

BIG SKY OWNERS ASSOCIATION, INC. BOARD OF DIRECTORS RESOLUTION

RESOLUTION: REVISED AND RESTATED ENFORCEMENT PROCEDURES

Date of Board Adoption: July 19, 2019

Resolution No.: 2019-02

Effective Date: July 19, 2019

Dates Revised: April 17, 2015; April 16, 2010; January 18, 2008

*** Use of capitalized terms in this Resolution, otherwise not defined herein, refer to defined terms in the BSOA Bylaws adopted on September 21, 2018 at its Board meeting and recorded with the Office of the Gallatin County Clerk and Recorder (Document #2637372, February 5, 2019) and the Office of the Madison County Clerk and Recorder (Document #182306, March 25, 2019).**

RESOLUTION

WHEREAS, the Big Sky Owners Association, Inc. (“Association”) adopted Amended and Restated Bylaws for the Big Sky Owners Association, Inc. on September 21, 2018 at its Board meeting and recorded with the Office of the Gallatin County Clerk and Recorder (Document #2637372, February 5, 2019) and the Office of the Madison County Clerk and Recorder (Document #182306, March 25, 2019), and as subsequently amended (“Bylaws”); and

WHEREAS, Article 9, “Enforcement Powers and Procedures,” specifically Section 9.1, “Procedure” of the Bylaws state that the Board will adopt by resolution a procedure to enforce the GOVERNING DOCUMENTS; and

WHEREAS, the Board adopted Enforcement Procedures by Resolution No. 2010-00 dated April 16, 2010 and deemed effective May 1, 2010; a Revised and Restated Enforcement Procedures by Resolution No. 2010-0 was adopted at a meeting of the Board April 2, 2015 and was deemed effective April 17, 2015; and

WHEREAS, the Board has determined it is in the best interests of the Association to replace and supersede said Enforcement Procedures set forth in Resolution No. 2010-0 with the following.

NOW THEREFORE, be it resolved that:

Enforcement procedures pursuant to Article 9 of the Bylaws shall be carried out as follows:

1. Delegation of Authority to BSAC. The Board hereby delegates to the BSAC the authority to hear and resolve violations that pertain to: 1) its authority under the Declarations or Design Regulations, 2) its approvals, denials or policies, and 3) activities related to construction or architectural review. The Board also delegates to the BSAC the authority to issue fines. However, the Board specifically reserves to itself the power to hear and resolve all other

violations (including but not limited to violations of the Governing Documents, as well as the decision of whether or not to pursue any legal proceeding. Subject to paragraphs 3 and 4 below, any issues that are brought to the BSAC or necessitate BSAC direction may be addressed at a regular meeting or a special meeting and the quorum requirement at such meetings shall be a simple majority (over 50%).

2. Violations. Obvious violations that can be seen by Staff in their usual course of business (e.g., driving to and from work, meetings, or covenant compliance checks, or during a Big Sky Architectural Committee (BSAC) aesthetic review) from the road right of way will be identified and addressed by Staff. In addition, complaints of violations reported by Members in Good Standing, BSOA committee members, and/or Board members will be investigated and addressed by Staff. If a violation of the Governing Documents has taken place, Staff will make reasonable efforts to contact the Member of record either in person, via telephone, e-mail, or in writing and see if the violation can be resolved without BSAC or Board action. If so resolved, no further action will be required. If not resolved after this first point of contact, or if Staff is unable to make contact with the Member after reasonable efforts, or if the nature of the violation requires immediate attention (e.g., commencement of construction without prior BSAC approval), then Staff will institute the procedures found in the paragraphs below. Notwithstanding the foregoing, Staff is delegated the discretion to continue to work with the Member to attempt to cure the violation. Staff will keep a tracking sheet of all violations and complaints (including the progress and resolution of said violation and complaint) and include this tracking sheet in the meeting packets for the BSAC and the Board at their regularly scheduled meetings. Per Section 9.1 of the Bylaws, each Member is responsible for their tenants, guests and/or invitees to comply with the Governing Documents.
3. Notification of Violation to BSAC or Board when No Immediate Action is Necessary. If Staff is unable to resolve the violation, and Staff determines the situation does not warrant immediate action by the BSAC/Board as set forth at paragraph 4 below, Staff shall notify the BSAC or Board, as appropriate, of the violation. If the violation is a matter that falls under the authority of the BSAC, as described in paragraph 1, and does not require immediate action, the matter shall be addressed by the BSAC at its next regularly scheduled or special meeting, subject to the notice provisions set forth below. If the violation is a matter that falls within the authority reserved to the Board, and does not require immediate action, the matter shall be addressed by the Board at its next regularly scheduled or special meeting subject to the same notice provisions. Any such meeting shall be held in accordance with the following provisions:
 - a. The Member of record shall be given written notice, at least ten (10) days prior to the holding of such meeting regarding the violation. Such notice shall: 1) include the date, time and location of the meeting; 2) identify the real property that is the subject of the violation; 3) state the alleged violation(s); 4) cite the Governing Document that is being violated; 5) recap the action taken by Staff up to the date of the notice; and 6) state any proposed action sought that may be taken by the BSAC/Board (including but not limited to fines, suspension of membership privileges and voting rights, performance deposit forfeiture or legal action).

