Jensen has offered to host a neighborhood-wide party next spring.
9. **Other Business** – Discussion of date for Annual Meeting and Budget Ratification Meeting (held together). The proposed date for the meeting is March 28.

**10. Member Open Forum** – None.

**10. Next meeting** – Executive Board meeting on Tuesday, January 17, 2023, at 6:30 PM at the Mountain View Fire Station.

**11. Adjourn** - The meeting adjourned at 8:20 PM.

A handwritten signature in black ink that reads "Paula Hemenway". The signature is fluid and cursive, with "Paula" on the first line and "Hemenway" on the second line.

Paula Hemenway, Secretary  
December 22, 2022

**Somerset Estates Homeowners Association - Treasurer's Report**

**Operating and Reserve Fund(s)**

**Balance Sheet and Summary Income Statement**

**November 2022**

<b>BALANCE SHEET</b>			
As of November 30, 2022			
	<b>Operating Fund</b>	<b>Reserve Fund</b>	<b>Total</b>
<b>ASSETS</b>			
<b>Operating/Checking Account</b>			
FirstBank	\$33,938	\$0	\$33,938
<b>Investment/Reserve Account</b>			
Capital One	\$0	\$402,076	\$402,076
<b>TOTAL ASSETS</b>	<b>\$33,938</b>	<b>\$402,076</b>	<b>\$436,014</b>
<b>LIABILITIES &amp; FUND BALANCE</b>			
Fund Balance	\$33,938	\$402,076	\$436,014
<b>TOTAL LIABILITIES &amp; FUND BALANCE</b>	<b>\$33,938</b>	<b>\$402,076</b>	<b>\$436,014</b>

<b>Statement of Revenues, Expenses, and Changes in Reserve Balance</b>			
	<b>Month of November, 2022</b>		<b>YTD November, 2022</b>
	<b>Operating Fund</b>	<b>Reserve Fund</b>	<b>Total</b>
<b>REVENUES</b>			
HOA Dues	\$3,175	\$0	\$3,175
HOA Violations & Fines / Late Fees	\$25	\$0	\$25
Special Assessment	\$0	\$0	\$0
Transfer Fees	\$0	\$0	\$0
Pond 7 Surcharges	\$0	\$0	\$0
Interest Income	\$0	\$594	\$594
<b>TOTAL REVENUES</b>	<b>\$3,200</b>	<b>\$594</b>	<b>\$3,794</b>
<b>EXPENSES</b>			
Administrative	\$5,364	\$0	\$5,364
Landscape Repair & Maintenance & Enhancement	\$3,185	\$0	\$3,185
Lights & Fence & Path & Pond Maintenance & Repair	\$279	\$0	\$279
Water & Utilities	\$1,159	\$0	\$1,159
Lighting Upgrades	\$0	\$0	\$0
Water System Infrastructure	\$0	\$0	\$0
Water Features (Ponds & Waterfall)	\$0	\$0	\$0
Water System Profession Fees (Project Mgmt. & Ops Manual)	\$0	\$0	\$0
Irrigation System	\$0	\$0	\$0
Hardscape (Fence & Paths & Monuments)	\$0	\$0	\$0
Softscape (Master Landscape Plan)	\$0	\$0	\$0
<b>TOTAL EXPENSES</b>	<b>\$9,987</b>	<b>\$0</b>	<b>\$9,987</b>
<b>EXCESS (DEFICIENCY) OF REVENUE OVER EXPENSES</b>	<b>(\$6,787)</b>	<b>\$594</b>	<b>(\$6,193)</b>
<b>TRANSFER BETWEEN OPERATING FUND and RESERVE FUND</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
			<b>\$109,123</b>
			<b>(\$111,573)</b>
			<b>(\$2,450)</b>

