

# ARROWHEAD IMPROVEMENTS ASSOCIATION, INC., ENFORCEMENT POLICIES AND PROCEDURES

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## ARROWHEAD IMPROVEMENTS ASSOCIATION, INC., ENFORCEMENT POLICIES AND PROCEDURES

In compliance with the Colorado Common Interest Ownership Act, the Arrowhead Improvements Association, Inc. (the "Association") adopts the following policies, procedures, and rules and regulations concerning covenant, bylaw, guideline, rule and regulation enforcement for the Association and that subdivision which is commonly known as Arrowhead in Gunnison Country Subdivision ("Arrowhead"), which is more particularly described in the Arrowhead in Gunnison Country Subdivision Declaration of Protective Covenants and Restrictions recorded at Reception No. 419911 in the Office of the Gunnison County, Colorado Clerk and Recorder, as amended (the "Protective Covenants").

1. **Discretionary Warning Procedure.** The Board of Directors of the Association (the "Board of Directors") may issue a Warning Letter notifying an alleged violator of an alleged violation observed by any agent of the Association, including without limitation all courtesy patrol officers working for or on behalf of the Association. A Warning Letter shall inform the alleged violator:
  - (1) of the violation or violations,
  - (2) in the event the violation is a continuing violation, provide the violator with 14 calendar days from the date of the warning letter to cease such violation, and
  - (3) in the event the violation is a continuing violation, inform the violator that if the cause of the continuing violation is not removed, stopped or otherwise rectified, the violator will be subject to fines (the "Warning Letter").

The Warning Letter may be given by hand delivery, posting in a conspicuous location on the property of an Owner that is the alleged violator, and/or mailing the same via certified mail return receipt requested to the Owner. An alleged violator that is given a Warning Letter and is found to have committed a subsequent violation of the covenant, bylaw, guideline, rule or regulation identified as violated in the Warning Letter or to have failed to cease a continuing violation within the time period provided will automatically be subjected to increased fines pursuant to paragraph 3. C. below. The issuance of a warning letter is not a prerequisite to any enforcement action, including the lodging of a Complaint under paragraph 2. B. below.

2. **Enforcement Procedure.** The Association shall not impose fines for any violation of any covenant, bylaw, guideline, rule or regulation of the Association until such time as the Association has complied with the following procedures:
  - A. **Complaint.** Any owner of any lot or parcel of real property within Arrowhead (any "Owner") may send or deliver to the Association via hand delivery, regular mail or email written notice of any violation of any covenant, or rule or regulation of the Association or Arrowhead (the "Complaint"). The Complaint shall, at a minimum:
    - (1) describe the covenant, bylaw, guideline, rule or regulation violated,

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(2) identify the alleged violator to the best of the complaining Owner's knowledge, and

(3) provide a short and plain statement of the facts giving rise to the violation such that, if the facts stated in the Complaint are true, the alleged violation would exist.

The Board of Directors, upon the discovery of any violation of any covenant, bylaw, guideline, rule or regulation of the Association or Arrowhead, may lodge its own Complaint by approving the same, which Complaint shall meet the same minimum requirements for content set forth above.

**B. Association's Initial Review of Complaint by Owner.** Within 15 calendar days of receipt by the Association, the Association shall perform an initial review of any Complaint provided by any Owner to determine whether the Complaint meets the minimum requirements set forth in paragraph 2. A. above. If the Complaint does not meet these minimum requirements, the Association shall reject the Complaint and notify the Owner that filed the Complaint that the Complaint does not meet the requirements of paragraph 2. A. The Association may, but need not, provide to the Owner a written explanation of why the Complaint does not satisfy the requirements of paragraph 2. A. If the Board of Directors believes, in its sole discretion, that Complaint is adequate, but that it is in the best interests of the Association to resolve the matter without imposing a fine, the Association may mail to the alleged violator a Warning Letter regarding the matters in the Complaint.

