

Rules for (1) Enforcing the Governing Documents and (2) Fines

Sky Mountain Homeowners Association, Inc.

(A Planned Community)

WHEREAS, the Association Board has the responsibility to enforce the provisions of the Association's Governing Documents (defined below) in order to preserve and enhance the appearance, appeal, and overall value of Association property.

WHEREAS, the Association seeks to adopt a complaint driven policy of enforcement and strongly encourages Lot Owners to informally attempt to resolve any complaints with their neighbors before formally filing a complaint with the Board.

WHEREAS, one enforcement tool is the ability of the Association to levy fines for violations of the Articles of Incorporation, Subdivision Plats, Declaration, Bylaws, Board Resolutions, Architectural Standards and Design Guidelines, and Rules and Regulations (collectively referred to as "Governing Documents"), as such Governing Documents may be amended.

WHEREAS, when used properly, the levy and collection of fines is an efficient tool for encouraging compliance with the Governing Documents. In addition, levying fines is much more cost effective than the alternative of enforcement through the judicial system. However, at times it may be more beneficial to the Association and its members to proceed with corrective action as provided for in the Declaration or judicial action in addition to, or in lieu of, fines.

WHEREAS, at a Board meeting of the Sky Mountain Homeowners Association, Inc. (the "Association") held on June 2, 2023, which meeting was called pursuant to Utah Code § 57-8a-217, the following Rules were adopted.

WHEREAS, pursuant to Utah Code § 57-8a-217(2)(a), reasonable notice that the Board was considering adopting the following Rules at the meeting of the Board was delivered fifteen (15) days, plus the additional time below for "effective" delivery, to the Owners by one or more of the following means:

- (a) when sent by facsimile, the notice is deemed when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;
- (b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;
- (c) If the Association has a provision in its governing documents for electronic communications with its members, then when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed within twenty-four

(24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

- (d) If the Association has a provision in its Governing Documents for electronic communications with its members, then when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;
- (e) when hand delivered, the notice is deemed immediately upon delivery; or
- (f) when delivered by other means, the notice is deemed upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

WHEREAS, at the meeting, the Board provided an open forum giving Owners opportunity to be heard before the Board adopted the Sections. (Utah Code § 57-8a-217(2)(b)).

WHEREAS, a copy of these Rules was delivered to Owners within fifteen (15) days after the Board meeting. (Utah Code § 57-8a-217(2)(c)).

WHEREAS, Pursuant to Utah Code § 57-8a-217(4), notice is given to Owners that they have sixty (60) days after the Board meeting to disapprove of the Board's adoption of this Rule. Disapproval is only effective if there is a vote of at least fifty-one percent (51%) of the allocated voting interests of the Owners in the Association and the vote is taken at a special meeting called for that purpose by the Owners as provided for in the Declaration, Articles of Incorporation, or Bylaws. However, the Board has no obligation to call a special meeting of the Owners to consider disapproval unless the Owners submit a petition, in the same manner as provided for in the Declaration, Articles of Incorporation, or Bylaws for a special meeting to be held. Should the Board receive such petition, the Rule will remain in effect, but actions to enforce will be stayed pending and subject to the outcome of the special meeting.

NOW THEREFORE, the following Rules are hereby adopted:

I. ENFORCEMENT POLICY

1. Owners shall be responsible for the improper actions or damages caused by themselves, their residents, tenants, guests, and other invitees. Furthermore, pursuant to Utah Code § 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the Governing Documents by the tenant.

2. Fines will only be made for violations of rules and covenants, conditions, or restrictions contained in the Association's Governing Documents.

3. If two (2) Lot Owners each separately submit a written complaint against another Lot Owner to the Board within a thirty (30) consecutive day period -- or such longer time as the Board may determine is appropriate under the circumstances -- then the Board shall conduct a formal review of the matter.

4. In addition to individual Lot Owners being able to file complaints, the Board may also file complaints in its capacity as the Association's Board through a majority vote of the quorum of the Board.

5. If one (1) or more complaints are signed by Lot Owners, dated, and sufficiently clear and credible in the establishment of probability that a Lot Owner has committed or is committing a violation of the Association's Governing Documents, or if a complaint is filed by the Board, the Board may send a "friendly reminder" to the Lot Owner alleged or, at the Board's election, may send a "warning letter" under the Fine Policy below.

6. If the "friendly reminder" or "warning letter" is not timely complied with, the Board may take such further enforcement action as it deems appropriate under the Association's Governing Documents.

