

**RESOLUTION
OF
NIAGARA VILLAGE HOMEOWNERS ASSOCIATION, INC.
REGARDING ENFORCEMENT OF COVENANTS AND RULES POLICY**

SUBJECT: Enforcement of covenants and rules; notice and hearing procedures; fine schedule.

PURPOSE: To adopt a Policy setting forth a process for enforcement of covenants and rules, including notice and hearing procedures and fine schedule as required by Colorado law and HB22-1137. If this policy is inconsistent with a previously adopted policy, the portions of this policy which are subject of the inconsistency will control.

AUTHORITY: The Declaration, Bylaws, and Articles of Incorporation for **NIAGARA VILLAGE HOMEOWNERS ASSOCIATION, INC.** and Colorado law.

EFFECTIVE DATE: _____

RESOLUTION: **NIAGARA VILLAGE HOMEOWNERS ASSOCIATION, INC.** ("Association") gives notice of its adoption of a Resolution establishing a fine schedule and enforcement procedure.

The resolution adopted is as follows:

Article VII, Section 5, of the Declaration grants the Association the power to enforce the provisions of the Declaration;

The Association's documents authorize and the Colorado Common Interest Ownership Act requires the Board of Directors to adopt rules, procedures and resolutions for carrying out its duties, and to enforce such rules, procedures and resolutions,

IT IS RESOLVED that the Association will enforce the Articles, Declaration, Bylaws and Rules subject to the following procedure:

- A. **Reporting Violations.** Complaints regarding alleged violations may be reported by an owner or resident within the community, a group of owners or residents, the Association's management company, if any, Board member(s) or committee member(s).
- B. **Complaints.** (1) Complaints by owners or residents shall be in writing and submitted to the Board of Directors. The complaining owner or resident shall have observed the alleged violation. The complaint shall identify the complainant ("Complainant") and the alleged violator ("Violator"), and set forth a statement describing the alleged violation, referencing the specific provisions which are alleged to have been violated, when the violation was observed and any other

pertinent information. Non-written complaints, or written complaints failing to include any information required by this provision, may not be investigated or prosecuted. (2) Complaints by a member of the Board of Directors, 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 the director or manager.

- C. Investigation. Upon receipt of a complaint by the Association, if more information is needed, the complaint will be investigated by a designated individual or committee within a reasonable time. The Board shall have sole discretion in appointing an individual or committee to investigate the matter.
- D. Language of Correspondence. The Association will send all correspondence in English unless the owner notifies the Association in writing that the owner prefers correspondence from the Association be in a language other than English. If an owner notifies the Association of its preferred language in writing, the Association will send all correspondence in the preferred language of the owner.
- E. Preferred Contact. The Association will send all correspondence to the owner at their address within the Association unless an owner identifies another person or address to serve as a designated contact for the owner to be contacted on the owner's behalf for purposes of notice. If an owner notifies the Association of its designated contact, the Association will send all correspondence and notices to both the owner and the owner's designated contact. The owner must identify the designated contact to the Association in writing and provide three forms of contact including a mailing address, email address and phone number for the designated contact. The owner is responsible at all times to notify the Association in writing of any changes to the designated contact or the designated contact's contact information.
- F. Initial Violation Letter. If a violation is found to exist, a violation letter will be sent to the Violator by Certified Mail, Return Receipt Requested, explaining the nature of the violation. The violation letter will state that the owner has thirty (30) days from the date of the letter to come into compliance or the Association, after conducting an inspection and determining that the owner has not cured the violation, may fine the owner pursuant to the fine schedule in Section (M) of this Policy, following notice and opportunity for a hearing.

If an owner cures the violation within the 30-day cure period, the owner may send written notice to the Association that the violation has been corrected and provide visual evidence of the correction. If the visual evidence submitted evidences the violation is corrected, the violation will be deemed cured on the date the owner sent the notice. If the owner does not include visual evidence that the violation has been cured, the Association shall inspect the violation as soon as practicable to determine if the violation has been cured.

If the Association does not receive notice from the owner that the violation has been corrected after receiving the initial violation letter, the Association shall

inspect the violation within seven (7) days after the expiration of the thirty (30) day period for compliance.

If, after inspection and whether or not the Association received notice from the Unit owner that the violation was cured, the Association determines that the violation has not been corrected, a second violation letter will be sent to the owner.

