

Elk Run Single Family Owners Association

Required Policies and Procedures

I. ADOPTION OF RULES AND POLICIES PROCEDURES

A. Definitions

1. A *policy* is a course or principle of action adopted to guide the Board of Managers.
2. A *procedure* is an established or official way of conducting a course of action.
3. A *rule* is defined as a regulation or requirement governing conduct or behavior.
4. An *Owner* will mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

B. Policies and procedures govern the activities of the Board in the operation of the Association.

C. Rules govern the use of property within the community and the behavior of residents (owners and tenants), and/or their guests while in the community.

D. The Board will have the authority to adopt policies, procedures, and rules to the extent they do not conflict with the Declaration, Articles of Incorporation, and Bylaws of the Association.

E. The Board will have authority to adopt and amend those policies and procedures which govern Association operation. Such policies and procedures shall be adopted at an open Board meeting and documented in the minutes or in a formal resolution.

F. Rules once adopted will be sent to all Members and will be effective upon distribution by any reasonable method as determined in the sole discretion of the Board. There is no requirement that an Owner actually receive a copy of a policy, rule, regulation, or procedure for it to be effective.

II. NOTICE POLICY

- A. Notice of Delinquent Assessment. With regard to an Owner's delinquency in paying assessments, fines or fees, the Association shall first contact the Owner to advise of the delinquency before taking any further collection action and shall maintain a record of any contacts, including information regarding the type of communication used to contact the Owner and the date and time that the contact was made.
- B. Notice of Violation of Covenants. With respect to any violation of the declaration, bylaws, covenants, or other governing documents of the Association that the Association reasonably determines threatens the public safety or health, the Association shall provide the Owner written notice of the violation informing the Owner that the Owner has seventy-two (72) hours to cure the violation or the association may fine the Owner.
- C. Designated Contact for Owner. For this Notice Policy, an Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf.
- D. Preference of Language. An Owner may also notify the Association if the Owner prefers that correspondence and notices from the Association be made in a language other than English. If a preference is not indicated by the Owner, the Association shall send the correspondence and notices in English. The Owner and the Owner's designated contact must receive the same correspondence and notices anytime communications are sent out; except that the unit owner must receive the correspondence and notices in the language for which the unit owner has indicated a preference, if any.
- E. Method of Delivery. The Association shall send the notice of delinquency by certified mail, return receipt requested, **and** by physically posting a copy of the notice of delinquency at the Owner's unit. In addition, the Association shall contact the Owner by one of the following means:
 - 1. First-class mail;
 - 2. Text message to a cellular number that the Association has on file as provided by Owner; or
 - 3. E-mail to an e-mail address that the association has on file provided by the Owner.

III. COLLECTION POLICIES AND PROCEDURES

A. Due Dates, Late Charges, Interest, Returned Checks, Suspension of Voting Rights.

1. Due Dates. The annual owner assessments of the Association are due quarterly on the first day of each January, April, July, and October. Any installment payment not received by the 10th day of the relevant month shall be deemed past due. Payments will be posted on the date the payment is received in the Association's office or the Association's payment processor's office. Any installment not paid in full within thirty (30) days of the due date will be considered delinquent. Owners may pay annually in January with a discount of \$10.00. All delinquent payments are subject to late charges and other fees as described in this Policy.
2. Other Charges. Any and all other charges of the Association, including fines, fees and other payments will be due thirty (30) days after notice to the Owner of the charges have been sent.
3. Interest. Interest at the rate of 8% per annum will accrue on any delinquent assessment, fine, or other charge without further notice to the Owner. Interest begins to accrue the day after the ten (10) day grace period. Such interest will be considered additional assessments and as such is a personal obligation of the Owner.
4. Suspension of Voting Rights. An Owner's voting rights will be automatically suspended without notice if an assessment or other charge is deemed delinquent by the Board. Suspensions are limited to 60 days for each violation.
5. Return Check Charges. If a check to 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 value of the check, draft, or money order, and a return check charge of \$40.00 or an amount equal to the actual charges incurred by the Association, whichever is greater, will be levied against the Owner.

If two or more of an owner's checks are returned unpaid by the bank within any twelve (12) month period, the Association may require that all of the owner's future payments, for a period of one (1) year, be made by certified check or money order.

B. Application of Payments.

1. If an Owner who has both unpaid assessments and unpaid fines, fees, or other charges, makes a payment to the Association, that payment will be applied first to any unpaid assessments and then to any unpaid fines, fees and interest charges.

C. Notices.

1. Notice of Delinquent Assessment. With regard to an Owner's delinquency in paying

assessments, fines or fees, the Association shall first contact the Owner to advise of the delinquency before taking any further collection action and shall maintain a record of any contacts, including information regarding the type of communication used to contact the Owner and the date and time that the contact was made. 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. For the Notice of Delinquent Assessment, an Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf; notice shall be sent to the designated contact as well as the Owner.