- b. The Member of record, or their authorized representative, shall attend the meeting either in person or by telephone to address the violation. If the Member refuses or fails to attend the scheduled meeting or any alternate date proposed, then the BSAC/Board may proceed to address the alleged violation(s) without the Member present. At the meeting, the BSAC/Board will hear the Staff's report regarding the alleged violation(s) and any recommended remedies and then hear the Member's response and the Member's proposed remedies to cure the violation. The BSAC/Board will 1) confirm there is a violation; 2) determine the remedies to cure the violation; 3) determine what action, if any, will be taken if the violation is not cured (including but not limited to assessing fines, suspension of membership privileges and voting rights, performance deposit forfeiture and/or recommending that legal action be taken); or 4) determine whether or not any action (exclusive of the decision on whether or not to pursue any legal proceeding) by the BSAC/Board is in the best interest of the Association, per the guidelines as set forth in Section 9.2 of the Bylaws.
- c. Within fifteen (15) business days following the meeting, Staff will send to the Member of record written notice of the BSAC's/Board's decision. Such notice shall: 1) identify the real property that is the subject of the violation; 2) state the violation(s); 3) cite the Governing Document that is being violated; 4) recap the action taken by Staff up to the date of the meeting; 5) recap the meeting, inclusive of the motion of the BSAC/Board; 6) state the required action by the Member to remedy the violation(s); 7) state the action that will be taken, including but not limited to fining the Member (inclusive of the amount that may be fined), suspension of membership privileges and voting rights, performance deposit forfeiture, and/or if it is recommending that legal action will be taken against the Member if the Member does not comply; and 8) state a reasonable time limit for compliance. If the BSAC/Board is not satisfied that the Member has complied with the BSAC's/Board's request to come into compliance or the Member does not respond at all, then the BSAC/Board may proceed with the action as specified in the notice.
- d. If the BSAC/Board decides not to pursue action, the BSAC/Board will document its reasons, per the guidelines as set forth in Section 9.2 of the Bylaws, in a detailed motion of the BSAC/Board recorded in the meeting minutes. As stated in paragraph 3(c) above, Staff will send to the Member, within fifteen (15) business days following the meeting, written notice of the BSAC's/Board's decision. Such notice shall: 1) identify the real property that is the subject of the violation; 2) state the violation(s); 3) cite the Governing Document that is being violated; 4) recap of the action taken by Staff up to the date of the meeting; 5) recap the meeting, inclusive of the detailed motion of the BSAC/Board and that the BSAC/Board is not pursuing action at this time; and 6) cite to Section 9.2 of the Bylaws that states "Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Governing Documents."
- e. If the Member does not bring the violation(s) into compliance within the specified time in the written notice, the Board, at its discretion, may commence proceedings either at

law or in equity against the Member. Legal proceedings may be either to restrain violation of the Governing Documents, or to recover damages or both. Additionally, if the BSAC's/Board's stated action was to fine the Member, such fine is due and payable to the Association within thirty 30 days from the date for compliance, specified in the notice. Fines not paid within sixty (60) days of the due date may result in the Association recording a lien against the property being assessed or bringing an action at law or both, in accordance with Section 7.6 of the Bylaws.

