

TOWN CENTER LOT 19 BUILDING CONDOMINIUM ASSOCIATION

EXECUTIVE BOARD

RESOLUTION

**ENFORCEMENT OF COVENANTS AND RULES**

October 10, 2022

The Executive Board of Town Center Lot 19 Building Condominium Association, a Colorado nonprofit corporation (the Association), hereby approves and adopts the following Resolution:

**RESOLVED**, that the following Policy of the Association related to Enforcement of Covenants and Rules is hereby adopted and ratified and replaces in its entirety any policy governing enforcement of covenants and rules that was previously adopted by the Association:

1. Power. The Board shall have the power and duty to hear and make decisions regarding purported violations of the Association Documents and written complaints filed with the Board pursuant to these policies and procedures. The Board may determine enforcement action on a case-by-case basis and take other actions as it may deem necessary and appropriate to assure compliance with the Association Documents and to create a safe and harmonious living environment. These enforcement provisions may be in addition to other specific provisions outlined in the Association Documents. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control.

2. Reporting Violations. The process to determine if the Association Documents have been violated and enforcement action should result shall be initiated by the filing of a written complaint (Complaint) with or by the Board or the Association's managing agent. Complaints regarding alleged violations of the Association Documents may be reported by an Owner or resident within the Town Center Lot 19 Building Condominiums, a group of Owners or residents, the Association's management company, Board member(s) or committee member(s) by submission of a written complaint. Complaints by a member of the Executive Board, a committee member, or the manager, if any, may be made in writing or by any other means deemed appropriate by the Board if such violation was observed by a Director or Manager.

3. Complaint and Investigation. The Complaint shall state the specific provision of the Association Documents alleged to have been violated and as many specifics as are available as to time, date, location, and persons involved. The Board shall make reasonable efforts to investigate all Complaints filed with it. If the Board determines that any Complaint filed with it is insufficient to provide grounds for a violation, it shall notify the complainant, who shall have seven (7) days to amend the Complaint to render it sufficient. If the complainant does not render the Complaint sufficient within said period of time, the Complaint shall be dismissed without a hearing or notice of violation. If the Board determines that the Complaint appears to establish a violation of the

Association Documents, the Board shall then make a reasonable determination as to whether the violation threatens public safety or health.

4. Violations Threatening Public Safety or Health: Upon conclusion of the investigation, where the Board has reasonably determined that the violation threatens public safety or health, the Board will proceed as follows:

a) Notice: The Board shall deliver written notice of the violation to the alleged Violator (Notice of Violation). The Notice of Violation must be sent in English and the language that the alleged Violator has previously indicated a preference for correspondence and notices. The Notice of Violation must include the following:

- i) Date and time of the violation;
- ii) Description of the violation;
- iii) References to portions of the Association Documents that the alleged Violator violated or is in violation of;
- iv) That the board has determined the violation threatens public safety or health;
- v) That the alleged Violator has seventy-two (72) hours to cure the violation, or the Association may fine the alleged Violator;
- vi) The action(s) required to cure the violation;
- vii) The fines to be imposed if the violation is not remedied within the cure period, including the interval at which such fines may be assessed if the violation is continuing in nature; and
- viii) As further detailed in Section 5, an explanation of the alleged Violator's right to request a hearing, and the timeline for the hearing process described in this policy.

b) Inspection and Cure: The alleged Violator may notify the Association of its cure and provide visual evidence of the cure. If the violation has been cured and the Association confirms the cure, the violation shall be deemed cured on the date notice was sent by the alleged Violator. If the alleged Violator notified the Association of its cure but failed to provide visual evidence or if the Association reasonably doubts the veracity of the visual evidence provided, the Association shall inspect the property as soon as practicable to determine whether the violation has been cured. If the Association does not receive notice that the alleged Violator cured the violation, the Association shall inspect the property within seven (7) days of the expiration of the cure period to determine whether the violation has been cured.

c) Fines: If the alleged Violator has not cured the violation within seventy-two (72) hours, the Association may impose fines upon the alleged Violator in accordance with the Fine Schedule listed below.

d) Legal Action: In addition to imposing fines, if the alleged Violator has not cured the violation within seventy-two (72) hours, the Association may take legal action against the Owner for the violation, including, without limitation seeking an injunction ordering compliance, prohibiting future occurrences of the violation, for damages, and for any other appropriate relief.