2. Language of Notice. An Owner may also notify the Association if the Owner prefers that correspondence and notices from the Association be made in a language other than English. If a preference is not indicated by the Owner, the Association shall send the correspondence and notices in English. The Owner and the Owner's designated contact, if applicable, must receive the same correspondence and notices anytime communications are sent out.
3. Requirements of Notice. The Notice of Delinquency shall be written in English and any language that the Owner has indicated a preference for, and shall include the following:
 1. Whether the delinquency is based on unpaid assessments, unpaid fines, fees or charges, or both and the total amount due, with an accounting of how the amount was determined.
 2. Notification to the Owner that unpaid assessments may lead to foreclosure.
 3. The name and contact information for the Association representative who the Owner may contact to request a copy of the Owner's ledger in order to verify the amount owed.
 4. The method by which payments may be applied on the delinquent account of an Owner and the legal remedies available to the Association to collect on the Owner's delinquent account pursuant to the Association's governing documents and Colorado law.
 5. That action is required on the part of the Owner to cure the delinquency and a description of the specific action required to cure the default.
 6. That failure to cure the delinquency within thirty (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 unit owner's property, or other remedies available under Colorado law.
 7. A description of the steps the Association must take before the Association may take legal action, including a description of the Association's cure process.

8. 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.
4. Method of Delivery. The Association shall send the Notice of Delinquency by certified mail, return receipt requested, **and** by physically posting a copy of the Notice of Delinquency at the Owner's unit. In addition, the Association shall provide the Notice of Delinquency to the Owner by one of the following means: (a) First-class mail; (b) text message to a cellular number provided by Owner; or (c) e-mail to an e-mail address provided by Owner.
- D. Payment Plan for Delinquent Assessments.**
1. Offer of Payment Plan. Prior to commencement of any legal action, the Association shall provide the Owner with a written offer to enter into a payment plan, allowing the Owner to repay the assessment debt in monthly installments over eighteen (18) months, so long as the Owner pays an amount of at least twenty-five (\$25.00) dollars a month, until the balance owed is less than twenty-five dollars (\$25.00).
 2. Owner's Failure to Comply with Payment Plan. Nothing in this section prohibits the Association or a holder or assignee of the Association's debt from pursuing legal action against an Owner if the Owner fails to comply with the terms of the payment plan. If an Owner fails to remit payment of three or more agreed-upon installments pursuant to the terms of the payment plan or fails to remain current with regular assessments as they come due during the eighteen-month repayment period, the Owner's failures shall constitute a failure to comply with the terms of the payment plan and the Association shall have the right to initiate foreclosure action or pursue legal action against such Owner.
 3. Payment Plan Exceptions. The Association is not required to offer a payment plan if the Owner does not occupy the unit and has acquired the unit as a result of: (a) default of a security interest encumbering the unit; (b) foreclosure of the Association's lien; or (c) the Owner has previously entered into a payment plan for unpaid assessments with the Association.

E. Collection Process.

1. Referral of Delinquent Account. If the owner fails to cure the delinquency within thirty (30) days after the deadline stated in the Notice of Delinquency has expired, the Association may, but shall not be required to refer the delinquent account to a collection agency or its attorneys for collection. The Board may only refer the delinquent account to a collection agency or its attorney if a majority of the executive board votes to refer the matter in a recorded vote at a meeting conducted pursuant to the Association's Meetings Policy and Procedures.

After an account has been referred to an attorney, the account shall remain with the attorney until the account is settled, has a zero balance, or is written off. All payment plans involving accounts referred to an attorney for collection may be set up and monitored

through the attorney. After consultation with the Board of Directors or the Association's managing agent, the attorneys shall be entitled to exercise all available remedies to collect the amounts due, including judicial foreclosure and appointment of a receiver of the delinquent owner's property.

2. Liens. 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.
3. Foreclosure of Lien. Notwithstanding any provision of this policy to the contrary, the Association may only foreclose the lien if:
 - a. The balance of the assessments and charges secured by the lien equals or exceeds six (6) months' worth of regular assessments based on the periodic budget adopted by the Association; and
 - b. The Board of Directors has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific owner's lot on an individual basis.

The Association must have complied with each of the requirements in Section C - 3 above, as determined by C.R.S. §38-33.3-316.3. The Association may not foreclose on an Owner's delinquent account if the debt securing the lien consists of fines only, or fines and collection costs, or fees associated with levied fines.

F. Attorney Fees.

1. Recovery of Costs of Collection. The Association will be entitled to recover its reasonable attorney fees and collection costs incurred in any action or suit for a judgment or decree brought by the association including the collection of assessments or other charges due the Association from a delinquent Owner pursuant to the terms of the Declaration and Colorado law. The Association is not entitled to recover attorney fees for any such fees incurred before the Association has complied with the notice requirements of with regard to the matters set forth in the Notice Policy, based upon the requirements contained in C.R.S. §38-33.3-209.5(1.7)(a).

G. Delinquencies Constitute Covenant Violation.

1. Any delinquency in the payment of assessments or other charges shall constitute a violation of the covenants contained in the Declaration, and following notice and an opportunity to be heard, the Association shall be entitled to impose sanctions on the delinquent owner consistent with the Association's Enforcement of Covenants and Rules Policy. For purposes of this section, 'sanctions' shall not include the assessment of late fees and interest which are due and payable immediately without notice and hearing.

