

Park River West Condominium Association, Inc.
Policy for the Collection of Unpaid Fines and Remediation Expense
Adopted December 6, 2022

The following policies and procedures (“Policy”) governing Collection of Unpaid Fines and Remediation Expense have been adopted by the Park River West Condominium Association, Inc. (“Association”) pursuant to section C.R.S. 38-33.3-209.5 at a meeting of the Board of Directors.

1. GENERAL

a. **Constitutions Superior To All.** Subject to constitutional protections afforded the Association and constitutional limitations imposed upon the State of Colorado and its political subdivisions, the provisions of the Declaration and Bylaws of the Association are incorporated in this Policy by reference and govern for all purposes when not in conflict with the Colorado Common Interest Ownership Act (“CCIOA”), as it exists or may be amended, and the Colorado Revised Nonprofit Corporation Act, as it exists or may be amended

b. **Contract Clause.** The Association claims protection under the Contract Clause of the United States Constitution (Article I, Section 10) and the Contract Clause of the Constitution of the State of Colorado (Article II, Section 11). By adherence to any statutory provision the Association shall not be deemed to have waived constitutional protections or to have acquiesced in the application of law when applying and enforcing the terms of its Declaration and Bylaws when they conflict with such law and the law would be effective after the date of adoption of the Declaration.

c. **When Subordinate.** This Policy is subordinate to and shall only supplement the Declaration and Bylaws where they are otherwise silent. The provisions of this Policy shall be independent and severable. The declaration of invalidity of any one or more of the Policy provisions by court order or decree shall in no way affect the validity or enforceability of any other provision, which other provisions shall remain in full force and effect.

2. FINES

This policy is applicable only to the imposition of Fines, Remediation Expense, Attorney Fees and Costs (collectively “Fines”) addressed by Declaration Section 27 and not the Common Expense Assessment addressed by Declaration Section 9. The procedure for determination of fines and the costs of remediation can be found in the separate Policy for Enforcement of Declarations, Covenants and Rules, including Notice and Hearing Procedures and the Schedule of Fines adopted by the Board. The date a Fine and/or Remediation Expense, plus any attorney fees and costs, is incurred is the date the Decision is rendered.

3. PAYMENT AND DELINQUENCY

a. **When Due.** The Fine, any Remediation Expense, costs and attorney fees are due when the Decision is rendered.

b. **Default Date.** The Association is empowered to collect upon the Decision after non-payment 30 days from the date of the Decision, including the imposition of a lien upon the offending Unit, but subject to Arbitration.

c. **Fees and Interest.** In the event a Unit Owner is in default in the payment of any Fine, Remediation Expense, Attorney Fees or Costs for more than 40 days after the Decision, the Unit Owner will be obligated to pay a Late Fee (the 5% penalty provided in the Declaration), a Collection Fee (the costs, expenses, and attorney fees provided in the Declaration), and default interest at the rate of 8% simple per annum on the amount of the delinquent Fine commencing 40 days subsequent to the Decision date as provided in the Declaration.

d. **No Lien Waiver.** Suit against the Unit Owner to recover a money judgment for unpaid Fines may be maintained by the Association without foreclosing the statutory Assessment Lien (C.R.S. section 38-33.316), and any such suit shall not be a waiver of the lien.

e. **Late Fee.** The Association adopts and applies the late fee applicable to Assessments in Declaration Section 9 to Fines incurred under Declaration Section 27. The late fee shall be 5% of the amount of a Decision remaining unpaid 40 days after the date rendered.

f. **Collection Fee.** The Association adopts and applies the Collection Fee applicable to Assessments in Declaration Section 9 to Fines incurred under Declaration Section 27. The Collection Fee shall be a base of \$250, plus any costs, expenses, and attorney fees incurred by the Association. Each Fine remaining unpaid on the 40th day after the Decision shall incur the Collection Fee. The base Collection Fee of \$250 is calculated to cover the work to prepare the Delinquency Notice, payment plan, certified mail, copy costs, and initial administrative expense incurred by the Association prior to any referral to an attorney or agency for enforced collection. The Collection Fee is a dynamic amount and will increase beyond the base as additional sums are expended by the Association to secure its lien and collect amounts due.

g. **Default Interest.** The Association adopts and applies the interest rate applicable to Assessments in Declaration Section 9 to Fines incurred under Declaration Section 27. The default interest rate is governed by the Declaration and set by the Declaration Section 9 at 15% per annum. The terms of C.R.S. section 38-33.3-209.5 (8)(a) as enacted in 2022 limits interest on unpaid Assessments, fines, or fees to 8% per annum. This statutory provision is in direct conflict with Declaration 9(j) that says the owner is "obligated" to pay 15% interest. The Board does not have the authority to vary the Declaration, but adopts this 8% rate to ensure it can collect unpaid Assessments, fines, and fees, pursue collection, and foreclose in lawful circumstances. Thus, the policy of the Association is that interest in the statutory amount of 8% simple per annum shall accrue and be due and