Such legal action can be in addition to any hearing or associated hearing procedures proscribed under this Policy.

e) Notice After Cure: Once the violation has been cured, the Association shall provide written notice to the alleged Violator of the outstanding fine balance for the violation, and that no further fines will be assessed for the violation.

5. Violations Not Threatening Public Safety or Health: Upon conclusion of the investigation, where the Board has determined that the violation does not threaten public health or safety, the Board will proceed as follows:

a) Notice: The Board shall deliver a Notice of Violation to the alleged Violator. The Notice of Violation must be sent in English and the language that the alleged Violator has previously indicated a preference for correspondence and notices. The Notice of Violation must include the following:

- i) Date and time of the violation;
- ii) Description of the violation;
- iii) References to portions of the Association Documents that the alleged Violator violated or is in violation of;
- iv) The action(s) required to cure the violation;
- v) That the alleged Violator has thirty (30) days to cure the violation, or the Association may fine the alleged Violator;
- vi) The fines to be imposed if the violation is not remedied within the cure period, including the interval at which such fines may be assessed if the violation is continuing in nature; and
- vii) As further detailed in Section 5, an explanation of the alleged Violator's right to request a hearing, and the timeline for the hearing process described in this policy.

b) Fines: If the alleged Violator has not cured the violation with thirty (30) days, the Association may impose fines upon the alleged Violator in accordance with the Fine Schedule listed below. The total amount of fines imposed for each violation shall not exceed five hundred dollars (\$500.00).

c) Second Cure Period: If the alleged Violator has not cured the violation within thirty (30) days, the Association shall grant the alleged Violator a second thirty (30) day period before initiating any legal action against the alleged Violator. The Association may impose fines upon the alleged Violator during the second cure period, as described in the preceding paragraph, and institute collection procedures in accordance with the Association's Collection Policy.

d) Inspection and Cure: After a notice of violation has been delivered to an alleged Violator, the alleged Violator may notify the Association of its cure and provide visual evidence of the cure. If the violation has been cured and the Association confirms the cure, the violation shall be deemed cured on the date notice was sent by the alleged Violator. If the alleged Violator notified the Association of its cure but failed to provide visual evidence or if the Association reasonably doubts the veracity of the visual evidence provided, the Association shall inspect the

property as soon as practicable to determine whether the violation has been cured. If the Association does not receive notice that the alleged Violator cured the violation, the Association shall inspect the property within seven (7) days of the expiration of the cure period to determine whether the violation has been cured.

e) Legal Action: In addition to imposing fines, if the alleged Violator has not cured the violation by the expiration of the second thirty (30) day cure period, the Association may take legal action against the alleged Violator for an injunction ordering compliance, prohibiting future occurrences of the violation, for damages, and for any other appropriate relief, but may not foreclose on any assessment lien solely for fines assessed against the alleged Violator. Such legal action can be in addition to any hearing or associated hearing procedures proscribed under this Policy.

f) Notice After Cure: Once the violation has been cured, the Association shall provide written notice to the alleged Violator of the outstanding fine balance for the violation, and that no further fines will be assessed for the violation.

6. Response to Notice of Violation: A request for response in substantially the following form shall be served upon the alleged Violator (hereinafter referred to as Respondent) at the time of service of the Notice of Violation. Additional information may be included at the discretion of the Board.

#### **Request for Response**

“You have the opportunity to be heard, orally or in writing, before any action to be taken by the Board of Directors or a tribunal appointed by the Board of Directors. To be heard, you must make a written request for a hearing. The request or the response must be filed with the Board of Directors or its designee not later than ten (10) days after being served with the notice, if the violation is not one which the Board has determined threatens public health and safety. The request or the response must be filed with the Board of Directors or its designee not later than seventy-two (72) hours after being served with the Notice of Violation if the violation is one which the Board has determined threatens public health and safety. Your request or response must respond to the charges set forth in the Complaint. If you fail to file a request for hearing or a response within the time specified, the Board of Directors may proceed with or without a hearing, at its discretion. **The Board of Directors may interpret your failure to request a hearing or respond constitutes a no-contest plea to the Notice of Violation.**”