IV. CONDUCT OF MEETINGS POLICY AND PROCEDURES

A. Annual Meetings/Special Member Meetings.

1. Meetings of the membership, either annual or special, will be held at such a place, including virtually, as may be fixed from time to time by resolution of the Board. Notice of a Membership meeting and the Agenda will be sent by email to each Member not more than twenty (20) days or less than ten (10) days prior to the meeting. If a Member requests notice by postal mail in writing, notice will be provided by U.S. first class mail. Membership meetings will also be posted on the Association's website. All meetings of the Association are open to every Owner, or any person designated by an Owner in writing as the Owners' representative.
2. The Agenda for all meetings shall follow the order of business specified by the Association's Bylaws, and if none, in accordance with the order of business determined by the Board. The agenda for Owners' meetings shall include a Member Open Forum during which any Member or Member's designated representative who wishes to speak will have the opportunity to do so, subject to the provisions of paragraphs 8, 9, 10, and 11 of this policy.
3. Each Member will sign in prior to the meeting for himself/herself and for any proxies he/she holds. Voting rights of delinquent Members are suspended, and such Members will not be given a ballot. If an election or a vote is to be held, the Member will be given the appropriate number of ballots. If a secret balloting is not required, the Association may indicate the number of proxies held on the ballot itself.
4. The presence at the meeting of Members entitled to cast, or of Members holding proxies and entitled to cast, the percentage of votes equal to the percentage contained in the Covenants, shall constitute a quorum for any action. If, however, such quorum is not present or represented at any meeting, the Members entitled to vote shall have to adjourn the meeting, from time to time, without notice other than announcement at the meeting until a quorum shall be present or be represented.
5. Secret ballots are required for the following: any ballot for election of a contested position on the Board of Managers; and any ballot for other matters if so requested by at least twenty percent (20%) of the Members present in person or by proxy at the meeting. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be owners who are selected or appointed at an open meeting, in fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates.
6. The President of the Board, or other person directed by the Board, will call the meeting to

order and chair the meeting.

7. Each Member who wishes to speak will be given a reasonable time to speak, provided the chair may impose reasonable time limits to facilitate Member participation. Members may not speak a second time until everyone who wishes to speak has been given an opportunity to speak once. Members may not speak more than twice on any one topic, subject to the chair's discretion.
8. Members must maintain decorum and refrain from addressing the Membership or Board until recognized by the chair. On being recognized, the Member must state his/her name and address.
9. Members may not interrupt anyone who validly has the floor, nor otherwise disrupt the meeting. Members may not engage in personal attacks on either Board Members or other Association Members. All comments and questions are to be delivered in a businesslike manner, and comments will be confined to matters germane to the agenda item being discussed. No Member may use abusive, rude, threatening, vulgar, or crude language. To facilitate free and open discussion, Members will not audio- or video-record meetings without prior authorization of the Board. The Board may choose to record the meeting to aid in the preparation of the minutes.
10. Members must obey all orders made by the meeting chair, including an order to step down. Any Member who refuses to follow the above rules will be asked to leave the meeting.
11. Any motions must be seconded prior to discussion and voting. Because the nature of a motion and vote may be outside the Members' authority, the Board reserves the right to determine whether a motion will be considered binding on the Association or a recommendation for processing. Such determination may be made following consultation with legal counsel.
12. When voting on motions or in elections, each member being present in person or by proxy will be entitled to the number of votes equal to the undivided percentage interest in the general common elements. For voting other than for Board members, votes will be taken in such a method as determined by the Board of Directors or the Chair of the meeting, including acclamation, by hand, by voice or by ballot, unless otherwise required by law.
13. In the election of Board Members, voting will be conducted by secret ballot for contested elections. Secret ballots will be counted by a neutral third party or by a committee of volunteers who will be Members selected or appointed at an open meeting by the President of the Board or other person presiding during that portion of the meeting. The committee of volunteers will not be Board Members, and in case of a contested election for a Board position, will not be candidates. The results of a vote taken by secret ballot will be reported

without identifying information of Members participating in such vote.

14. Meetings are not required to be held in accordance with Robert's Rules of Order; however, the chair of the meeting may establish such reasonable meeting rules of order as necessary.

B. Board Meetings

1. Regular meetings of the Board of Directors shall be held quarterly, as the Board of Directors, by vote, may determine with written notice to the general membership and at such place and hour as may be fixed, from time to time, by resolution of the Board.
Should said meeting fall on a legal holiday, then that meeting will be held at the same time on the next day which is not a legal holiday. All Board meetings of the Association are open to every Owner, or any person designated by the Owner in writing as the Owners' representative.
2. Special meetings of the Board of Directors will be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director. All Special meetings of the Board of Directors are open to every Owner, or any person designated by the Owner in writing as the Owner's representative.
3. The Directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Any actions taken will be included in the minutes of the next meeting.
4. A majority of the number of directors will constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present will be regarded as the act of the board.