Somerset Estates Homeowners Association - Treasurer's Report								
Total Funds								
Income Statement								
November 2022								
		Year-to-Date			Better/ (Worse)	Budget 2022		
		Month	Actual	Budget				
REVENUE and EXPENSE SUMMARY								
<b>REVENUE</b>								
HOA Dues		\$3,175	\$248,250	\$245,575	\$2,675	\$246,975		
HOA Violations, Fines and Late Fees		\$25	\$6,697	\$0	\$6,697	\$0		
Transfer Fees		\$0	\$750	\$0	\$750	\$0		
Pond 7 Surcharges		\$0	\$1,000	\$1,000	\$0	\$1,000		
Special Assessment		\$0	\$2,500	\$2,500	\$0	\$2,500		
Interest Income		\$594	\$3,485	\$1,950	\$1,535	\$2,070		
<b>TOTAL REVENUES</b>		<b>\$3,794</b>	<b>\$262,682</b>	<b>\$251,025</b>	<b>\$11,657</b>	<b>\$252,545</b>		
<b>EXPENSES</b>								
Administrative		\$5,364	\$37,793	\$36,730	(\$1,063)	\$40,420		
Capital Expenses		\$0	\$117,558	\$198,500	\$80,942	\$198,500		
Landscape Repair & Maintenance & Enhancement		\$3,185	\$78,203	\$68,910	(\$9,293)	\$73,440		
Lights & Fence & Path & Pond Maintenance		\$279	\$20,010	\$22,340	\$2,330	\$21,540		
Water & Utilities		\$1,159	\$11,568	\$22,000	\$10,432	\$22,500		
<b>TOTAL EXPENSES</b>		<b>\$9,987</b>	<b>\$265,132</b>	<b>\$348,480</b>	<b>\$83,348</b>	<b>\$356,400</b>		
<b>EXCESS (DEFICIENCY) OF REVENUE OVER EXPENSES</b>		<b>(\$6,193)</b>	<b>(\$2,450)</b>	<b>(\$97,455)</b>	<b>\$95,005</b>	<b>(\$103,855)</b>		
<b>Outstanding Dues and Fines</b>		<u>0 - 30 Days</u>	<u>30 - 60 Days</u>	<u>60 - 90 Days</u>	<u>Over 90 Days</u>	<u>Total</u>		
Dollars		\$55	\$1,400	\$0	\$0	\$1,455		
# of Homes		2	0	0	0	2		

**SOMERSET ESTATES HOMEOWNERS ASSOCIATION, INC.**  
**COLLECTION POLICY AND PROCEDURE**

Adopted December 20, 2022

The following policy has been adopted by Somerset Estates Homeowners Association, Inc. ("Association") pursuant to the Colorado Common Interest Ownership Act ("Act"), including C.R.S. 38-33.3-209.5, as amended, at a regular meeting of the Executive Board, and replaces in its entirety the previous policy. This policy contains provisions that may conflict with the terms of the Association's governing documents. The Act and this policy will control over any conflicting provisions in the governing documents.

**Purpose:** To establish a uniform and systematic procedure for collecting assessments and other charges of the Association, thus ensuring the financial wellbeing of the Association.

**Collection Philosophy:** All owners are obligated by the Consolidated, Amended and Restated Declaration for Somerset Estates ("Declaration") to pay all dues and assessments in a timely manner. Failure to do so jeopardizes the Association's ability to pay its bills. Failure of owners to pay assessments in a timely manner is also unfair to its other owners who do. Accordingly, the Association, acting through the Executive Board must take steps to ensure timely payment of assessments.

**NOW, THEREFORE, IT IS RESOLVED** that the Association does hereby adopt the following procedures and policies for the collection of assessments and other charges of the Association:

1. **Due Dates.** The annual assessment, as determined by the Association, shall be due and payable quarterly in equal installments due on the first (1st) day of January, April, July and October each year. Special assessments or other charges may be assessed or made from time to time by the Association in accordance with the Declaration and are due and payable as specified by the resolution authorizing such assessment or charge. All assessments or other charges not paid to the Association when due shall be considered past due and delinquent.
2. **Late Fees and Interest.** The Association shall be entitled to impose a monthly late fee of \$25.00 on any assessment or other charge not paid within 30 days of the due date. Additionally, any assessment or other charge not paid within 30 days after the due date shall bear interest from the due date at the rate of 8% per annum, or at such lesser rate as may be set from time to time by the Executive Board. All such fees and interest shall be due and payable immediately, without notice, in the manner provided for payment of assessments.
3. **Return Check Charges.** If any check or other instrument payable to or for the benefit of the Association is not honored by the bank or is returned by the bank for any reason, including, but not limited to insufficient funds, the Owner is liable to the Association for an amount equal to the face amount of the check, draft, or money order and a return check charge of: (a) \$20.00; or (b) 20% of the face amount of the check, draft, or money order, but not less than \$20.00, if it has been assigned to a collection agency for collection; or (c) an amount equal to the actual charges incurred by the Association levied by the party returning the check, whichever is greater. If two or more of an Owner's checks are returned with any fiscal year, the Association may require that future payments, for a period of one year, be made by certified check or money order.
4. **Lien.** Under Colorado law and the terms of the Declaration, there is a lien for any unpaid assessment. If payment in full of any assessment or other charge is not received by the deadline stated in the Notice of Delinquency, the Association may cause a notice of lien to be filed against the property of the delinquent owner. The lien shall include assessments, fees, charges, late charges, attorneys' fees, fines and interest owed by the delinquent owner. The Association may delegate authority to the Association's attorney to sign and acknowledge the notice of assessment lien. This delegation may be withdrawn at any time by sending written notice to the Association's attorney of the withdrawal.
5. **Administrative Expenses.** Collection costs imposed by the Association or its managing agent for

delinquent accounts will be the obligation of the Owner and may be posted to the Owner's account. Examples include, but are not limited to, certified mailings and costs to physically post a notice or translate a notice to a language other than English.

6. Suspension of Rights. An Owner's voting rights may be suspended without notice if an assessment or other charge is delinquent as set forth in this policy.

7. Acceleration. Following written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. Upon acceleration, the Owner loses the privilege of paying any and all assessments and charges in installments for the remainder of the fiscal year, unless privilege is otherwise reinstated in the Board's sole discretion.

8. Attorney's Fees and Collection Costs. The Association shall be entitled to recover its reasonable attorneys' fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent owner, together with post-judgment and appellate attorneys' fees and costs incurred.

9. Application of Payments. If an Owner who has both unpaid assessments and unpaid fines, fees, interest or other charges makes a payment to the Association, the Association will apply the payment first to any unpaid assessments and second to any outstanding fines, fees, interest or other charges owed.

10. Monthly Notice of Delinquency. The Association will send monthly notices to each Owner with an outstanding balance and an itemized list of all assessments, fines, fees, and charges that the Owner owes to the Association. The monthly statement will be sent by first-class mail to the Owner's registered address and by email if the Association has a current email address. If the account has been referred to a collection agency or to any attorney, the statement will also specify that the balance may not include all attorney's fees and costs that have been incurred as of the statement date but not yet invoiced to the Association and posted to the account. No fees or other charges will be assessed for providing statements required under this Section.

11. Notice of Delinquency. The Association may send courtesy notices to Owners. After an installment of an assessment or other charge owed to the Association becomes 30 days past due, and before the Association turns the delinquent account over to a collection agency or refers it to the Association's attorneys for legal action, the Association shall cause a Notice of Delinquency to be sent to the owner who is delinquent in payment. The Notice of Delinquency shall specify the following

- A. The total amount due, with an accounting of how the amount was determined;
- B. Whether an opportunity to enter into a payment plan exists as provided in this policy, and the instructions for contacting the Association or its manager to enter into such a payment plan;
- C. The name and contact information for the person the Owner may contact to request a copy of the Owner's ledger in order to verify the amount owed;
- D. A statement that action is required to cure the delinquency, and that failure to do so within 30 days may result in the Owner's delinquent 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, or other remedies under Colorado law;
- E. Whether the delinquency concerns unpaid assessments; unpaid fines, fees or charges; or both unpaid assessments and unpaid fines, fees, or charges; and if the notice of delinquency concerns unpaid assessments, the notice of delinquency must notify the Owner that the unpaid assessments may lead to foreclosure;
- F. The steps the Association must take before the Association may take legal action against the Owner, including a description of the Association's cure process; and the specific action required to cure the default; and
- G. A description of what legal action the Association may take against the Owner, including a

description of the types of matters that the Association or Owner may take to small claims court, including injunctive matters for which the Association seeks an order requiring the Owner to comply with the Declaration, bylaws, covenants, or other governing documents of the Association.