**C. Notice of Alleged Violation.** Within 15 calendar days of the Board of Directors lodging a Complaint or the satisfactory completion of the Association's initial review of a Complaint by an Owner that does not result in a Warning Letter, the Association shall mail to the alleged violator the following via regular mail:

(1) A copy of the Complaint;

(2) A copy of these policies and procedures; and

(3) A notice of Complaint (a "Notice of Complaint"), which shall state, at a minimum, that:

(i) a Complaint has been made,

(ii) whether, based upon the allegations in the Complaint, any of the alleged violations appear to be continuing violations,

(iii) the amount of the possible fine or other action the Association may take if the alleged violation or violations occurred or are occurring, and

(iv) that the alleged violator has a right to a hearing and such other rights as provided by the governing documents for the Association and Arrowhead.

**D. Request for Hearing.** If the alleged violator desires a hearing on the Complaint, including any possible action that the Association may take if the violation or violations alleged in the Complaint occurred or are occurring, the alleged violator must provide a written

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request for a hearing (the "Request for a Hearing") to the Association by certified mail, return receipt requested. The Request for a Hearing must be post marked no later than 15 calendar days of the date of the Notice of Complaint. The Request for a Hearing shall not be effective unless it is actually received by the Association. The Request for a Hearing shall include, at a minimum:

- (1) a statement of any allegations in the Complaint which the alleged violator disputes,
- (2) with respect to any defense other than a denial of the facts alleged in the Complaint, a short and plain statement of any grounds or bases for any defense, and
- (3) to the extent that the alleged violator believes that the fine or other action identified by the Association in the Notice of Complaint would not be the correct fine or other action, a short and plain statement of why it is incorrect and what the correct fine or other action would be.

- E. Notice of Hearing.** Within 7 calendar days of the receipt of a Request for a Hearing, the Association shall provide written notice to the alleged violator via regular mail of the date, time and location of the hearing (the "Notice of Hearing"). The hearing shall be held no less than 15 calendar days from the date of mailing the Notice of Hearing. Unless the alleged violator and the Association agree otherwise, the hearing shall be held no more than 25 calendar days from the date of mailing the Notice of Hearing.
- F. Board of Directors to Act as Decision Makers.** The Board of Directors shall act as the decision makers at the hearing unless any one or more member of the Board of Directors will not be an impartial decision maker, in which case the other Board of Directors, or such members thereof as they so choose, shall serve as the decision makers; provided, however, that in their sole discretion, the Board of Directors may appoint an Owner or Owners to serve as the decision makers in lieu of the Board of Directors or any member of the Board of Directors. In no event shall there be more decision makers at a hearing than there are members of the Board of Directors, but the Board of Directors may have any number of decision makers less than the total number of Board of Directors if desired; provided, however, that there shall always be an odd number of decision makers. Regardless of whether the Complaint was lodged by the Association, there may be only one decision maker if the Board of Directors, in its sole discretion, elects to have only one decision maker.
- G. All Decision Makers Shall Be Impartial.** All decision makers at the hearing shall be impartial decision makers. A person cannot be an impartial decision maker if he or she has 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 person who cannot serve as an impartial decision maker shall, sufficiently prior to the hearing to enable the

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appointment of a substitute decision maker if desired by the Board of Directors, inform the Board of Directors and recuse himself or herself from serving as a decision maker at the hearing.

