

ESPERANZA HOMEOWNERS ASSOCIATION, INC.

NOTICE AND HEARING AND ENFORCEMENT POLICY AND PROCEDURES

Adopted \_\_\_\_\_, 2005

The following procedures have been adopted by the Esperanza Homeowners Association, Inc., ("Association") pursuant to C.R.S. 38-33.3-209.5, at a regular meeting of the Board of Directors.

**WHEREAS**, the Board of Directors believes it to be in the best interest of the Association to adopt a uniform policy for Notice and Hearing and Enforcement Procedures.

**NOW, THEREFORE, BE IT RESOLVED** that the Association does hereby adopt the following policies and procedures for the enforcement of the Association's restrictive covenants:

1. Power. The Board of Directors shall have the power and duty to hear and make decisions regarding violations and written Complaints filed with the Board and impose fines or other sanctions, 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 Declaration for Esperanza Homeowners ("Declaration"), the Association's Articles of Incorporation, Bylaws, and rules and regulations and Design Guidelines promulgated thereunder, and to create a safe and harmonious living environment.

These enforcement provisions may be in addition to other specific provisions outlined in the Association's Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and Design Guidelines ("Governing 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.

The Board of Directors, in its sole discretion, shall at all times have the right to not take action on a matter, notwithstanding anything in this Policy to the contrary.

2. Complaint. A proceeding to determine if the Governing Documents have been violated and any enforcement measures and remedies that may apply shall be initiated by the filing of a written Complaint with or by the Association's Board. The Complaint shall state the specific provision(s) of the Governing Documents alleged to have been violated and as many specifics as are available as to time, date, location and persons involved.

3. Notice of Complaint and Right to Hearing. Upon receipt of a Complaint, if the Board determines, in its discretion, that the allegations in the Complaint are sufficient to constitute a violation of the Governing Documents and that action is warranted, the Association shall send a notice to the person(s) (the "Respondent") alleged to have violated the Governing Documents, by prepaid, first class United States mail addressed to the mailing address of the Respondent appearing on the records of the Association. The notice shall advise the Respondent of the following: (1) the details of the Complaint, or include a copy of the Complaint; (2) the action that may be taken; (3) his or her right to be heard, either orally or in writing, by the Board or by a tribunal or committee appointed by the Board at the next meeting of the Board which is at least fifteen days after the date of the notice; (4) the date on which the hearing will be scheduled; and (5) the Board's right to proceed with or without a hearing, at its discretion, to make its determination of the allegations contained in the Complaint based on all relevant facts and circumstances, if the Respondent fails to appear at the specified date and time or otherwise respond to the Complaint. **The Board may determine that the Respondent's failure to respond or appear at the hearing constitutes a no-contest plea to the Complaint and enforce the provisions of the Governing Documents.**
4. Hearing. Each hearing shall be held at the scheduled time, place and date, unless the Respondent has failed to respond or appear at the hearing. The Board may grant continuance(s) for good cause. 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 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.
5. Decision. 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 Complaint 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 Respondent's failure to appear or respond constitutes a no-contest plea to the Complaint, and impose the sanctions provided for herein or enforce the provisions of the Governing 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. Except as provided herein, the Board's decision shall have an effective date no sooner than five (5) days after the hearing. 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.

6. Enforcement, Attorney's Fees, and Fines/Sanctions. The provisions of these Policies and Procedures shall not limit, or be a condition precedent to, the Association's right to enforce the Governing 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 these Policies and Procedures. Without limiting the Association's remedies under the Governing Documents, the Association may assess fines and suspend membership privileges in accordance with these Policies and Procedures. 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.

- (a) Fines may be levied for violations of the Governing Documents as follows:

<u>Number of violations in a 12 month period</u>	<u>Fine Amount</u>
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Courtesy Letter- no monetary fine

Hearing Notice- no monetary fine however, fines may be levied after the hearing.

First Notification of Fine- if found to be in violation at the Hearing, a \$50 Fine will be levied if the violation is not cured within the time frame listed in Types of Violations listed in the Design Guidelines

Second Notification of Fine- a \$100 fine will be levied if the violation is not cured within 10 days of the First Notification of Fine.

Third Notification of Fine- if the violation is not cured within 10 days following the Second Notification of Fine, the Association may take additional action listed on page 17 of the Design Guidelines. Which could be and additional \$100 fines for each 10 day period that the violation remains uncorrected after the Second Notification of Fine.

A member or guest who accumulates more than 4 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 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 Governing 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.

- (b) The record Owner 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 an Assessment imposed against the record Owner's real estate and enforceable as provided in the Declaration.
7. Violations or Offenses that Constitute a Present Danger. If, in its sole discretion, the Board deems that any violation is or maybe 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 prior compliance with Sections 1 through 6 above.
8. 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 any one 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) As used herein, the term "Board" shall include any tribunal or committee appointed by the Board consistent with the Governing Documents or consistent with the Colorado Revised Nonprofit Corporation Act.

The undersigned hereby certify that the foregoing resolution was adopted and made a part of the minutes of the meeting of the Board of Directors of the Association conducted on the \_\_\_ day of \_\_\_\_\_, 2005.

Esperanza Homeowners Association, Inc.

By: \_\_\_\_\_

President

Attest:

This Notice and Hearing and Enforcement Policy and Procedures were adopted by the Board of Directors on the \_\_\_ day of \_\_\_\_\_, 2005 and are attested to by the Secretary of the Esperanza Homeowners Association, Inc.

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Secretary