7. Hearing. If the Respondent files a written request for hearing, the Board shall set the matter for hearing after reasonable efforts to coordinate a convenient date and time with the Respondent, which may be the next regularly scheduled meeting of the Board, but in no event sooner than ten (10) days after mailing a Notice of Hearing outlined below, unless the violation is one which the Board has determined threatens public health and safety. Each hearing shall be held at the scheduled time, place, and date. The Board may, in its discretion, grant a continuance(s). The Board may: (a) exercise its discretion as to the specific manner in which a hearing shall be conducted; (b) question witnesses and review evidence; and (c) act as it may deem appropriate or

desirable to permit the Board to reach a just decision. Neither the Complainant nor the Respondent must attend the hearing, but both are encouraged to attend either personally or through a designated representative (including counsel). Any party may elect not to present argument or 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, unless otherwise determined by the board pursuant to C.R.S. § 38-33.3-308(4)(e), which allows the Board to hold a disciplinary hearing regarding a Member in executive or closed session. If the disciplinary hearing is held in an executive or closed-door session, the Respondent may request and receive the results of any vote taken at the relevant meeting.

8. Notice of Hearing. If the Respondent files a written request for hearing, a notice of hearing in substantially the following form shall be mailed to or served upon the Respondent, as set forth above, at least ten (10) days prior to the hearing date, unless the violation is one which the Board has determined threatens public health and safety. Additional information may be included in the Notice of Hearing at the discretion of the Board.

**Notice of Hearing**

You are hereby notified that a hearing will be held before the Board at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. upon the charges made in the Complaint or letter previously sent to you on \_\_\_\_\_.

9. Conduct of Hearing and Decision. At the beginning of each hearing, the presiding officer shall introduce the case by describing the alleged violation and the procedure to be followed during the hearing. Each party or designated representative, may, but is not required to, make an opening statement, present evidence and testimony, present witnesses, and make a closing statement. The presiding officer may also impose such other rules of conduct as may be appropriate under the given circumstances. After all argument, testimony, and other evidence has been presented to the Board at a hearing, the Board shall render its decision within a reasonable time, not to exceed ten (10) days, taking into consideration all of the relevant facts and circumstances. Following the hearing, the Board, acting by majority vote of the quorum, shall determine if the Respondent violated the Association Documents and the amount, if any, of the fine to be imposed or other penalty to be enforced. The Board's decision shall be final. The minutes of the meeting must contain a written statement of the results of the hearing and the fine or penalty, if any, imposed. The Board will then provide the Respondent in violation a written letter or email, served as set forth above, setting forth (i) a summary of the hearing, (ii) the final decision made by the Board, and (iii) the amount of any fine imposed. The Board's decision shall have an effective date no sooner than five (5) days after the hearing. Failure to strictly follow the hearing procedures set forth herein shall not constitute grounds for appeal of the hearing committee's decision absent a showing of denial of due process.

10. Impartial Decision Maker. Any board member involved in the decision process outlined above must be an "impartial decision maker," as defined by C.R.S. § 38-33.3-209.5(2)(b), which requires that an "impartial decision maker" be:

A person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and

restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association.

Any impartial decision maker who is incapable of objective and disinterested consideration of any enforcement matter before the Association shall disclose such to the President of the Board of Directors prior to the hearing, if possible, or at the hearing, and the person shall be disqualified from all proceedings with regarding the hearing at issue. If disqualification of the person results in an even number of remaining persons eligible to preside over the hearing, the presiding officer may appoint an impartial Member, in good, standing, to serve as a voting member of the hearing.

11. Enforcement and Fines. The Association may enforce the Association Documents by any means available to the Association, including the levy of fines, self-help remedies authorized by the Association Documents, suspension of rights, relief in the nature of an injunction whether prohibitory or mandatory, or a lawsuit for damages, injunctive relief, attorney's fees and/or costs incurred by the Association. If the violation involves damage to the Association's or a Member's property, costs of repair or replacement may be levied on the Respondent. Any fine or other monetary award levied against the Respondent will be collected pursuant to the Association's Collection Policy. In the event the Board determines any Respondent habitually violates the Association Documents (i.e., 4 or more violations in any 12-month period), the Board may suspend or revoke a Respondent's Association rights and privileges for a period commensurate with the violations, except that any suspension of a Respondent's voting rights and privileges shall not exceed 60 days following any violation unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues and for up to 60 days thereafter.

Fines may be levied for violations of the Association Documents as follows:

a) The Board shall apply the following penalty schedule relating to specific violations of the Association Documents, which are not a threat to public health and safety. The total amount of fines imposed for each violation shall not exceed five hundred dollars (\$500.00).