- H. Conduct of Hearing.** The scope of the hearing shall include, at a minimum, those subjects to be included in the Notice of Decision. The decision makers may, by majority vote at the hearing, elect one decision maker to serve as the presiding officer for the hearing. If a presiding officer is elected, the presiding officer will be responsible for the efficient administration of the hearing. In the absence of a presiding officer, the decision makers shall be responsible for the efficient administration of the hearing. The hearing shall be conducted in such a manner that provides the party filing the Complaint and the alleged violator with an opportunity to be heard, to present any witnesses with testimony relevant to the alleged violation or violations, and to present any other evidence relevant to the alleged violation or violations. The party filing the Complaint, if unable to be present, may submit a letter or other documentary evidence to the decision makers for review, and the alleged violator shall have the opportunity to review the documentary evidence and respond to such at the hearing. In the interests of efficiency, the presiding officer or, in the absence thereof, the decision makers, may stop the presentation of evidence and argument that is duplicative or irrelevant. Unless otherwise determined by the Board of Directors in accordance with Colorado law, all hearings shall be open to attendance by all members of the Association. Any party, the Association, and the decision makers may record the hearing if so desired.
- I. Notice of Decision.** After the hearing, the decision makers for such hearing shall make their decision by majority vote. The decision makers shall, in rendering their decision, take into account the Complaint, the Request for a Hearing, and the evidence and argument presented at the hearing. The written decision shall be mailed via regular mail to the alleged violator and the party making the Complaint no later than 15 calendar days after the hearing (the "Notice of Decision"). The Notice of Decision shall include:
- (1) a finding of whether the violation or violations alleged in the Complaint occurred or are occurring,
  - (2) a finding of whether the alleged violator is the one who should be held responsible for the violation,
  - (2) if such violation or violations exist, a finding of whether the violation or violations are a continuing violation, and
  - (3) a finding of what, if any, fine or other action shall be imposed by the Association as a result of any violation or violations, if any.

The decision makers may also determine, based upon the evidence presented at the hearing, that additional, separate or different violations from those alleged in the Complaint occurred or are occurring provided that such evidence was relevant to the alleged facts or violations in the Complaint and the same violator is responsible. If such

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finding of additional, separate or different violations is made, the Notice of Decision shall also:

- (1) identify those violations,
- (2) state whether such violations are continuing violations, and
- (3) state what, if any, fine or other action shall be imposed by the Association as a result of such violations.

- J. Failure to Make Request for a Hearing.** Upon the failure to make a timely Request for a Hearing, the Association may, within 30 calendar days of the date of the Notice of Complaint, consider all allegations in the Complaint as true and shall assess the fine or take such other action as was identified in the Notice of Complaint. Alternatively, if no timely Request for a Hearing is made, the Association may conduct its own independent investigation and, following such investigation, assess the fine or take such other action as was identified in the Notice of Complaint or impose a lesser fine or take such lesser action that the Association, in its sole discretion, believes appropriate. The Association shall mail to the violator via regular mail a written notice of the fine or other action imposed by the Association as a result of the violation or violations, if any.

### 3. Fine Schedule.

- A. Fine Schedule.** Except as otherwise set forth in these policies and procedures or the covenants and bylaws, the following are the minimum fines for violations of the provisions of any covenant, bylaw, guideline, rule or regulation of the Association and Arrowhead:

#### (1) Category 1:

- i. Shed or detached garage used as dwelling or with utilities other than electricity and/or propane. (Regulations: Section I: Article 2.g) (a continuing violation) **\$1,000.00 Fine For First Violation.**
- ii. Failure to obtain approval of plan changes or failure to follow approved plan. (Regulations: Section I: Article 1.e.6.) **\$1,000.00 Fine For First Violation.**
- iii. Removing a living tree over 2 inches in diameter without approval from the appropriate authority. (Regulations: Section I: Article 2.r) **\$1,000.00 Fine For First Violation.**
- iv. Use of a site for other than a single-family residence or campsite. (Regulations: Section I: Article 2.a) **\$1,000.00 Fine For First Violation.**
- v. Failure to comply with ten-foot setbacks. (Regulations: Section I: Article 2.f.) (a continuing violation) **\$1,000.00 Fine For First Violation.**
- vi. Failure to complete Dry-In within 3 years. (Regulations: Section I: Article 1.e.(8.)) (a continuing violation) **\$500.00 Fine For First Violation.**
- vii. Starting a fire outside an approved fire pit. (Regulations: Section II. Article 1.f) **\$500.00 Fine For First Violation.**
- viii. Violating a fire ban. (Regulations: Section II. Article 1.f) **\$500.00 Fine For First Violation.**
- ix. Setting off fireworks. (Regulations: Section II: Article 1.d) **\$200.00 Fine For First Violation.**