C. Executive Session.

1. The Board may hold an executive or closed door session and may restrict attendance to Board members and such other persons requested by the Board. The matters to be discussed at such an executive session shall include only matters enumerated below:
 - a. matters pertaining to employees of the Association or the managing agent's contract or involving the employment, promotion, discipline or dismissal of an officer, agent or employee of the Association;
 - b. consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
 - c. investigative proceedings concerning possible or actual criminal misconduct;
 - d. matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

- e. any matter the disclosure of which would constitute an unwarranted invasion of individual privacy including a disciplinary hearing regarding a unit owner and any referral of delinquency, except that a unit owner who is the subject of a disciplinary hearing or referral of delinquency may request and receive the results of any vote taken at the relevant meeting;
 - f. review of or discussion relating to any written or oral communication from legal counsel.
- 2. Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate matter, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

V. CONFLICT OF INTEREST POLICY

A. General Duty. The Board of Directors shall use its best efforts at all times to make decisions that are consistent with high principles, and to protect and enhance the value of the properties in the community. All members of the Board shall exercise their power and duties in good faith and in the best interest of the Association. All members of the Board shall avoid conflicts of interest and conflicting interest transactions in their dealings with and representation of the Association and shall avoid the appearance of impropriety in those dealings.

B. Definitions.

1. "Conflict of interest" means circumstances under which a Board member may be unduly influenced in his or her decision-making process in favor of or against any particular action. If any contract, decision, or other action taken by or on behalf of the Board of Directors would financially benefit any member of the Board of Directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board of Directors or a parent or spouse of any of those persons, that member of the Board of Directors shall declare a conflict of interest for that issue.

2. "Conflicting interest transaction" means any contract, transaction, or other financial relationship between the Association and a Board member, or between the Association and a party related to a Board member, or between the Association and an entity in which a Board member of the Association is a director or officer or has a financial interest. For purposes of this section, a "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the Board Member or a party related to a Board Member has a beneficial interest, or an entity to which a party related to a Board Member is a director, officer or has a financial interest.

3. "Officer," for purposes of this policy only, means any person designated as an Officer of the Association and any person to whom the Board delegates responsibilities, including without limitation a managing agent, attorney, or an accountant employed by the Board.

C. Disclosure by Officer. The Board Member has a duty to disclose the existence of any actual or potential conflict of interest and all material facts relating to the actual or potential conflict in an open meeting prior to any discussion or action on that issue. After making such disclosure, the Board Member may participate in the discussion but shall not vote on that issue. Such disclosure will be reflected in the minutes of the meeting or other written form.

- D. Disclosures by Members. If a Member believes that a vendor or contractor has a perceived undisclosed conflict of interest, the Member may notify any member of the Board of the perceived conflict of interest and a disinterested member of the Board will review the perceived conflict to determine if it falls within the parameters of this policy.
- E. Participation and Voting. a majority of the disinterested Board members may ask the interested Board member to remain during any portion of the discussion and/or vote, provided that the interested Board member does not vote.
- F. Quorum. The President or other person appointed by the Board will count for the purpose of establishing a quorum of the Board for the matter in which there is a conflict.
- G. Approval of Transaction. The contract, Board decision, or other Board action must be approved by the majority of the disinterested Board Members who are voting. No contract, Board decision, or other Board action in which a Board Member has a conflict of interest will be approved unless it is commercially reasonable to and/or in the best interests of the Association.
- H. Loans. No loans will be made by the Association to its Officers. Any Officer who assents to or participates in the making of any such loan will be liable to the Association for the amount of such loan until repayment of the loan.

VI. COVENANT AND RULES ENFORCEMENT POLICIES AND PROCEDURES

A. Enforcement Procedure. The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration of Basalt South Single Family Residences. Failure by the Association or by any Owner to enforce any covenant or restriction contained herein will in no event be deemed a waiver of the right to do so thereafter.

1. Violation Threatening Safety or Health.

- a. With respect to any violation of the Declaration, Bylaws, Covenants, or other governing documents of the Association that the Board reasonably determines threatens the public safety or health of the association community, the Association shall provide the Owner written notice of the violation informing the Owner that the Owner has seventy-two (72) hours to cure the violation or the Association may fine the Owner. The method of delivery of such written notice shall be certified mail, return receipt requested and posting notice at the Owner's unit, as well as one of the following alternative methods: first class mail, text message or e-mail as provided by the Owner.
- b. If, after an inspection of the unit, the Association determines that the Owner has not cured the violation within seventy-two (72) hours after receiving the notice, the Association may impose fines on the Owner every other day and may take legal action against the Owner for the violation. However, the Association shall not pursue foreclosure against the Owner based upon a lien securing fines that the Association has assessed against the Owner or collection costs or attorney fees that the Association has incurred which are only associated with the assessed fines.

