

BEAR CREEK HOMEOWNERS ASSOCIATION, INC.

**POLICY #0005: ENFORCEMENT OF COVENANTS AND RULES;
NOTICE AND HEARING PROCEDURE**

Adopted 5-25-10

The following procedures have been adopted by the Bear Creek Homeowners Association, Inc., ("Association") pursuant to the provisions of C.R.S. §38-33.3-209.5, C.R.S. §38-33.3-308, the Association Documents, and The Act, at a regular meeting of the Board of Directors.

Purpose: The Board of Directors has the duty to manage the Association and regulate the use of the common elements. The Association Documents establish rules and obligations of the Members. This Policy sets forth the procedure for enforcing the provisions of the Association Documents and The Act.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following Policy to govern the enforcement of the Association's Documents, Rules, and Restrictive Covenants:

1. **Authority.** The Board has the power and duty to hear and make decisions regarding violations of the Association Documents and to impose fines or other sanctions against Members. The Board may determine appropriate enforcement action on a case by case basis, and take other actions as it may deem necessary to assure compliance with the Association Documents and to create a safe and harmonious living environment.

2. **Violations.** Either the Board, the Architectural Review Committee (ARC) or a Member(s) may bring an alleged violation of the Association Documents to the attention of the Association. Members must submit their concerns to the Association in writing, which shall state the specific provision(s) of the Association Documents alleged to have been violated and as many specifics as are available as to time, date, location and persons involved.

3. **Violations or Offenses that Constitute a Present Danger.** If, in its sole discretion, the Board deems that any violation or alleged violation is or may be an immediate or substantial threat to the health, safety or welfare of the community or an individual, the Board may impose any appropriate sanction as necessary to abate the threat to health, safety or welfare of the community or individual, without conducting a hearing as provided in this Policy. Following any actions of the Association to abate a present danger, the matter shall be addressed as provided in this Policy.

4. **Notice and Right to Hearing.** If the Board determines that the allegations are sufficient to constitute a violation of the Association Documents and that action is warranted, the Association shall send a notice to the Member alleged to have violated the Association Documents, by certified mail, return receipt requested, to the mailing address of the Respondent appearing on the records of the Association.

(a) **Notice and Demand for Abatement.** The notice and demand for abatement ("Notice and Demand for Abatement") shall advise the Member of the alleged violation, the action required of the Member to abate the violation, and a reasonable time period during which the violation may be abated without further sanction. The notice shall also advise the Member that if the violation is not abated within the allowed time or if any similar violation occurs, the Board may impose a sanction against the Member after notice and hearing. The Member is solely responsible for the actions and or inactions of their tenants, family members, and guests.

(b) **Continuing Violation.** At any time within 12 months of the date of the demand for abatement, if the violation continues past the time allowed for abatement or if the same or similar violation subsequently occurs, the Board shall mail the Respondent a written notice of a hearing (Notice of Hearing) to be held by the Board. The Notice of Hearing shall contain information regarding:

- i. the nature of the alleged violation, and
- ii. the time and place of the hearing, which shall not be less than ten days from the date of the Notice of Hearing, and
- iii. an invitation to attend the hearing and produce any statement, evidence, and witness on the Member's behalf, and
- iv. the proposed sanction to be imposed.

(c) **Statement of Potential Action by Association.** The Notice of Hearing shall contain the following statement: The Board may determine that the Member's failure to respond or appear at the hearing constitutes a no-contest plea to the alleged violation. If the Member fails to appear at the specified date and time or otherwise fails to respond to the Association, the Board may proceed with or without a hearing at its discretion to make its determination of the allegations based on all available relevant facts and circumstances and enforce the provisions of the Association's Documents as the Board deems necessary. The Member is solely responsible for the actions and or inactions of their tenants, Family members, and guests.

(d) **Satisfaction of Notice of Hearing.** Proof of notice shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered in the

record of the hearing by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing.

5. **Hearing.** Each hearing shall be held at the scheduled time, place and date, unless the Member has failed to respond or appear at the hearing.

(a) **Conduct of Hearing.** The Board may grant continuance(s) for good cause. In conducting the hearing, the Board may exercise its discretion as to the specific manner in which a hearing shall be conducted, question witnesses and review evidence, and act as it may deem appropriate or desirable to permit the Board to reach a just decision. Neither the party bringing the matter to the attention of the Association or the Member must be in attendance at the hearing, but both are encouraged to attend. Any party may elect not to present evidence at the hearing. Action taken by the Board shall be fair and reasonable taking into consideration all of the relevant facts and circumstances. Each hearing shall be open to attendance by all Members of the Association, except those portions of which may necessitate an executive session of the Board.

(b) **Opportunity to be Heard.** The hearing shall be conducted in a manner that affords the alleged violator a reasonable opportunity to be heard. If the respondent does not appear but a written response is filed, the Board shall render its decision based on the information contained in the allegation and the written response, considering all of the relevant facts and circumstances. If neither an appearance nor a written response is made, the Board need not conduct a hearing or make any further findings except that it may determine that the Member's failure to appear or respond constitutes a no-contest plea to the complaint, and impose appropriate sanctions or otherwise enforce the provisions of the Association Documents, or both.