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- x. Discharging firearms. (Regulations: Section II: Article 1.d) **\$200.00 Fine For First Violation.**
  - xi. Discharging black and gray water within Arrowhead. (Regulations: Section I: Article 2.b) and (Regulations: Section II: Article 2.c) **\$100.00 Fine For First Violation.**
- (2) Category 2. \$150.00 Fine For First Violation:**
- i. Moving an existing structure onto a site. (Regulations: Section I: Article 2.c)(a continuing violation)
  - ii. Failure of an owner to maintain his/her site. (Regulations: Section II: Article 1.l.) (a continuing violation)
  - iii. Use of unapproved materials in building. (Regulations: Section I: Article 1.c.(3.)) (a continuing violation)
  - iv. Existence of a pit toilet. (Regulations: Section I: Article 2.b) (a continuing violation)
  - v. Building a fence without approval. (Regulations: Section I: Article 2.p.) (a continuing violation)
  - vi. Hunting or trapping on private lots or common area. (Regulations: Section II: Article 1.h)
  - vii. Any motorized vehicles being operated off the filing roads or approved parking areas. The assessment will range from \$150 to \$500 according to the amount of damage caused by the violation. (Regulations: Section II: Article 2.b)
  - viii. Failure to obtain design review permits. (Regulations: Section I: Article 2.d) (a continuing violation)
  - ix. Lawn Watering. (Regulations: Section II: Article 1.j.)
  - x. Elevated fuel tanks that violate size and placement requirements. (Section I: Article 2.q.) (a continuing violation)
  - xi. Advertising signs installed on a site. (Regulations: Section I: Article 2.l) (a continuing violation)
  - xii. Construction vehicles parked on a site without active construction. (Regulations: Section II: Article 1.j.) (a continuing violation)
  - xiii. Animals off site not under control. (Regulations: Section II: Article 1.b.)
  - xiv. Vehicle abandoned on common areas, roads, or parking lot. (Regulations: Section II: Article 1.n.) (a continuing violation)
  - xv. Inadequate screening of garbage cans or storage areas. (Regulations: Section I: Article 2.j.) (a continuing violation)
  - xvi. Installing satellite dishes or antennas, which extend beyond 25 feet, without approval. (Regulations: Section I: Article 2.k.) (a continuing violation)
  - xvii. Not removing camping equipment including RVs by designated date. (Regulations: Section II: Article 1.a.) (a continuing violation)
  - xviii. Not having a valid RV registration, failure to register, violating the 14 day limit, or otherwise failing to comply with the covenants, bylaws, rules, regulations, policies and procedures with respect to RV usage. (Regulations: Section II: Article 1.a) (a continuing violation)
  - xix. Failure to remove vehicles, trailers, snowmobiles, and sleds from the winter parking lot by designated date. (Regulations: Section II: Article 2.e. and Appendix B, 6.)(a continuing violation)

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- xx. Not cleaning a lot. (Regulations: Section II: Article 1.m)
- xxi. Horseback riding in prohibited areas or maintaining a horse on a site. (Protective Covenants: Article V: 3.)
- xxii. Any other violation of any other covenant, bylaw, guideline, rule or regulation not specifically identified or otherwise provided for in paragraph 2. A.
- xxiii. Speeding in excess of the posted speed limit. (Regulations: Section II: Article 2.b)
- xxiv. Trash or garbage not properly stored or removed. (Regulations: Section II: Article 1.g.)
- xxv. Creating a public nuisance. (Section II: Article 1.c)
- xxvi. Using unapproved poisons or pesticides outside of buildings. Regulations: Section II: Article 1.e)
- xxvii. Fishing violations. (Regulations: Section II: Article 2.d)
- xxviii. Operation of off-highway vehicles by persons under the age of ten (10), or failure to provide immediate supervision of underage drivers of off-highway vehicles. (Regulations: Section II: Article 1.o)
- xxix. Failure to register their vehicles, snowmobiles, ATVs, UTVs, or trailers with the Association. (Regulations: Section II: Article 1. p)(a continuing violation)

