

POLICY, PROCEDURES AND FINES RE ENFORCEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAST BEND

ARTICLE I – SCOPE OF POLICIES AND PROCEDURES

1.1 Scope. These Policies and Procedures shall apply to enforcement of the Declaration of Covenants, Conditions and Restrictions for East Bend (the “**Declaration**”) recorded in the Arapahoe County real property records at reception no. E1148282, including any Rules and Regulations and Design Review Guidelines adopted pursuant thereto.

ARTICLE II – VIOLATIONS OF THE GOVERNING DOCUMENTS AND OPPORTUNITY TO BE HEARD

The East Bend Metropolitan District (“**District**”) adopts the following policies and procedures for covenant and rule enforcement. This policy supersedes any previously adopted policies regarding the enforcement of covenants.

2.1 Violations. Any Person violating any provisions of the Declaration, Rules and Regulations, Resolutions, and Design Guidelines of the Community (“**Governing Documents**”) shall be liable to the Community for any expense, loss, or damage occasioned by reason of such violation and shall also be liable to the Community for the fines and penalties set forth in this Policy. The District’s Board of Directors (“**Board**”) shall be responsible for enforcing the Governing Documents in accordance with this policy.

(a) Notice of Alleged Violation Required. A Notice of Violation (the “**Notice**”) may be given as soon as reasonably practicable following the receipt of a complaint or discovery of such violation.

(ii) The Notice shall describe the nature of the alleged violation, the action required to cure the violation, the possible fine that may be imposed, and the right to request a hearing within ten (10) days of the notice. The Notice shall provide that, if a hearing is not timely requested by the Owner, that the Owner shall be deemed to have waived the right to contest the alleged violation and shall have forty-five (45) days from the date of the Notice to cure such violation before the imposition of fines. The Notice shall be either hand delivered, sent by U.S. mail, or sent by electronic delivery if the Owner has provided an e-mail address to the District.

(ii) The Board may also, at its option, provide a copy of such Notice to any non-Owner violator.

(b) Complaints of Alleged Violation. Any Owner may send the Board a formal, written complaint (by either electronic mail or regular mail using the Violation Complaint-Witness Statement) of a covenant or rule violation, with as much information as is known.

(i) Complaints may also be initiated by the Board, DRC, or duly authorized agent/management company.

(ii) Complaints that cannot be independently verified by the Board's Managing Agent, Board, or DRC must be in writing.

(iii) The Board shall have no obligation to consider oral complaints or anonymous complaints.

(iv) The Board shall have the authority to determine whether a written complaint is justified before continuing with the Notice and Hearing Procedure or any other enforcement procedures.

(c) Request for Hearing. A hearing must be requested in writing within ten (10) days of initial receipt of a Notice of Violation. Such request may be submitted via e-mail or regular mail at the address provided in the Notice of Violation. If a Hearing is not timely requested, then the Owner shall be deemed to have waived their right to contest the violation and shall have forty-five (45) days from the date of the Notice to cure such violation before the imposition of fines pursuant to the Fine Schedule.

(d) Hearing Procedures.

(i) A Hearing shall be scheduled as soon as practicable after receipt of a Request for a Hearing.

(ii) A Hearing is an informational, administrative procedure with the District Board, the Owner, and an impartial decision-maker as delegated by the District Board, acting impartially with regard to the alleged violation. Rules of evidence do not apply and either party may have an attorney present. Hearings are open to the public. Any party with an interest in the matter may present testimony. The impartial decision-maker may exercise its discretion regarding the specific manner in which a hearing shall be conducted and may question witnesses, review evidence, and take such reasonable action during the course of a hearing as it deems appropriate to reach a decision. The Hearing shall be a fair and impartial process to determine whether the violation actually occurred and the Owner's responsibility for the violation.

(iii) If the Owner fails to attend the hearing, the individuals hearing the violation may determine if there was a violation based on the information available.

(iv) The Board will render its written findings and decision within ten (10) days of the conclusion of the hearing. A decision, either a finding for or against the Owner,

is by a majority vote of the District Board. Notice of the written decision shall be deemed received by Owner: (1) immediately if hand-delivered or sent via e-mail; or (2) at 5:00 p.m. on the third business day after deposited in a regular depository of the U.S. Postal Service.

(v) If it is determined that a violation has occurred, the Owner shall have a forty-five (45) day cure period, beginning upon receipt of written notice of such decision, to remedy the violation pursuant to the Governing Documents. If such violation is not remedied within the cure period, then fines may be imposed pursuant to the Fine Schedule.

(e) Repetitive Violations. Repetitive Violations are additional violations of the same covenant or rule that occur within a one-year period from the notice date of the initial violation after the violation is cured. A Repetitive Violation is subject to the provision of a Notice and opportunity for a hearing as set forth in the Policy. Fines may be imposed for Repetitive Violations as set forth in the Fine Schedule.