2. Violation Not Affecting Safety or Health.

- a. If the Association reasonably determines that an Owner has committed a violation of the Declaration, Bylaws, Covenants, or other governing documents of the Association, other than a violation that threatens the public safety or health, the Association shall, through certified mail, return receipt requested, provide the Owner written notice, in English and in any other language that the unit owner has indicated a preference for of the violation, informing the Owner that the Owner has thirty (30) days to cure the violation or the Association, after conducting an inspection and determining that the Owner has not cured the violation, may fine the Owner; however, the total amount of fines imposed for the violation may not exceed five hundred dollars (\$500.00).
- b. The Association shall grant an Owner two (2) consecutive thirty (30) day periods to cure a violation before the Association may take legal action against the Owner for the violation. However, the Association shall not pursue foreclosure against

the unit owner based on fines owed collection costs or attorney fees that the Association has incurred which are only associated with the assessed fines.

B. Complaint.

1. Complaints regarding an alleged violation of any provisions of the Declaration, Bylaws, Rules and Regulations, Resolutions, Covenants, shall be in writing, reported to the Association Board and may be reported by an Owner, Board Member, resident, or occupant. The complaint shall state the specific provisions of the Declaration, Bylaws, Rules and Regulations, Resolutions, or Covenants alleged to have been violated, with as many specifics as are available as to date, time, location and individuals involved. Complaints alleging violations against a renter or occupant who is not the Owner shall be directed to the Owner by the Board. Owners shall at all times be responsible for the actions of their tenants and/or occupants.
2. The Association Board will have the authority to determine whether a complaint is justified before continuing with a fine or with the Notice and Hearing Procedures. Complaints that, in the opinion of the Board, lack sufficient information or detail may be deemed to not warrant further investigation. If the Board determines the violation has occurred, it shall give written notice to the Owner within thirty (30) days of the complaint.

C. Notice of Alleged Violation.

1. A notice of the alleged violation of any provisions of the Declaration, Bylaws, Rules and Regulations, Resolutions, Covenants, shall be in writing, addressed to the Owner and the Owner's designated contact, if applicable, drafted in the Owner's preferred language and English, setting forth the nature of the alleged violation and the specific action to be taken by the Owner to remedy said violation. The notice shall be sent to the Owner and designated contact by certified mail, return receipt requested, **and** by physically posting a copy of the notice at the Owner's unit. In addition, the Association shall deliver the notice to the Owner by one of the following means: first class mail; text message if provided by Owner and/or email if provided by Owner.
2. The Notice shall give the Owner thirty (30) days to cure the violation, submit a plan to remedy the violation, or request a hearing with the Board. The notice shall describe the nature of the violation, the remedy, the fine, if applicable and fine-payment due date, the Owner's right to request a hearing before the Board to contest the violation and/or fine, and shall further state that the Board may seek to protect its rights as they are specified in the governing legal documents.

D. Remedies.

1. The Association shall grant the Owner two (2) consecutive thirty-day (30) periods to cure a violation before the Association may take legal action against the Owner for the violation. The Association shall not pursue foreclosure against the Owner based upon a lien securing fines that the Association has assessed against the Owner or collection costs

or attorney fees that the Association has incurred which are only associated with the assessed fines.

2. If the Owner cures the violation within the period to cure afforded (30 or 60 days), the Owner may notify the Association of the cure and, if the Owner sends visual evidence that the violation has been cured with the notice, the violation is deemed cured on the date that the Owner sends the notice. If the Owner's notice does not include visual evidence that the violation has been cured, the Association shall inspect the unit as soon as practicable to determine if the violation has been cured.

3. If the Association does not receive notice from the Owner that the violation has been cured, the Association shall inspect the unit within seven (7) days after the expiration of the thirty-day (30) cure period to determine if the violation has been cured. If, after the inspection and whether or not the Association received notice from the Owner that the violation was cured, the Association determines that the violation has not been cured:

- a. A second thirty (30) day period to cure commences only if the first thirty (30) day period to cure has elapsed; or
- b. The association may take legal action pursuant to this section if two (2) thirty (30) day periods to cure have elapsed.

4. Once the Owner cures a violation, the Association shall notify the Owner, in English and in any language that the unit owner has indicated a preference for correspondence and notices pursuant to the Notice Policy, that the Owner will not be further fined with regard to the violation and shall notify the Owner of any outstanding fine balance that is still owed to the Association by the Owner.

E. Request for Hearing.

1. If an Owner desires a hearing to challenge or contest any alleged violation and/or fine, or to discuss any mitigating circumstances, the Owner must request such hearing, in writing, within 10 (ten) days of receipt of the Notice of Violation. The request for hearing shall describe the grounds and basis for challenging the alleged violation or the mitigating circumstances.
2. In the event a proper and timely request for a hearing is not made as provided herein, the right to a hearing will be deemed forever waived. If a hearing for a waiver or fine is not requested within the 10-day period, the Owner will have the remainder of the first thirty (30) day period in which to cure the violation before any fines are assessed. If the violation is not cured at the end of the first thirty (30) day cure period the Owner will be afforded a second thirty (30) day period to cure the violation prior to the levying of fines, pursuant to the Fine Schedule contained herein.
3. A request for a hearing does not allow the Owner to continue to violate the same Association's provisions of the Declaration, Bylaws, Rules and Regulations, Resolutions, Covenants. If the same alleged violation continues to occur, the Violator will be assessed fines in accordance with the Fine Schedule contained herein.