4. Notice of Violation to BSAC/Board when Immediate Action is Necessary. If Staff determines immediate action is necessary to abate the violation, (e.g., commencement of construction without prior BSAC approval), Staff shall report the violation to the Chair of the BSAC with copy to the Board, or directly to the Board itself. Upon receipt of said notice, the Chair of the BSAC or Board shall issue a written order requiring the immediate suspension and cessation ("Cease and Desist Order") of any act of non-compliance or construction or work on the Member's property that Staff has identified as being in violation of the Governing Documents. Such Cease and Desist Order shall 1) identify the real property that is the subject of the violation; 2) state the violation(s); 3) cite the Governing Document that is being violated; 4) state the date and hour of its issuance; and 5) state the date, time and location of a meeting to be held by the BSAC/Board to consider the issue. Such meeting shall be held no later than ten (10) days after issuance of the Cease and Desist Order. The Cease and Desist Order shall promptly be delivered to the Member of record or the Member's designated representative (with copy to the Board) via personal delivery, facsimile, e-mail or U.S. Mail, postage prepaid. Any notice delivered via facsimile, e-mail or U.S. Mail shall be followed by delivery of the notice via registered or certified U.S. Mail, postage prepaid, return receipt requested. The meeting shall be conducted in accordance with the operational procedures outlined in paragraphs 3(b) – 3(e) above and BSAC/Board shall have all rights and remedies provided for therein. Additionally, at the meeting, BSAC/Board shall determine whether good cause exists for the Cease and Desist Order to be continued, amended, dissolved or made permanent. The Cease and Desist Order must remain in effect at least until the BSAC/Board holds its meeting, which meeting may be continued to a date certain at the Member's request. Any Member dissatisfied with the determination of the BSAC may appeal the matter to the Board by delivering a written notice of appeal to the Board within fifteen (15) business days after the date of the BSAC's determination. Upon receipt of said notice of appeal, the Board may call a Special Meeting for the purpose of considering the appeal or address the issue at its next regularly scheduled meeting. At such meeting, the Board shall determine whether the BSAC's determination should be affirmed, reversed or modified.
5. Remedies Cumulative. Each of the remedies stated herein shall be in addition to any other remedy provided by Article 9 of the Bylaws, shall be cumulative, and shall not be exclusive. At the Board's discretion, the Board may waive the administrative notice procedures set forth above and proceed immediately to filing an action at law or equity against the Member violating or attempting to violate any of the Governing Documents. Legal proceedings may be either to restrain violation of the Governing Documents, to recover damages or both.
6. Fines - Fines issued for enforcement under this Resolution shall not exceed \$50,000 per violation for properties of single-family residences or \$100,000 per violation for properties of multi-family

residences and commercial buildings/developments. The BSAC/Board has the discretion to levy fines either on a per violation basis or on a per day penalty basis. Fines on a per day basis shall not exceed \$500/day for properties of single-family residences or \$1,000/day for properties of multi-family residences and commercial buildings/developments. Any fines issued for enforcement under this Resolution shall begin to accrue as of the date and hour of the issuance of Notice (including Cease and Desist Order) and shall be due and payable to the Association within thirty (30) days after the date of the mailing notice of such fines to the Member. All fines, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land, run with the land and shall be a continuing lien upon the property against which each such fine is made. Money from fines collected under this Resolution shall be deposited with the BSOA and used at the discretion of the Board for the benefit of the Association.

7. Written Notice - All notices and other communications required to be given hereunder shall be in writing and shall be sent by United States mail, postage prepaid, to the address of the Member or the Member's designee of record on file with the BSOA or such other address as the Member may designate by notice to the BSOA pursuant hereto, or by personal delivery or electronic transmission or facsimile. Each notice shall be deemed to have been given by mail on the date deposited in the United States mail as provided above, or if by personal delivery on the date so delivered or if by electronic transmission or facsimile, upon confirmation of successful transmission to the party to be notified. Notices delivered by facsimile, or electronic transmission shall be followed by sending a copy of such notice via United States Mail, postage prepaid, return receipt requested.
8. In the event the BSAC or the Board, in its discretion as set forth in Section 9.2, of the Bylaws, determines not to take enforcement action with regard to a particular case, such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Governing Documents. In the event an Owner decides to take action at law or in equity to enforce the Governing Documents after the BSAC or the Board has issued its written decision not to take action, the Association is not liable to the Owner for any costs or attorney's fees incurred in taking such action.
9. The Board is the sole interpreter of this Resolution and decisions by the Board are final.
10. This Resolution supersedes all other Policies/Resolutions with regard to enforcement procedures for Governing Documents.

DATED this ____ day of July 2019.

BOARD OF DIRECTORS
BIG SKY OWNERS ASSOCIATION, INC.

Gary Walton, Chair

Eric Ossorio, Vice Chair

Gail Young, Treasurer

Maggie Good, Secretary

Philip Chadwell, Director

Kevin Daily, Director

Grant Hilton, Director

John Gladstein, Director

Jim Glowacki, Director