(f) Continuous Violations. Continuous Violations occur when violations of the covenant or rule were not fully remedied in accordance with the Governing Documents within the provided cure period. Fines for continuous violations may be imposed without additional written notice pursuant to the Fine Schedule.

2.2 Fine Schedule.

(a) The Board will give new Owners a 30-day grace period from the day they close on their property before sending violation letters and levying fines pursuant to this policy. The purpose of the 30-day grace period is to allow new Owners adequate time to familiarize themselves with the Declaration, this Policy, and any additional regulatory documents.

(b) In the event that a violation constitutes an immediate threat to the health, safety and welfare of the public or property within the District, the District may pursue any remedy available to it in law or equity to remediate the violation, including, for example, an injunction, the assistance of law enforcement, the fire department, animal control, or other enforcement authorities. Upon request by an Owner contesting the alleged violation, a hearing shall be held as soon as practicable thereafter to determine the nature of the violation(s) and any applicable fines.

(c) The Fine Schedule is attached to this Policy.

2.3 Fine Waivers. The Board or DRC may waive all or any portion of the fines if, in its reasonable discretion, such a waiver is appropriate under the circumstances. Additionally, The Board or the DRC may condition a waiver of the entire fine, or any portion thereof, upon the violator coming into compliance with the Declaration, Rules and Regulations, or Design Guidelines.

2.4 Due Dates for Fines. All fines shall be due and payable within 30 days of notice of the fine. Late fees and interest may be imposed as adopted by the Board. All fines and late charges shall be considered a fee, rate, toll, fine, penalty, or charge and may be collected as set forth in the Declaration or this Policy. Fines shall be in addition to all other remedies available to the Board pursuant to the terms of the Declaration and Colorado law, including the collection of attorney's fees.

2.5 Additional Board Enforcement Rights. The Board shall have additional remedies as permitted by law and set forth in the Governing Documents.

ARTICLE III – INTEREST

3.1 Interest. Interest charges shall accrue on all fine amounts not paid by the applicable due date and any amounts expended by the Board to cure a violation of or to repair damages caused as a result of a violation of the Governing Documents. Simple Interest shall accrue and shall be charged at the maximum statutory amount of 18% per annum.

ARTICLE IV – LIEN FILING POLICIES AND PROCEDURES

4.1 Perpetual Lien. Pursuant to Section 32-1-1004.5, C.R.S., until paid, any fee, rate, toll, fine, penalty, or charge shall constitute a perpetual lien on and against the Unit for which covenant enforcement and design review services were provided. All liens for any unpaid fee, rate, toll, fine, penalty, or charge shall, to the fullest extent permitted by law, have priority over all other liens of record affecting the Unit and shall run with the Unit and remain in effect until paid in full.

4.2 Collection of Delinquent Fees. The Managing Agent shall be responsible for collecting fee, rate, toll, fine, penalty, or charge. The Board, by resolution and at a public meeting held after notice has been provided to an affected Owner, may elect to have certain delinquent fees, rates, tolls, fines, penalties, charges, or assessments made or levied for covenant enforcement and design review services certified to the county treasurer to be collected and paid over in the same manner as taxes are authorized to be collected and paid.

ARTICLE V – PAYMENT PLANS

5.1 Payment Plans. Should the Owner desire to enter into a payment plan with the Board, such Owner shall first submit a written request to the Board, and the Board shall make the determination in its sole discretion.

ARTICLE VI – SEVERABILITY

6.1 Severability. If any term or provision of these Policies and Procedures is found to be invalid or unenforceable by a court of competent jurisdiction or by operation of

any applicable law, such invalid or unenforceable term or provision shall not affect the validity of these Policies and Procedures as a whole but shall be severed here from, leaving the remaining terms or provisions in full force and effect.

FINE SCHEDULE

Violations and Repetitive Violations

<u>Violation</u>	<u>Action</u>	<u>Fine – upon Determination of Violation¹</u>
Initial Violation	Notice of Violation and Opportunity for Hearing	No Fine
First Repetitive Violation	Notice of Violation and Opportunity for Hearing	\$100
Second Repetitive Violation	Notice of Violation and Opportunity for Hearing	\$200
Third Repetitive Violation	Notice of Violation and Opportunity for Hearing	\$300
Fourth Repetitive Violation	Notice of Violation and Opportunity for Hearing	Legal Action Notice Letter and \$50 per day until Cured
Fifth Repetitive Violation	Notice of Violation and Opportunity for Hearing	Legal Action and \$50 per day until Cured

Continuous Violations

Fines for Continuous Violations are imposed if the violation is not cured within the Cure Period for any individual Violation.

<u>Time Period – Days Following Expiration of Cure Period</u>	<u>Fine – Per Day</u>
1-14	\$25
15-28	\$50
29 until Cured	\$100

¹ The Determination of Violation date is either: (1) the date of the Notice of Violation if no hearing is requested; or (2) the date on which the Board determines there was a violation of the Governing Documents following a hearing.