F. Schedule for Hearing Upon receiving a request for a Hearing, the Board shall give written notice of the date, time, and place of the hearing to the Owner requesting the Hearing. The Hearing will be scheduled for a date and time not less than ten (10) nor more than thirty (30) days from the date of receipt of the request.

G. Board - to Conduct Hearing. The Board, or persons appointed by the Board, (the "Hearing Board") shall act as an impartial decision maker with respect to the alleged violations and will hear and decide cases pursuant to the procedures set forth herein. The Hearing Board shall consist of individuals who do not have any direct personal or financial interest in the outcome of the hearing. A person is deemed not to have a direct personal or financial interest if that person will not receive any greater benefit or detriment from the outcome of the hearing than would the general membership of the Association. The Hearing Board shall conduct a fair and impartial fact-finding process to determine whether or not the alleged violation actually occurred, and whether the Owner is the person who should be held responsible for the violation. The Hearing Board will determine and impose fines in accordance with the Fee Schedule contained herein.

H. Hearing Procedures.

1. Notice of Hearing. The Hearing Board shall inform the Owner of the scheduled time, place, and date of the requested hearing and shall deliver the notice to the Owner by certified mail, return receipt requested, and by posting the notice on the unit as well as one of the following means: first class mail; text message if provided by Owner and/or email if provided by Owner.
2. The Hearing.
 - a. The hearing shall be open to attendance by all Members of the Association.
 - b. At the beginning of the hearing, the Presiding Officer will establish a quorum, explain the rules, procedures, and guidelines by which the hearing will be conducted, and will introduce the case before the Board. The Presiding Officer may grant a continuance for good cause.
 - c. The complaining parties and the Owner will have the right but not the obligation to be in attendance at the Hearing, either in person or by other means as mutually agreed upon by the parties. Each party may present evidence, testimony, and witnesses. If either party is unable to attend the Hearing, he or she may instead submit a letter and other applicable evidence to the Board explaining the basis of their position in the matter.
 - d. The decision of the Board at the hearing will be based on the matters set forth in the Violation Notice and hearing request and the evidence and testimony presented at the hearing.

- I. Decision. After all testimony and other evidence has been presented to the Hearing Board the Hearing Board will, after consideration of all of the relevant facts, circumstances, evidence and testimony presented, render its written findings and decision and, if appropriate, impose a fine as set forth in the Fine Schedule contained herein. The Hearing Board may present its findings at the conclusion of the hearing, but the decision shall not have an effective date until five (5) days after the hearing. At the conclusion of the five (5) period, the Hearing Board shall issue its decision in writing, advising the Owner to correct the violation within a reasonable period of time, not to exceed thirty (30) days. The Hearing Board's written decision shall be delivered to the Owner pursuant to the Notice Policy contained herein.
- J. Enforcement. The provisions of this policy shall not limit, or be a condition precedent to, the Association's right to enforce the Declaration, the Association's policies, rules and regulations by any means available to the Association, including, but not limited to, commencement of a lawsuit to force compliance or to seek injunctive relief or damages. The Association shall be entitled to reimbursement of all reasonable attorney's fees and costs incurred by the Association in connection with any enforcement action, including any proceeding under this policy. Without limiting the Association's remedies under the Declaration, Bylaws, Rules and Regulations, the Hearing Board may assess fines, suspend membership privileges, and impose other sanctions in accordance with this policy.

If the violation involves damage to Association property, the Owner shall also pay the costs of repair or replacement. The Hearing Board may revoke or suspend the Owner's privileges for a period of time equal to the duration of the violation and for up to sixty (60) days thereafter, unless such violation is a continuing violation, in which case such suspension may continue for so long as such violation continues and for up to sixty (60) days thereafter.

- K. Fine Schedule. The imposition of fines for the following are guidelines for violation of the provisions of the Declaration, Bylaws, Rules and Regulations, Resolutions, Covenants, ~~etc.~~ of the Association. The Association may not impose fines for violation of the Declaration, Bylaws, Covenants or other governing documents on a daily basis, nor may the Association impose late fees on a daily basis against an Owner.

<u>Number of Violations in 12 Month Period</u>	<u>Fine Amount</u>
<u>First Violation</u>	<u>Written Warning or fine of \$100.00</u>
<u>Second Violation</u>	<u>Fine of \$200.00</u>
<u>Third and Subsequent Violations</u>	<u>Fine assessed base upon violation, not to exceed \$500.00</u>

1. The Board reserves the right to issue a fine for the first violation if that violation involves a threat to health and safety, peace and quiet, and other violations which the Board has determined serious enough to warrant a fine. In addition, on prior written notice, the Board reserves the right to levy fines in excess of the above referenced schedule, if the

finances set forth in this schedule are not likely to provide effective incentives to induce compliance.

2. All fines, costs and expenses, including attorney's fees, necessary to enforce this policy shall be an Assessment against the owner's property and subject to all lien and collection powers of the Association.
3. An increased fine amount based on the nature and severity of the violation, as determined in the sole discretion of the Board, may be imposed, but may not exceed five hundred Dollars (\$500.00).
4. The Board may waive all or any portion of the fines, if in its reasonable discretion such waiver is appropriate under the circumstances. In addition, the Board may condition waiver of the entire fine or any portion thereof upon the Owner's compliance with the Declaration, Bylaws, Rules and Regulations, Resolutions, Covenants.