**B. Schedule of Fines for Second and Subsequent Violations.** Upon the occurrence of a second violation of the same covenant, bylaw, guideline, rule or regulation by the same violator, the amount of the fine shall be double the amount of the initial fine and, for every violation thereafter of the same covenant, bylaw, guideline, rule or regulation by the same violator, it shall be triple the amount of the initial fine.

**C. Increased Fines.** The decision makers at any hearing, if one occurs, and the Association if a hearing does not occur, may impose up to triple the amount of the fine as shown on the schedule of fines set forth above if the decision makers or Association find either:

- (1) that the violator acted with an intentional disregard of the covenant, bylaw, guideline, rule or regulation violated,
- (2) that the violation created a substantial risk to the health or safety of persons other than the violator, or
- (3) that the violator was issued a Warning Letter warning of a violation and the violator either:
  - (i) committed a subsequent violation of the same covenant, bylaw, guideline, rule or regulation warned of in the Warning Letter, or
  - (ii) the violator failed to cease a continuing violation within the time period stated in the Warning Letter.

**D. Continuing Violations.** Continuing violations are a separate violation for each day the violation exists. If the violation is a continuing violation, a separate finding of a violation for each day that the violation continues is not necessary and the fines will automatically escalate pursuant to paragraph 3. B. above. A continuing violation will not be considered to have ceased until the violation in fact ceases and the Association issues a written statement that the violation has in fact ceased.

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- E. Definition of Continuing Violation.** A continuing violation is any violation which by its nature will continue unless the violator or some other person removes, stops, or otherwise rectifies the cause for the violation. By way of example and not limitation, a continuing violation would include placing a prohibited number of recreational vehicles on a lot. Paragraph 3. A. provides a non-exhaustive and non-exclusive list of potential violations of the Regulations for the Association and, where applicable, identifies whether such violations will generally be considered continuing violations. Paragraph 3. A. does not identify certain violations of the Regulations as continuing violations where the violation will not generally be a continuing violation. However, though a particular violation is not designated in paragraph 3. A. as a continuing violation, the actual violation may be a continuing violation notwithstanding the absence of such designation in paragraph 3. A.
- F. Costs of Prosecution.** The Association is entitled to recover from a violator all costs incurred by the Association in the successful prosecution of a Complaint lodged by the Association, including the Association's reasonable attorneys' fees. The Association shall have engaged in the successful prosecution of a Complaint lodged by the Association if the decision maker or decision makers at the hearing determine that any one or more of the alleged violations occurred or are occurring.
- G. Due and Payable; Delinquency.** All fines shall be due and payable at the date the fine is imposed and delinquent if not paid within 30 days of the Association mailing to the violator notice thereof via regular mail. All fines shall bear interest at the rate of 10% per annum from the date of delinquency and a late charge of \$5.00 shall be charged on all fines not paid within 30 days.
- H. Non-Compliance Assessments.** All fines, attorneys' fees, late charges and other amounts owed by an Owner that was given a Warning Letter and failed to cease a continuing violation within the time period provided in the Warning Letter shall be a non-compliance assessment. The non-compliance assessment may be collected as set forth in the Protective Covenants and Colorado law, including without limitation the Association's right to collect attorneys' fees as authorized by Colorado Law and the Protective Covenants.
- 4. Additional Enforcement Rights**
- A. Not Subject To Dispute Resolution Policy.** Except with respect to violations allegedly committed by the Association, the Policy of Dispute Resolution Between the Association and Owners (the "Dispute Resolution Policy") does not apply to violations or alleged violations by any Owner or other alleged violator of any covenant, bylaw, guideline, rule or regulation, which alleged violation or violations shall be governed exclusively by these Arrowhead Enforcement Policies and Procedures subject to 4. B. below. To the extent of any conflict between these policies and the Dispute Resolution Policy, the Dispute Resolution Policy is hereby amended such that it does not apply to violations or alleged