12. Owner Contact and Delivery of Notice. Before the Association turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, the Association will:

- A. Send a copy of the delinquency notice described in Paragraph 11 by certified mail, return receipt requested and physically post a copy of this delinquency notice at the Owner's Lot; and
- B. Contact the Owner by one or more of the following means:
  - i. First-class mail;
  - ii. Text message to a cellular number that the Association has on file that the Owner has provided to the Association; or
  - iii. Email to an email address that the Association has on file that the Owner has provided to the Association.
- C. Notices from the Association will be sent in English; provided, however, that the Owner may send written notice to the Association with an alternate language preference. The Association will attempt to provide an accurate translation of the original English version, but due to nuances in translating to a foreign language, slight differences may exist.
- D. An Owner may send written notice to the Association identifying another person to serve as a designated contact for the Owner for notices and correspondence. The Association will send the same written communications to the designated contact that it sends to the Owner. If the Owner wishes to change or cease the designated contact, the Owner must send the Association written notice.

13. Record of Notification. The Association will maintain a record of the contact(s) it has made with an Owner regarding a delinquency, including the type of communication used to contact the Owner and the date and time the contact was made. As this record relates to a particular Lot, it will not be deemed to be a record available to all Owners under Colorado law.

14. Payment Plans.

- A. Before the Association turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, it will make a good faith effort to coordinate with the Owner to set up a payment plan. An Owner may enter into a payment plan to pay off a deficiency in equal installments over a minimum period of 18 months or such other longer period as authorized by the Board.
- B. If the Owner fails to comply with the terms of the payment plan (fails to remit payment of three or more agreed-upon installments within 15 days after the monthly installments are due), the Association may pursue legal action subject to the notice requirements above.
- C. The Association is not obligated to negotiate a payment plan with:
  - i. An Owner who has previously entered into a payment plan pursuant to this policy, or
  - ii. An Owner who does not occupy the Lot and acquired the Lot because of a default of security interest encumbering the Lot or a foreclosure of the Association's lien.
- D. Before the Association initiates a foreclosure proceeding based on the Owner's unpaid assessments, it will provide the Owner with a written offer to enter into a repayment plan of at least 18 months. Under the repayment plan, the Owner may choose the amount to be paid each month, so long as each payment must be in an amount of at least \$25.00. The Owner may elect to pay the remaining balance under the repayment plan at any time during the duration of the repayment plan.
- E. All payment plans involving accounts referred to an attorney for collection will be set and monitored through the attorney in consultation with the President of the Board or other person designated by the Board.

15. Board Action to Refer Delinquent Account. Before a delinquent account is referred to a collection agency

or attorney, a majority of the Board must vote to refer the matter by recorded vote conducted in executive session.

16. **Referral of Delinquent Accounts to Attorneys.** After an account has been referred to the Association's attorney, the account remains with the attorney until it is settled, has a zero balance, or is otherwise resolved. Once accounts are turned over to the Association's attorney, Owners will make payments to the Association at the attorney's address. The Association's attorney is authorized to take whatever action is necessary, in consultation with the President of the Board or other person designated by the Board, believed to be in the Association's best interest. After a delinquent account has been referred to the Association's attorney, all communication with the delinquent Owner will be handled through the Association's attorney. Neither the property manager, if any, nor any member of the Board may discuss the collection of the account directly with an Owner after it has been turned over the Association's attorney unless the attorney is present or has consented to the contact. Action by the Association's attorney may include the following:

- A. **Notice of Lien.** If not already recorded, a notice of lien may be recorded against the delinquent Owner's property to provide record notice of the Association's claim against the property.
- B. **Filing Lawsuit.** The Association may file a lawsuit against the delinquent Owner seeking a money judgment. If a personal judgment is entered against the delinquent Owner, the Association may pursue remedies such as garnishing the Owner's wages or bank account to collect judgment amounts.
- C. **Judicial Foreclosure.** The Association may foreclose on its lien in lieu of or in addition to suing an Owner for a money judgment. The purpose of foreclosing is to obtain payment of all assessments owing in situation where either a money judgment lawsuit has been or is likely to be unsuccessful or in other circumstances that may favor such action. If the Association forecloses on its lien, the Owner will lose the Owner's Lot, having the same effect as if a first mortgagee institutes a foreclosure action against the property (although the procedure is different).