L. Payment of Fine. All fines shall be due within fifteen (15) days of the written decision issued by the Hearing Board; if not paid in full within ten (10) days of the due date, the Owner will be delinquent, and said delinquency will be handled pursuant to the Association's Collection Policy and Procedures.

Late fees and interest may be assessed in accordance with the Association's Collection Policy. All fines and late charges will be considered an assessment and may be collected as set forth in the Declaration and Collection Policy. Fines will be in addition to all other remedies available to the Association pursuant to the terms of the Declaration and Colorado law, including the Association's right to collect attorney fees as authorized by Colorado law.

M. Cure of Violation by Owner. Once the Owner cures a violation, regardless of whether a hearing was requested or held, the Association shall notify the Owner, in English and in any other language that the Owner has indicated a preference for correspondence and notices pursuant to the Notice Policy, that the Owner will not be further fined with regard to the violation and a statement of any outstanding fine balance the Owner still owes to the Association.

The Association shall send a monthly basis the Association shall send the Owner who has any outstanding balance owed to the Association an itemized statement of all assessments, fines, fees and charges that the Owner owes to the Association. The statement shall be sent to the Owner by first class mail and, if the Association has the relevant e-mail address, by e-mail.

N. Unresolved Violations. After the expiration of sixty (60) days following notice of a violation in which no hearing is requested or alternatively after an appeals meeting, the Board may:

1. suspend the rights or privileges of the owner relating to use of any common area and/or common elements within the Association and suspend the voting rights of the owner;

2. pursue all rights of action available at law or in equity including, but not limited to, the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including attorney's fees, and damages;
3. reserve the right to waive or increase fines or penalties based on the severity of the violation and circumstances;
4. enter at all reasonable times with 24 hour notice upon any lot to which a violation, breach, or other condition to be remedied exists, and take the actions specified in the notice to the owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist. Such entry or action, or both, shall not be deemed to be a trespass or wrongful act. All costs and expenses, including attorney's fees, incurred by the Association or on its behalf in enforcing such violation, shall be a binding personal obligation of such owner enforceable at law, as well as a lien, on such owner's lot or unit.

O. Habitual Offenders and Continuing Violations. An Owner who accumulates more than three (3) violations within a twelve (12) month period will be deemed to be a habitual offender. For habitual offenders, continuing violations, or violations which have an indefinite commencement or termination date, the Hearing Board may impose such additional fines as are deemed reasonable by the Hearing Committee without regard to the schedule set forth above.

P. Failure to Enforce Policy Does Not Constitute Waiver. 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. The provisions of this policy shall be independent and severable. The invalidity of any one or more of the provisions hereof by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

VII. DISPUTE RESOLUTION POLICIES AND PROCEDURES

A. Disputes between the Association and any Owner regarding Covenant and/or Rule violations are addressed in the "Covenant and Rule Enforcement Policies and Procedures."

B. Requirements for Dispute Resolution between the Association and Owner.

Prior to filing a lawsuit against the Association, the Board, Managing Agent, and/or any other Association officer, the Owner must request and attend a Hearing with the Board of Directors. If the Owner is not satisfied with the Board's decision, he/she must next submit the dispute to Mediation.

1. Hearing. A request for a Hearing before the Board shall be in writing and sent by certified mail, first-class, receipt required. It will be sent to either the Association's Board or the Association's Managing Agent.
 - a. Upon receiving a request for a Hearing, the Board or Association's Managing Agent will give notice of the date, time, and place of the hearing to the person requesting the hearing. The Board will schedule the Hearing for a date and time not less than ten (10) nor more than ninety (90) days from the date of receipt of the request.
 - b. The *Hearing* and *Decision* sections as set forth in "Covenant and Rules Enforcement Policies and Procedures" will be followed for all Hearings.
 - c. The Owner requesting the Hearing will make a good faith effort to explain his/her position to the Board and resolve the dispute.
 - d. If the Owner is dissatisfied with the Board's decision, the Owner will utilize mediation, prior to filing a lawsuit.
2. Mediation. If a dispute between an Owner(s) and the Association, the Board, Managing Agent, and/or any other Association officer is not resolved through the Hearing, the Owner may request in writing that the issue be submitted to mediation.
 - a. A mediator will be selected by a consensus of the parties involved within fifteen (15) day of the receipt of the request for mediation. The role of the mediator will be to facilitate further negotiation between the parties. The mediator will not have the power to decide how to resolve the dispute but will use recognized, accepted mediation techniques to assist the parties in coming to a resolution.
 - b. Any settlement of the claim through mediation shall be documented in writing by the mediator and signed by the parties. If a termination of the

mediation occurs, the mediator shall issue a written statement advising that the parties are at an impasse.