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violations by any Owner or other alleged violator of any covenant, bylaw, guideline, rule or regulation except with respect to violations allegedly committed by the Association.

- B. Legal Action.** Notwithstanding any other provision of these policies and procedures, the Association, at any time, may pursue legal action to enforce any covenant, bylaw, guideline, rule or regulation without first following the procedures set forth above if the Board of Directors determines, in its sole discretion, that such action is in the Association's best interests. Without limitation, the Association may also institute legal action recover unpaid fines, attorneys' fees, and interest.
- C. Individual Assessments.** In addition to fines, the Board of Directors may levy assessments, including non-compliance assessments, as set forth in the Protective Covenants.
- D. Suspension of Rights.** The right of an Owner to vote may be suspended as set forth in the bylaws for the Association and as set forth in the Protective Covenants. In addition, the right of an Owner to vote shall be automatically suspended if the Owner is more than 30 days delinquent in payment of any assessment, fee, or other charges by the Association. Further, the Association may suspend the right of an Owner to vote in the event that the Owner has committed a second or subsequent violation of any covenant, bylaw, rule or regulation of the Association or Arrowhead.
- E. Service of Notices.** Whenever mailing of any document or notice to an Owner is appropriate under these policies and procedures, such document or notice shall be mailed to the most current address of the Owner that is in the Association's records. Similarly, whenever mailing of any document or notice to the Association is appropriate under these policies and procedures, such document or notice shall be mailed to the Association at the most current address the Owner is advised of in writing or, if no such address has been provided, at the most current address for the Association with the Colorado Secretary of State.
- F. Failure to Enforce.** Failure of the Association to enforce any covenant, bylaw, rule or regulation shall not be deemed a waiver of the right to do so for any subsequent violations of such covenant, bylaw, rule or regulation. Nor shall the failure of the Association to enforce any covenant, bylaw, rule or regulation be deemed a waiver of the right to enforce any other covenant, bylaw, rule or regulation.
- G. Construction and Interpretation.** To the extent of any conflict or apparent conflict between these Arrowhead Improvements Association, Inc. Enforcement Policies and Procedures (these "Policies and Procedures") and the Covenants or other rules or regulations of the Association, the Association hereby exercises its authority pursuant to the Covenants to interpret and clarify the Covenants and other rules and regulations of the Association such that the same are consistent with these Policies and Procedures. Pursuant to its power and authority to interpret, the Association hereby interprets the Covenants and other rules and regulations such that, to the fullest extent possible, the Covenants and other rules and regulations are harmonious with and not in conflict with

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these Policies and Procedures. Pursuant to its power and authority to clarify, the Association hereby clarifies that in the event of any conflict between these Policies and Procedures and the Covenants or any other rule or regulation of the Association, the position adopted by the Association, expressly or impliedly, in these Policies and Procedures is the correct and accurate interpretation and position.

- H. Alternate Service.** Notwithstanding any other provision in these Policies and Procedures, any document, including without limitation any notice, required to be given by the Association may be given by hand delivery, posting, or any form of mailing. Any such alternate form of delivery may be in addition to or in lieu of any method otherwise stated in these Policies and Procedures and any such alternate delivery shall be effective upon receipt.
- I. Severability.** If any provision or portion of any provision in these Policies and Procedures is invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of the provision or any other provision, which shall to the fullest extent permitted by law be valid and enforceable.