Additionally, the Association will not pursue foreclosure against an Owner solely based on fines owed to the Association and/or collection costs or attorney's fees the Association incurred that are only association with such fines. Prior to filing a foreclosure action, the Board will resolve by a recorded vote in executive session to authorize the filing of the foreclosure action against the particular Lot against which the foreclosure action will be filed.

Should the Association pursue foreclosure of its assessment lien, no member of the Association's Executive Board, the Association's Manager, or any of the Manager's employees, or the Association's legal representative or any member of said law firm, or any family member of any of the preceding, shall be permitted to purchase a foreclosed home.

- D. **Receivership.** The Association may seek appointment of a receiver. A receiver is a disinterested person, appointed by the court, who manages rental of the Owner's property and collects 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 deterioration of the property.
- E. **Bankruptcy Filings.** The Association may file necessary claims, documents, and motions in Bankruptcy Court to protect the Association's claim.

17. **Certificate of Status of Assessment/Estoppel Letter.** The Association will furnish to an Owner, or such Owner's designee, upon written request delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against the Owner's Lot. The statement will be delivered within 14 calendar days after receipt of the request personally or by certified mail, first-class postage prepaid, return receipt requested. If the Owner's account has been turned over to the Association's attorney, the statement will include any attorney's fees incurred in providing the statement.

18. **Bankruptcies and Public Trustee Foreclosures.** Upon receipt of any bankruptcy notice or a foreclosure notice by any holder of an encumbrance against any Lot within the Association, the Association may advise the Association's attorney of the same and turn the account over to the Association's attorney.

19. **Enforcement.** Either the Association or an Owner seeking to enforce this Policy, or any rights and

responsibilities under the Declaration or this Policy or other governing documents related to disputes arising out of assessments, fines or fees owed to the Association and for which the amount does not exceed \$7,500.00, exclusive of interest and costs, may file a claim in Small Claims Court for such enforcement, including injunctive relief.

20. Waivers. The Association may modify these procedures as the Association determines appropriate under the particular circumstances. Any accommodation may be documents in the Association's files. Failure to require strict compliance with this policy is not deemed a waiver of the Association's right to require strict compliance and will not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney's fees, and/or costs as describe and imposed by this policy.

21. Severability. If a provision of this policy is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provisions of this policy.

Somerset Estates Homeowners Association, Inc.

By: \_\_\_\_\_  
Scott Abrahamson, President

This Collection Policy and Procedure was adopted by the Executive Board on the 20<sup>th</sup> day of December, 2022, effective immediately, and is attested to by the Secretary of the Somerset Estates Homeowners Association, Inc.

By: \_\_\_\_\_  
Paula Hemenway, Secretary

**SOMERSET ESTATES HOMEOWNERS ASSOCIATION, INC.**  
**ENFORCEMENT AND FINES POLICY**

Adopted December 20, 2022

The following policy has been adopted by Somerset Estates Homeowners Association, Inc. ("Association") pursuant to the Colorado Common Interest Membership Act ("Act"), including C.R.S. 38-33.3-209.5, as amended, at a regular meeting of the Executive Board ("Board"), and replaces in its entirety the previous policy. This policy contains provisions that may conflict with the terms of the Association's governing documents. The Act and this policy will control over any conflicting provisions in the governing documents.

**Purpose:** To establish a uniform and systematic protocol for enforcement of the Declaration, the Articles of Incorporation, the Bylaws, the Architectural and Landscaping Standards, and all other Rules, regulations, procedures, policies and guidelines, however denominated, adopted, or amended by the Board from time to time (collectively, "Documents"), for the regulation and management of the community, including Common Areas and Lots, and the imposition of fines for such enforcement.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following policy for the enforcement of the Documents of the Association:

1. **Fines Policy.** The Association may levy fines for violations of the Documents in accordance with the following fair and impartial fact-finding process that is designed to determine whether the alleged violation actually occurred and whether Owner allegedly violating the Association Documents is the one who should be held responsible for the violation.
2. **Notice of Violation ("Notice")**. The Notice of Violation process is as follows:
  - A. **Complaints.** The Board shall have the power and duty to accept complaints from Members of the Association. A proceeding to determine if the Documents have been violated by a Member and/or by a Member's guest or renter/lessee, and any enforcement measures and remedies that may apply, shall be initiated by a Member filing a written complaint with the Board, by any Property Manager that may be engaged by the Board, by a Board Committee, or by the Board itself. The complaint shall state the specific provision(s) of the Documents alleged to have been violated and as many specifics as are available as to time, date, location, and persons involved, including photographs if the violation is of the type that can be readily photographed. Upon receipt of a complaint, if the Board determines that the allegations in the complaint are sufficient to constitute a violation of the Documents and that action is warranted, the Association shall send a Notice of Violation ("Notice") to the Owner(s) alleged to have violated the Documents. The Association may also, at its option, provide a copy of the notice to any non-Owner violator.
  - B. **Violations that Threaten Public Safety or Health.** If the Association reasonably determines that a violation threatens the public safety or health, the Notice will describe the nature of the violation, advise the Owner that he/she has 72 hours to correct the violation or may be fined, and state that the Association may seek to remedy the violation and otherwise protect its rights as specified in the Documents and as provided by law. The Notice may be sent by any of the following means: first-class mail; certified mail; email to an email address that the Association has on file because the Owner has provided the email address to the Association; text message to a cellular number that the Association has on file because the Owner has provided the number or the Association; or personal delivery. After 72 hours from receipt of the Notice, the Association will inspect the Owner's Lot and determine whether the violation has been cured (or take whatever action is needed to determine if the violation is cured). If the Owner has not cured the violation, the Association may impose fines on the Owner every other day (or weekly at the Board's discretion) in accordance with the fine schedule in Section 5A below and/or commence legal action to enforce the governing documents and cure the violation. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

C. **Violations that DO NOT Threaten Public Safety or Health.** If the Association reasonably determines that a violation does not threaten public safety or health, the Notice will describe the nature of the violation, advise the Owner that he/she has 30 days to correct the violation or may be fined, and state that the Association may seek to remedy the violation and otherwise protect its rights as specified in the Documents and as provided by law. The Notice shall be sent to the Owner by certified mail, return receipt requested. Not later than 7 days after the conclusion of the 30-day period, the Association shall inspect the Owner's Lot to determine if the violation has been cured. If the violation has not been cured, the Association shall send a second Notice to the Owner advising that the violation has not been cured and that the Owner has an additional 30 days to cure the violation or may be fined and state that the Association may seek to remedy the violation and otherwise protect its rights as specified in the Documents and as provided by law. The second Notice shall also be sent to the Owner by certified mail, return receipt requested.

Before the expiration of either the first or the second 30-day period to cure the violation, the Owner may send the Association written notice that the violation has been cured, with visual evidence that the violation has been cured. The violation will be deemed cured as of the date the Owner sends the written notice. If the written notice from the Owner does not include visual evidence of the cure, then the Association shall inspect the Owner's Lot as soon as practicable to determine if the violation has been cured.

If the Owner does not provide written notice to the Association that the violation has been cured before the expiration of the second 30-day period to cure the violation, then within 7 days after the expiration of the second 30-day period the Association shall inspect the Owner's Lot as soon as practicable to determine if the violation has been cured. If upon inspection the Association determines that the violation has not been cured the Association may impose fines as set forth in Section 5B below and take other legal action the Association deems appropriate to cure the violation.

D. **Additional Required Notices.** If an Owner cures a violation, the Association will notify the Owner: (1) of any outstanding fine balance owned to the Association, and (2) that the Owner will not be further fined with regard to the violation.

E. Notices from the Association will be sent in English; provided, however, that the Owner may send written notice to the Association with an alternate language preference. The Association will attempt to provide an accurate translation of the original English version but due to nuances in translating to a foreign language, slight differences may exist.

F. An Owner may send written notice to the Association identifying another person to serve as a designated contact for the Owner for notices and correspondence. The Association will send the same written communications to the designated contact that it sends to the owner. If the Owner wishes to change or cease the designated contact, the Owner must send the Association written notice.

G. For the purpose of this policy to comply with Colorado law, a Notice is deemed received when sent by and according to the following timelines:

- Email or text – Upon successful transmission of electronic mail or text;
- Certified Mail/First-Class Mail – 3 business days after deposit for delivery;
- Posting – upon physical posting at the Owner's Lot; or
- Actual Notice – Upon hand-delivery.