- G. Second Violation Letter. If the owner does not come into compliance within thirty (30) days of the first violation letter, a second violation letter will be sent providing a final thirty (30) day request for compliance. This second letter will be sent to the owner, providing notice and an opportunity for a hearing, and explaining that the Association, after conducting an inspection and determining that the owner has not cured the violation, may fine the owner pursuant to Section (M) of this Policy. The letter will state that the alleged Violator is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing within fourteen (14) days of the date on the second violation letter.
- H. Notice of Hearing. If a hearing is requested by the owner, the Board, committee or other person conducting such hearing, as may be determined in the sole discretion of the Board, may serve a written notice of the hearing to all parties involved at least fourteen (14) days prior to the hearing date.
- I. Hearing. At the beginning of each hearing, the presiding officer, shall introduce the case by describing the alleged violation. Each party may make opening statements, may present evidence and testimony, may present witnesses, and may make closing statements. Neither the Complainant nor the alleged Violator must be in attendance at the hearing. However, failure to appear at the hearing will result in the Board making a unilateral decision based solely on the matters set forth in the complaint, results of the investigation and such evidence as may be presented at the hearing. Unless otherwise determined by the Board, all hearings shall be open to attendance by all members of the Association. After all testimony and other evidence has been presented at a hearing, the Board shall, within a reasonable time, render its written findings and decision, and impose a fine, if applicable. A decision, either a finding for or against the owner, shall be by a majority of the Board members present at the hearing.
- J. Failure to Timely Request Hearing. If the alleged Violator fails to request a hearing within fourteen (14) days of the second letter, or fails to appear at the hearing, the Board may unilaterally make a decision with respect to the alleged violation based on the complaint, results of the investigation, and any other available information. If a violation is found to exist, the owner may be assessed a fine pursuant to Section (M) of this Policy.
- K. Notification of Decision. The decision of the Board, committee or other person, shall be in writing and provided to the Violator and Complainant within 10 days of the hearing, or if no hearing is requested, within 10 days of the final decision.

- L. Appeals. The Board, committee or other person, may order an appeal at any time within ten (10) days following the delivery of its decision at the request of the Complainant, Violator or Board member.
- M. Fine Schedule. The following fine schedule has been adopted for all recurring covenant violations:

First Violation	First violation letter including nature of violation (30 days to cure)
Continuing Violation (of same covenant)	Second letter and subject to \$100 fine after hearing opportunity (30 day cure period)

After the second violation letter and expiration of second thirty (30) day opportunity to correct the alleged violation, the violation(s) may also be turned over to the Association's attorney to take appropriate legal action, including but not limited to injunctive relief and an award of attorneys fees and costs. Any Violator committing two (2) or more violations of the same covenant in any six (6) month period may be immediately turned over to the Association's attorney for appropriate legal action.

- N. Continuous Violations. Continuous violations shall be defined as on-going violations of owner obligations that are perpetual in nature. Each day/incidence of noncompliance with such perpetual obligations constitutes a separate violation. *For example: the failure to remove an unapproved exterior improvement is a breach of the perpetual covenant requiring owners to obtain Board approval prior to making exterior modifications. Therefore, every day the owner fails to remove the improvement constitutes a breach of the covenant.*

If a Violator is determined as having a continuous violation, in accordance with the terms of this Policy, such owner may be subject to a monthly fine of \$100.00 each month the violation is not corrected, not to exceed \$500.00. Each fine is due and payable within thirty (30) days.

- O. Public Safety or Health. If the Association reasonably determines that a violation threatens 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. If after an inspection, the Association determines that the owner has not cured the violation within seventy-two (72) hours after receiving the notice, the Association may impose a \$100 fine on the owner every other day until the violation is cured and commence legal action against the owner for the violation, not to exceed \$500.00.
- P. Cure. Once an owner cures a violation, the Association shall notify owner (1) that the owner will not be further fined with regard to the violation, (2) of any outstanding

balance that the owner owes the Association as a result of the violation, and (3) the date that balance is due before being considered delinquent.

- Q. Monthly Statements. On a monthly basis and by First Class Mail, and if the Association has the relevant e-mail address, by e-mail, the Association shall send to each owner who has any outstanding balance owed the Association an itemized list of all assessments, fines, fees, and charges that the owner owes to the Association. The Association shall send the itemized list to the owner in English or in any language for which the owner has indicated a preference for correspondence and to any designated contact for the owner.
- R. 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 Violator coming into compliance with the Articles, Declaration, Bylaws or Rules.
- S. Other Enforcement Means. This fine schedule and enforcement process are 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.
 - 1. Small Claims Court: The Association or owner may file a claim in small claims court in which debt, damage or value of personal property claimed does not exceed seven thousand five hundred dollars. Small claims court may also enforce the rights and responsibilities arising under the Declaration, Bylaws, Covenants, or other governing documents in relation to disputes arising from assessments, fines, and fees. Small claims court may also be utilized to enforce restrictive covenants on residential property if the amount required to comply does not exceed seven thousand five hundred dollars. Small claims court may also be utilized to enforce rights arising under the Declaration, Bylaws, Covenants, or other governing documents, including seeking declaratory relief.
- T. Definitions. Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.
- U. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the Project.
- V. Deviations. The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.

PRESIDENT'S CERTIFICATION: The undersigned, being the President of the Association, certifies that the foregoing Resolution was adopted by the Board of Directors

of the Association, at a duly called and held meeting of the Board of Directors on _____, 2023 and in witness thereof, the undersigned has subscribed his/her name.

NIAGARA VILLAGE HOMEOWNERS ASSOCIATION, INC.

By: _____
Its: President