6. **Decision.** If the Respondent does not appear but files a written response, the Board shall render its decision based on the information provided in the written response, taking into consideration all of the relevant facts and circumstances. If neither an appearance nor a written response is made, the Board need not conduct a hearing or make any further findings except that it may determine that the Respondent's failure to appear or respond constitutes a no-contest plea to the alleged violation, and impose appropriate sanctions or otherwise enforce the provisions of the Association Documents, or both. If an appearance is made, after all testimony and other evidence has been presented to the Board at a hearing, the Board shall render its decision(s), taking into consideration all of the relevant facts and circumstances. If the Board does not inform the Respondent of its decision at the time of the hearing, or if no hearing is held, the Board will provide a written decision to the Respondent's address of record via regular U.S. Mail within five (5) days after the hearing or meeting at which the determination is made.

7. **Business Judgment Rule.** The decision of the Board to pursue enforcement in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and shall not be arbitrary or capricious in taking enforcement action. Without limiting the

generality of the foregoing, the Board may determine that, under the circumstances of a particular case:

(a) **Association Position.** The Association's position is not strong enough to justify taking any further action or that the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law.

(b) **Extent of Violation.** Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources.

(c) **Best Interests of the Association.** That it is not in the Association's best interests, based on hardship, expense or other reasonable criteria, to pursue the enforcement action.

8. **Enforcement, Attorney's Fees, and Fines/Sanctions.** The provisions of this Policy shall not limit or be a condition precedent to the Association's right to enforce the Association Documents by any means available to the Association, including, but not limited to, commencement of a lawsuit to force compliance or seeking 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 Association Documents, the Association may assess fines and suspend membership privileges in accordance with this Policy. If the violation involves damage to Association property, the violator shall pay the costs of repair or replacement. The Board may revoke or suspend the violator's privileges for a period of time equal to the duration of the violation, except that any suspension of voting rights of a Member shall not exceed 60 days following any violation by such Member 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 60 days thereafter.

9. **Fines.**

(a) **Schedule of Fines.** Fines may be levied for violations of the Association Documents as follows:

i. **Architectural Violations – Violations of Article V, Section 5.2 of the Declaration.**

Each violation: \$150.00 plus \$50.00 per day until plans have been submitted.

ii. **Article IX, Sections 9.6, 9.7, 9.10, 9.11 and 9.12 of the Declaration.**

Number of violations in a 12 month period Fine Amount

First violation: Warning

Second violation: \$50.00 fine

Third violation: \$100.00 fine

iii. **Parking and Vehicular Violations – Violations of Article IX, Section 9.8 of the Declaration.**

Number of violations in a 12 month period Fine Amount

First violation: Warning

Second violation: \$50.00 fine

Third violation: \$100.00 fine

iv. **Pet / Animal Violations – Violations of Article IX, Section 9.5 of the Declaration.**

Number of violations in a 12 month period Fine Amount

First violation: Warning

Second violation: \$100.00 fine

Third violation: \$200.00 fine

v. **Debris / Clean-Up Violations – Violations of Article IX, Section 9.12 of the Declaration.**

Number of violations in a 12 month period Fine Amount

First violation: Warning

Second violation: \$50.00 fine plus cost of cleanup.

Third violation: \$100.00 fine plus cost of cleanup.

vi. **General Nuisance Violations — Violation of Article IX, Section 9.9 of the Declaration.**

Each violation: \$500.00

Violations of any other provisions of the Declaration not specifically defined above.

Number of violations in a 12 month period Fine Amount

First violation: Warning

Second violation: \$50.00 fine

Third violation: \$100.00 fine

(b) **Additional Fines.** A Member who accumulates 3 violations within a 12 month period will be deemed to be a habitual offender. Without limiting the Board's ability to fine or suspend membership privileges in accordance with these Policies and procedures, habitual offenders, continuing violations, or violations which have an indefinite commencement or termination date, shall all be subject to a fine of \$100 per month until the violation is corrected, and/or suspension of membership privileges as determined by the Board. Further, in the event of a determination by the Board of a willful, wanton or flagrant disregard for the provisions of the Association Documents, or based on the severity of the violation, the Board may impose such additional fines as are deemed reasonable by the Board without regard to the schedule set forth above.

(c) **Owner Obligation.** The Member (Owner(s) of Record) of real estate subject to the Declaration shall have the primary obligation to pay fines imposed for their actions and actions of their tenants, Family members, and guests. Fines imposed pursuant to these enforcement policies and procedures shall become a Special Assessment imposed against the Member's (Owner(s) of Record) real estate and enforceable as provided in the Declaration.

10. Miscellaneous.

(a) **No 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.

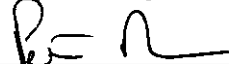
(b) **Additional Remedies.** These enforcement provisions may be in addition to other specific provisions outlined in the Association Documents, and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

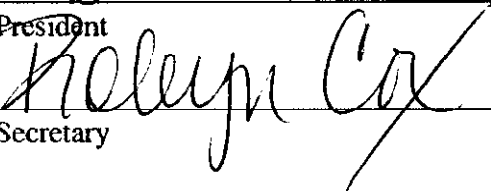
PRESIDENT'S CERTIFICATION:

The undersigned, being the President of the Bear Creek Homeowners Association, Inc., a Colorado nonprofit corporation, certifies that the foregoing Resolution # 0005 was introduced for first reading at a duly called and held meeting of the Board on May 25, 2010, and is

hereby approved and adopted by the Board, at a duly called and held meeting of the Board on May 25, 2010, and in witness thereof, the undersigned has subscribed his/her name.

Bear Creek Homeowners Association, Inc., a Colorado non-profit corporation

By: 
President

By: 
Secretary