3. **Request for Hearing.** If an Owner desires a hearing to contest any alleged violation and possible fine or to discuss any mitigating circumstances, the Owner must request the hearing in writing prior to the deadline and in the manner stated in the Notice of Violation. The request for hearing should describe the grounds and basis for challenging the alleged violation or the mitigating circumstances. If a timely request for a hearing is not made, the right to a hearing is deemed forever waived. If a hearing is not requested by the deadline, the Board will determine if there was a violation based upon the information available to it, and if so, assess a fine as set forth in the fine schedule upon expiration of any applicable cure period(s).

The hearing process will not and cannot be used to determine if a particular provision of the Documents is desirable.

4. Hearing Procedure. The general procedure for a hearing is as follows:

- A. Hearing Notice. The Board will inform the Owner of the scheduled time, date, and place of the requested hearing by any of the following means: first-class mail; certified mail; email to an email address that the Association has on file because the Owner has provided the email address to the Association; text message to a cellular number that the Association has on file because the Owner has provided the number to the Association; or personal delivery. Hearings may be conducted during or subsequent to any applicable cure period(s). The Board or presiding officer may grant continuances for good cause.
- B. Hearing Board to Conduct Hearing. The hearing board, which may be the Executive Board, will hear and decide cases set for hearing pursuant to the procedures set forth in this policy. The hearing board may appoint an officer or other Owner to preside at any hearing. The hearing board shall contain an odd number of members with a minimum of three.
- C. Conflicts. Any Owner who requests a hearing will be afforded a fair and impartial fact-finding process by “impartial decision maker” (persons with authority to make a decision on a claimed covenant, rule, or architectural and landscaping violation and without a direct personal or financial interest in the outcome of the hearing). Any decision-maker who is incapable of objective and disinterested consideration will disclose this to the presiding officer prior to the hearing, if possible. If advance notice is not possible, the disclosure will be made at the hearing, and the decision-maker will be disqualified from all proceedings related to the hearing. If disqualification of any decision-maker results in an even number of individuals eligible to hear a case, the presiding officer may appoint an Association Member, in good standing, to serve as a voting member of the hearing board.
- D. Process. At the beginning of each hearing, the presiding officer will explain the rules, procedures, and guidelines by which the hearing will be conducted. The complaining parties and the Owner will have the right, but not the obligation, to attend the hearing. Each party may present evidence, testimony, and witnesses. The decision will be based on the matters set forth in the Notice, request for hearing, and evidence as may be presented at the hearing. Unless otherwise requested by the Owner, all hearings will be conducted during executive session. If a complaining party is unable to attend the hearing, the complainant may submit a letter to the hearing board explaining the basis of the complaint.
- E. Decision. After all testimony and other evidence has been presented the hearing board shall decide whether the Owner should be held responsible for the alleged violation. If the hearing board finds that the Owner has violated the Documents, a fine shall then be assessed by the hearing board due upon expiration of any applicable cure period(s) or mutually agreeable arrangements made with the Owner to ensure cure of the violation and compliance in the future. If the hearing board finds that the Owner should not be held responsible for the alleged violation, then (1) no fine shall be assessed, and (2) the Association shall not allocate to that Owner’s account any of the Association’s costs or attorneys’ fees incurred in asserting or hearing the alleged violation. A decision, either a finding for or against the Owner, will be by a majority vote of the hearing board.

5. Fines.

- A. Violations that Threaten Public Safety and Health. The Association may impose a fine every other day in the amount of \$25.00 (or \$100.00 per week at the Board’s discretion) for violations that threaten public safety or health until the violation is cured. If the violation is not cured within two weeks, the Association may impose a fine of \$200.00 per week until the violation is cured. If the violation is not cured within another two weeks (four weeks total), the Association may impose a fine of \$500.00 per week until the violation is cured. If the violation is not cured within another two weeks (six weeks total), the Association may impose a fine of \$1000.00 per week until the violation is cured.