7. Under Utah Code § 57-8a-213, the Board may use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, including: (i) whether to compromise a claim made by or against the Board or the Association; and (ii) whether to pursue a claim for an unpaid assessment. The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) (A) a technical violation has or may have occurred; and (B) the violation is not material as to a reasonable person or does not justify expending the Association's resources; or (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

If the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action. Moreover, this section does not govern whether the Association's action in enforcing a provision of the Governing Documents constitutes a waiver or modification of that provision.

8. This Enforcement Policy does not apply to collection of assessments, actions for injunctive relief, or actions or remedies pursued by the Association for the protection of the health, welfare, and safety of the properties within the Association's jurisdiction.

9. To the extent any conflict exists between these Rules and Regulations and any law, statute or governmental ordinance, or any provision of the Declaration, then the provisions of the law, statute, or ordinance, or the Declaration, shall govern and take precedence over the provisions of these Rules and Regulations.

II. FINE POLICY

A. Schedule of Fines.

1. **General Schedule of Fines.** Fines will be assessed for any violation or non-compliance with the Association's Governing Documents as specifically provided for in the General Schedule of Fines as set forth in Exhibit A hereto.

2. **Establishment of a Violation.** Any violation of the Governing Documents of the Association is subject to a fine as provided for in these Rules.

3. Violation Notices.

a. **Initial Reminder Notice.** Upon indication by two (2) Owners of the existence of the probability of a violation of the Governing Documents or a complaint from a Board member, the Board or its agent, may, but is not required to, issue a "Friendly Reminder" (otherwise known as the "Initial Reminder Notice") by way of phone call, business/post card, email, letter or door hanger, which will notify the recipient of the following:

- (i) The nature, description, and location of the violation;
- (ii) Contact information and reference information on the provisions of the Governing Documents being violated, in the event that the Owner or tenant may simply be unaware that the noted problem is in fact considered a violation; and
- (iii) A pleasant request to remedy the violation within the time requested by the Board.

b. **Written Warning.** Upon verification of the probability of a violation, and whether or not an "Initial Reminder Notice" has been sent, the Board or its agent shall cause to be sent to the Owner – prior to assessing a fine -- a Written Warning that the violation exists. The Written Warning will include the following:

- (i) A description of the violation;
- (ii) A statement of the rule or provision of the Governing Documents that the Owner's conduct violates;
- (iii) If the violation is a continuing violation, a statement of the time that is not less than forty-eight (48) hours after the day on which the Board of Directors gives the Owner the Written Warning by which the Owner shall cure the violation. A "continuing violation" is one that continues without interruption for a period of twenty-four (24) consecutive hours or more.

- (iv) For violations that are not a continuing violation, a statement that the Board of Directors may, in accordance with Utah Code § 57-8a-208 and the provisions of this Fining Procedure, assess fines against the Owner if the Owner commits the same violation within one (1) year after the day on which the Board of Directors assesses the initial fine against the Owner.
- c. Date Notice Deemed Given. Any notice sent pursuant to this Rule is effectively deemed given and received when delivered by one (1) or more of the following means:
- (a) when sent by facsimile, the notice is deemed when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;
 - (b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;
 - (c) If the Association has a provision in its governing documents for electronic communications with its members, then when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;
 - (d) If the Association has a provision in its governing documents for electronic communications with its members, then when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;
 - (e) when hand delivered, the notice is deemed immediately upon delivery; or
 - (f) when delivered by other means, the notice is deemed upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.
- d. Failure to Comply/Basis for Initial Fine. Failure to comply with the Written Warning will result in one or more of the following (which shall be cumulative and not exclusive):
- (i) For non-continuing violations, a fine will be issued against the Owner if within one (1) year after the day on which the Board of Directors gives the Owner a Written Warning described above, another violation of the same rule or provision identified in the Written Warning. The fine will be deemed issued, without further warning, by sending a subsequent notice to the Owner that the same or similar violation has occurred and the fine is assessed.
 - (ii) For a continuing violation, a fine will be issued against the Owner if the violation is not cured within the time period that is stated in the Written

Warning described above. The initial fine will be deemed issued, without further warning, by sending a subsequent notice to the Owner that the violation was not cured within the time provided in the warning letter. Fines for continuing violations will run beginning the day following the date the violation was to be cured. Additional fines will be deemed issued without further notice every tenth (10th) day the violation continues.