- c. Any cost of mediation will be shared equally among the parties unless they and the mediator agree otherwise.
 - d. Upon termination of mediation if no resolution is reached, if Claimant desires to pursue the claim, Claimant shall thereafter be entitled to file an action in any court having jurisdiction in Eagle County for final resolution of the claim. In any action, the court shall award the substantially prevailing party its reasonable costs and attorneys' fees.
3. Exclusions. Unless all parties to the actions outlined below otherwise agree, the following disputes or claims shall not be subject to the provisions of this policy:
- a. An action by the Association relating to the collection or enforcement of the obligation to pay assessments or other charges set forth in the Association's governing documents; and
 - b. An action by the Association to obtain a temporary restraining order or preliminary or permanent injunction and such other ancillary relief as the court may deem necessary in order to enjoin any immediate threat to persons or property; and
 - c. Any action between or among lot owners, which does not include the Association as a party, if such action asserts a claim which would constitute a claim for relief independent of the Association's governing documents; and
 - d. Any action in which any indispensable party is not the Association, its officers, directors, or committee members, or a person subject to the Association's governing documents, or their officers, directors, partners, members, employees, and agents; and
 - e. Any action to enforce a settlement agreement made under the provisions of this policy.
4. Judicial Enforcement. If the parties agree to a resolution of any claim through negotiation or mediation in accordance with this policy, and any party thereafter fails to abide by the terms of such agreement, then any other party may file its action in court to enforce such agreement without the need to again comply with the procedures set forth in this policy. In such event, the party taking action to

enforce the agreement shall be entitled to recover from the non-complying party all costs incurred in enforcing such agreement, including without limitation, reasonable attorneys' fees and court costs.

5. Interaction with Enforcement Policy. It is not the intent of this policy to supersede any of the provisions of the Association's Covenant and Rule Enforcement Policy. Nor is the intent of this policy to require the Association to follow the procedures set forth herein before having the ability to bring enforcement action or impose fines or other sanctions under the Enforcement Policy.

VIII. INVESTMENT AND RESERVES POLICY

A. Standard of Care. With regard to investment of reserve funds, the Board of Directors will be subject to the standard of care outlined below.

1. The Board of Directors will perform its duties regarding investment of reserves in good faith, in the best interests of the Association, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
2. In the performance of the duties, the Board of Directors will be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by one or more Directors, Legal counsel, or other persons as to matters which the Board of Directors reasonably believes to be within such person's professional or expert competence.
3. The Board of Directors will not be liable for the Association or its Members for any action taken or omitted if such action or omission was performed in compliance with this policy.

B. Review Authorization and Records.

1. The Board of Directors will establish the amount, if any, to be transferred to reserve funds on an annual basis.
2. All accounts, instruments, and other documentation of reserve funds will be subject to the approval of and may from time to time be amended by the Board of Directors as appropriate, and will be reviewed at least once per year.

C. Insurance. The Association will carry fidelity insurance to protect against theft or dishonesty from anyone with access to the reserve funds to the extent such insurance is reasonably available.

D. The Association may implement a Reserve Study. This policy will be based on a full physical inspection of the common elements. and then, based on an estimate of replacement cost, adjusted to determine financial needs for the future.

E. Funding Policies.

1. Based upon the recommendations from a Reserve Study, the Board will determine if an assessment of the Owners will be required as part of the Capital Reserve budget, with such assessment applying until a reasonable level of Capital Reserves has been achieved (adequate level to be determined by financial needs identified in the Reserve Study). The costs are to be shared in accordance with each unit's percentage of ownership of the common elements.

2. Maintain a separate Capital Reserve Trust Account.
3. Transfer net operating income remaining at the end of the fiscal year to the Capital Reserve Trust Account, as determined by the Board of Directors.
4. If a major capital replacement occurs before the level of Capital Reserves is sufficient to pay for the replacement, then the Association will institute a special assessment to, at a minimum, cover any outstanding costs of the replacement.

IX. Records Inspection Policy and Procedures

This policy includes the records that the Association will maintain and all other procedures, charges, restrictions, remedies and request forms associated with the Associations' Records Inspection Policy and Procedures, as prescribed in C.R.S. §38-33.3-317. Any request for records should be done in writing using a records request form shown below:

Elk Run Single Family Owner's Association

REQUEST FOR ACCESS TO ASSOCIATION RECORDS

Owner Name: _____ Date: _____

Address: _____

Telephone # _____

Pursuant to C.R.S. [§38-33.3-317](#) and the Association's Records Inspection Policy, I hereby request that Elk Run Single Family Owner's Association provide access to the following Association records. I understand that upon receipt of this request, the Association will schedule an appointment with me during regular business hours.

1. The records that I wish to review are

A. _____

B. _____

C. _____

D. _____

E. _____

F. _____

G. _____

2. I acknowledge and accept the Association's Records Inspection Policy in its entirety. I acknowledge and accept that the records of the Association will be made available to me only at such time and place as the Association's policy provides. I agree to pay any costs associated with the labor and materials to search, retrieve, assemble and copy the requested document(s). In the event the records provided to me by the Association are used for any improper purpose, I will be responsible for any and all damages, penalties, and costs incurred by the Association, including attorney fees. Also, I will be subject to all enforcement procedures available to the Association through its governing documents and/or Colorado law.

Owner signature: _____