- B. Violations that DO NOT Threaten Public Safety and Health. If an Owner fails to timely cure a violation that does not threaten public safety or health, as set forth in Section 2C above, then the Board shall fine the Owner \$100.00 at the end of the 30-day notice period, and written notice of the fine shall be provided to the Owner (“Initial Fine Letter”). If the violation is not cured within 30 days of the date of the Initial Fine Letter, then the Board shall fine the Owner an additional \$200.00 and written notice of the additional fine shall be provided to the Owner (“Second Fine Letter”). If the violation is still not cured within 30 days of the Second Fine Letter, then the Board shall fine the Owner \$200.00 and written notice of the fine shall be provided to the Owner. In the alternative, the Association may fine the owner the sum of \$50.00 every other day, up to a maximum of \$500.00, until the violation is corrected. In no circumstance may the Owner be fined in excess of \$500.00 per violation.
- C. The Owner is responsible for notifying the Association in writing if and when the violation has been corrected.
- D. In the event that any Owner’s guest or renter/lessee violates the Documents and a fine is imposed, the Owner shall pay the fine upon notice from the Board.

6. Injunction. If the violation has not been cured within 60 days after the Notice, the Association may commence the necessary legal proceedings under the Documents or under Colorado law to compel correction of the violation as well as to recover any unpaid fines, court costs, attorney fees, and other Association expenses arising from the violation. Nothing in this paragraph shall preclude the Association from commencing legal proceedings to correct the violation prior to expiration of the 60-day period.

7. Collection of Fines. Assessed fines shall be billed to the Owner pursuant to the Association’s Collection Policy and are legally collectable as Assessments in accordance with the Documents and Colorado law. Furthermore, the violating Owner is responsible for all administrative and other costs and reasonable attorney fees incurred by the Association as a result of the violation. Examples include but are not limited to, certified mailings or costs to translate a notice to a language other than English. The fines and costs are the personal obligation of the violating Owner and, in addition, constitute a lien against such Owner’s Lot.

8. Repeat Violations. A “repeat violation” is a subsequent or additional violation of the same provision (covenant, restriction, rule, or regulation) as the first violation committed by an Owner, and which occurs within twelve months after the first violation. Such violation is considered a continuation of the first violation, and thus an Owner with a repeat violation is not entitled to the same hearing procedures set forth above. However, the Association shall provide Notice of the repeat violation to the Owner in accordance with Section 2B above. If the repeat violation has not been cured within the time period specified in the Notice for correction of the violation, then the fine (which will be determined by the Board and may be up to double the amount of the fine assess for the first violation but shall in no event exceed \$500.00 per violation that does not threaten public safety or health) will be imposed upon the expiration of the correction time period, notwithstanding any other provisions of this Policy to the contrary. After the twelve-month period, any subsequent occurrence of the same violation will be treated as a new first violation.

9. Additional Enforcement Rights. Fines levied under this Policy are not the Association’s exclusive remedy for addressing a violation. Nothing in this Policy precludes the Association from pursuing any other remedy provided under the Documents or under Colorado law for correcting the violation.

- A. Recorded Notice of Violation. The board may issue and record with the Clerk and Recorder of boulder County a Notice of Violation.
- B. Specific Assessments. The Board may levy specific Assessments against any Owner and Owner’s Lot for those purposes set forth in the Declaration, including, but not limited to reimbursing the Association for costs incurred in bringing an Owner into compliance.

- C. **Self-help Remedies.** The Association or its duly authorized agent has the authority to abate or remove any structure, thing, or condition that violates the Documents as more fully provided in Section 3.4.4(10) of the Declaration. All costs of self-help will be assessed against and be a lien on the Owner's Lot.
- D. **Suspension of Right to Vote.** An Owner's right to vote may be suspended after notice to the Owner if the Owner is in violation of the documents as more fully provided in Section 3.4.4(11) of the Declaration.

22. **Miscellaneous.** Failure by the Association to enforce any provision of this policy shall in no event be deemed to be a waiver of the right to do so thereafter.

23. **Severability.** If a provision of this policy is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provisions of this policy.

Somerset Estates Homeowners Association, Inc.

By: \_\_\_\_\_  
Scott Abrahamson, President

This Enforcement and Fines Policy was adopted by the Executive Board on the 20<sup>th</sup> day of December, 2022, effective immediately, and is attested to by the Secretary of the Somerset Estates Homeowners Association, Inc.

By: \_\_\_\_\_  
Paula Hemenway, Secretary