- (iii) In lieu of and without fining, the Association may, upon following the procedures in the Governing Documents, correct the violation and levy an assessment and record a lien against the Owner's Lot as may be permitted under the Association's Declaration.
- (iv) Any other remedy under law, or at equity, including equitable or injunctive relief.

e. Subsequent Additional Fines Without Warning. After the Board of Directors assesses a fine against a Owner, the Board of Directors may, without further warning to the Owner, (i) assess an additional fine according to Exhibit A against the Owner each time the Owner commits a violation of the same rule or provision within one (1) year after the day on which the Board of Directors assesses an initial fine for a violation of the same rule or provision; or (ii) assess an additional fine according to Exhibit A against the Owner each time the Owner allows a violation to continue (a continuing violation) for ten (10) days after the day on which the Board of Directors assesses the initial fine. As to a continuing violation, the Board may only assess a subsequent additional fine every tenth day following the previous fine.

f. Interest and Late Charges. Interest and late charges will accrue on fines at the same rate as provided for assessments in the Declaration. No interest or late fees may accrue until after the Board conducts the hearing and the Owner receives a final decision

4. **Hearing Before Board.** An Owner who is assessed a fine may request an informal hearing before the Board to dispute the initial fine and each additional fine within thirty (30) days after the day on which the Owner receives notice that the initial fine has been assessed. The Owner will be given a reasonable opportunity to present the Owner's position to the Board. An Owner, Board member, or any other person involved in shall be afforded the right to participate by means of electronic participation.

5. **Appeal to Court.** An Owner may appeal a decision by the Board of Directors that the Owner has violated the Governing Documents by initiating a civil action within one hundred and eighty (180) days after (i) if the Owner timely requests an informal hearing, the day on which the Owner receives a final decision from the Board of Directors; or (ii) if the Owner does not timely request an informal hearing, the day on which the time to request an informal hearing expires.

6. **Assessment.** A fine may be levied as an assessment against the Lot of the Owner after the time for appeal to the Courts has expired.

B. Delegation. A Board of Directors may delegate the Board of Director’s rights and responsibility to a managing agent. However, the Board of Directors may not delegate the Board or Director’s rights or responsibilities concerning the holding of a hearing.

C. Referral to Legal Counsel. Where a violation is determined to exist, the Board may, at any time during the enforcement process, refer the violation to legal counsel for action seeking injunctive relief against the Owner to correct or otherwise abate the violation, or to pursue any other legal or equitable remedy that may be available to the Association.

D. Cure of Violation During Enforcement. An Owner may correct a violation at any time during the pendency of any procedure prescribed by these Rules. Upon verification that the violation has been corrected, the violation will be deemed resolved, but the Owner will remain liable for all costs and fines.

E. Utah Code. All fines set forth in these Rules and Regulations shall be levied in accordance with Utah Code § 57-8a-208, as such may be amended from time to time.

F. Exceptions to General Schedule of Fines. Notwithstanding the General Schedule of Fines as provided above, the following violations will be subject to the fines specified below:

1. Declaration & Bylaws Fines. Fines set forth in the Declaration (CC&Rs) and Bylaws, as amended.

2. Failure to Complete Construction. Failure to complete construction of a single-family dwelling (“Living Unit”), exterior remodel of a Living Unit, building expansion of a Living Unit or any accessory units, garages, casitas, studios or any other construction on a Lot within one (1) year from commencement: \$1,000 per month until completed. Date of completion will be determined by the date of the issuance of a Certificate of Occupancy where possible or, when all construction work for the project ceases and the contemplated construction appears complete.

3. Failure to Complete Landscaping. Failure to complete landscaping within three (3) months of completion or occupancy of a Living Unit, whichever occurs first: \$500 per month until completed.

4. _____

[SIGNATURES ON FOLLOWING PAGE]

Adopted on this 2nd day of June, 2023 by a majority or more of the Association's Board.

**SKY MOUNTAIN HOMEOWNERS ASSOCIATION,
INC.,** a Utah nonprofit corporation

By: _____
Its: Vice President on behalf of the President

Pursuant to Utah Code § 57-8a-217, a copy of these Rules were sent to each Member of the Association within fifteen (15) days after the Board meeting via:

- U.S. Mail
- Email
- Hand Delivery
- Other _____

Attest:

Secretary

EXHIBIT A
(SCHEDULE OF FINES)

A. Fines for Continuing Violations. Fines for continuing violations shall be grouped into two categories: (i) continuing violations involving architectural standards, occupancy, or rental restrictions and those that, in the sole discretion of the Board, involve safety of persons or property; and (ii) all other continuing violations. The fines for category (i) and category (ii) violations shall be as follows:

1. Category (i)

- (A) Initial fine: \$500
- (B) Additional fines: \$100 for each consecutive 10 days the violation continues

2. Category (ii)

- (A) Initial fine: \$25
- (B) First additional fine: \$50 if the violation continues for 10 days after the Initial fine
- (C) Further Additional fines: \$100 for each consecutive 10 days the violation continues after the First additional fine

B. Fines other than Continuing Violations. Fines for violations that are not continuing violations shall be as follows:

- 1. Initial fine: \$25
- 2. First additional fine: \$50
- 3. Further additional fines: \$100 each