<u>Number of offenses in a 12-month period</u>	<u>Fine Amount</u>
First violation:	Warning letter
Second violation:	\$100.00
Third and subsequent violations:	\$500.00

b) The Board shall apply the following penalty schedule relating to specific violations of the Association Documents, which are a threat to public health and safety.

<u>Number of offenses in a 12-month period</u>	<u>Fine Amount</u>
First violation:	up to \$500
Second violation:	up to \$1,000

12. Continuing Violations. If a violation is one that is continuing in nature, the Association may assess a fine in intervals of every other day, weekly, or monthly until the violation is abated. Alternatively, if a violation remains uncured for more than forty-eight hours from the date a fine is levied against a Member, the Association may elect to provide a new Notice of Violation to the Member and levy additional fines.

13. Finality of Board Decisions/Limited Appeal. Decisions of the Board under this Enforcement Policy are final except in situations in which the Board imposes (1) aggregate fines or other monetary awards in excess of \$500 for any 12-month period and (2) a non-monetary penalty or remedy such as suspension of rights or relief in the nature of an injunction, whether prohibitory or mandatory. In such cases Respondent may appeal the applicable Board decisions pursuant to the Association's Dispute Resolution Policy.

14. Fines During Pendency of Hearing Process. If fines or other monetary awards are levied against a Respondent pursuant to this Policy during the pendency of a hearing requested by Respondent and/or the Board's decision on the hearing, such monies will not become due and payable until the Board issues a final decision confirming the monies levied against the Respondent. If the Board decides that fines or other monetary awards should not have been levied against the Respondent, then the Respondent shall not be charged the fine or other monetary award initially levied and the Association shall not allocate to the Respondent's account any of the Association's costs or attorney fees incurred in asserting or hearing the claim.

15. Members Responsible for Tenants, Family Members or Guests. Though the conduct alleged to be in violation of the Association Documents may be that of a Member's tenant, invitee, agent, family member, affiliate or guest, Members may be deemed responsible by the Board for such conduct and may be fined for such conduct under this Enforcement Policy.

16. Service of Notices. Service of all notices required or permitted to be given hereunder shall be made as follows:

a) *If to a Member*: By email, personal delivery, posting on the Member's property or by U.S. Mail, certified mail, return receipt requested, addressed to the last registered address of the Member as contained in the Association's records.

b) *If to the Association*: By email to [admin@smprop.com](mailto:admin@smprop.com), personal delivery, or by U.S. Mail, certified mail, return receipt requested, addressed to the Association.

17. Modification. The Board reserves the right, from time to time, to amend or repeal these policies and procedures, subject to any limitations placed on the Board in the Association Documents or by law.

18. Waiver of Fines. The Board may waive all, or any portion, of the fines if, in its sole discretion, such waiver is appropriate under the circumstances. Additionally, the Board may condition waiver of the entire fine, or any portion thereof, upon the Respondent coming into and staying in compliance with the Association Documents.

19. Other Enforcement Means. This fine schedule and enforcement process is adopted in addition to all other enforcement means which are available to the Association through its

Declaration, Bylaws, Articles of Incorporation and Colorado law. The use of this process does not preclude the Association from using any other enforcement means.

20. Design Review Violations. Notwithstanding any provisions contained in this Resolution, in the event of any specific violations of any applicable architectural or design review body's rules and regulations or design guidelines, then enforcement provisions of the design guidelines or rules and regulations shall apply if they are inconsistent with the provisions of this Resolution.

21. Replacement. This policy supersedes and replaces prior policies adopted by the Board dealing with the subject matter herein.

22. Definitions. Unless otherwise defined in this Policy, capitalized terms shall have the same meaning ascribed by the Declaration.

23. Miscellaneous.

a) Failure by the Association to enforce any provision of these policies and procedures shall in no event be deemed to be a waiver of the right to do so thereafter.

b) The provisions of these policies and procedures shall be independent and severable. The invalidity of anyone 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.

c) The use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders. The captions are inserted only as a matter of convenience and are in no way to be construed to define, limit or otherwise describe the scope of these policies and procedures.

#### CERTIFICATION

I, the undersigned, do hereby certify:

That I am a duly elected and acting Secretary of the Association, a Colorado nonprofit corporation; and

That the foregoing Resolution was duly adopted by action of the Executive Board of the Association at its meeting held on August 19, 2022, at which a quorum was present.

Dated: 10/10/2022

*Michael T. Davies*

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Michael T Davies, Secretary