

RESTRICTIVE COVENANT ENFORCEMENT AND FINING POLICY
for
VILLAGE CREEK COMMUNITY ASSOCIATION, INC.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I, _____, Secretary of Village Creek Community Association, Inc. (“Association”), certify that, in the open session of a properly noticed meeting of the Association’s Board of Directors (“Board”) duly called and held on the _____ day of _____, 2022, with at least a quorum of the Board members being present and remaining throughout, and being duly authorized to transact business, the following Restrictive Covenant Enforcement and Fining Policy (“Policy”) was approved by at least a majority of the Board members in attendance.

RECITALS

1. Per Texas Property Code, Section 202.004(b), a property owners’ association may initiate, defend, or intervene in litigation affecting the enforcement of a restrictive covenant.
2. Article XI, Section 1 of the Declaration of Covenants, Conditions and Restrictions for Village Creek, Section One, a Subdivision in Harris County, Texas (“Declaration”), filed at Clerk’s File No. T730470 in the Official Public Records of Real Property of Harris County, Texas, authorizes the Association to impose reasonable fines for violations of the restrictions or any rules and regulations adopted by the Association or the Architectural Review Committee. The Declaration encumbers all sections of Village Creek under the jurisdiction of the Association by various annexation documents filed with Harris County, Texas.
3. The Association’s Board of Directors desires to adopt a Restrictive Covenant Enforcement and Fining Policy relating to the enforcement of the Declaration and the other Restrictive Covenants of the Association consistent with Section 209.006 of the Texas Property Code.
6. This Policy supersedes and replaces any previously recorded restrictive covenant/deed restriction enforcement policy or similarly named document including, but not limited to, the: (a) Violation Enforcement Resolution for Village Creek Community Association, Inc. and the Violation Schedule for the Village Creek Community Association, Inc., both of which are filed as part of the Property Owners’ Association Amended Management for Village Creek Community Association filed at Clerk’s File No. 20150102864 in the Official Public Records of Real Property of Harris County, Texas; and (b) Uncurable Violation Enforcement Resolution for the Village Creek Community

Association, Inc. filed at Clerk's File No. 20150489556 in the Official Public Records of Real Property of Harris County, Texas

**VILLAGE CREEK COMMUNITY ASSOCIATION, INC.
RESTRICTIVE COVENANT ENFORCEMENT AND FINING POLICY**

The Recitals are fully incorporated herein by reference.

It is the policy of the Association to enforce its Restrictive Covenants (as defined herein) as provided below.

Section 1. Definitions.

Capitalized terms used in this Restrictive Covenant Enforcement and Fining Policy ("Policy"), including Exhibit A attached hereto and fully incorporated herein by reference, have the following meanings:

- 1.1. Association - Village Creek Community Association, Inc.
- 1.2. Declaration - The Declaration of Covenants, Conditions and Restrictions for Village Creek, Section One, a subdivision in Harris County, Texas recorded in the Official Public Records of Real Property of Harris County, Texas under Clerk's File No. T730470 as amended and supplemented, including all annexations thereto, if any.
- 1.3. Restrictive Covenant *or* Restrictive Covenants - Any covenant, condition, or restriction contained in the Association's Dedicatory Instruments [as that term is defined in Texas Property Code Sec. 202.001(1)] whether mandatory, prohibitive, permissive or administrative.
- 1.4. Board *or* Board of Directors - The Board of Directors of the Village Creek Community Association, Inc.

Other capitalized terms used in this Policy, but not defined herein, have the same meanings as that ascribed to them in the Declaration.

Section 2. Types of Violations. Section 209.006 of the Texas Property Code refers to curable violations, uncurable violations, and violations which are considered a threat to public health or safety. The types of violations are addressed below.

- 2.1. **Curable Violations** - By way of example and not in limitation, the following are curable violations:
 - a. An ongoing parking violation;
 - b. A maintenance violation;
 - c. The failure to construct improvements or modifications in accordance with approved plans and specifications; and
 - d. An ongoing noise violation.

2.2. **Uncurable Violation** – A violation that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. By way of example and not in limitation, the following are examples of uncurable violations:

- a. An act constituting a threat to health or safety. A violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.
- b. A “one-off” violation or a Restrictive Covenant violation that is not ongoing;
- c. A noise violation that is not ongoing; and
- d. Holding a garage sale or other event/activity prohibited by the Restrictive Covenant.

If there is reasonable uncertainty as to whether a violation is curable or uncurable or a threat to public health or safety, the Board has the authority to make the determination and, therefore, to decide how to proceed with enforcing the Restrictive Covenants. Provided that, this Policy will not be construed to impose an obligation on the Board to pursue a violation or an alleged violation of the Restrictive Covenants if the Board, in its reasonable good faith judgment, decides pursuing the violation or alleged violation is not warranted or necessary.

Section 3. Enforcement – Curable Violations. If a violation is curable, the Owner will be given a reasonable period to cure the violation. The time period given to an Owner may vary depending upon the violation. The enforcement procedure for this type of violation is as follows:

3.1. **Courtesy/Violation Letter(s) (Optional)** – A courtesy and/or violation letter(s) may be sent to the Owner describing the violation and requesting that the Owner cure the violation. The Association may send more than one courtesy or violation letter. The Association is not required to send a courtesy and/or violation letter.

3.2. **Final Notice Letter** – Either upon initial discovery of a violation, or after a courtesy or violation letter(s) has been sent, a final notice letter may be sent to the Owner. The final notice letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier. The final notice letter will be sent to the Owner’s last known address as shown in the records of the Association. It is the Owner’s obligation to provide the Association with the Owner’s current mailing address. The final notice letter may, at the Board’s discretion, also be sent by any other method that the Board determines will cause the demand letter to be received by the Owner. Depending on the severity of the violation and/or the history of prior violations on the Owner’s property, the final notice letter may be the first letter sent (rather than a courtesy letter and/or a violation letter) as determined by the Board in its sole discretion. The Association may send more than one final notice letter.

3.4. **Contents of the Final Notice Letter.** – The final notice letter for a curable violation will include, among other things, the following:

- a. A description of the violation of the Restrictive Covenants;
- b. A date by which the Owner must cure the violation;

- c. Notice that the Owner may request a hearing before the Board of Directors and that such request must be made in writing on or before the 30th day after the date the notice was mailed to the Owner;
- d. Notice that the Owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 *et seq.*), if the Owner is serving on active military duty; and
- e. Notice that, if the violation is not corrected in the time frame described in the letter, the Owner will be responsible for all reasonable attorney's fees and other reasonable costs incurred by the Association related to enforcing the Restrictive Covenants.

3.5. **Hearing Requested** – If a hearing is properly requested in writing by the Owner, a hearing will be held in accordance with Texas Property Code Section 209.007.

3.6. **Hearing Not Requested** – If a hearing is not properly requested by the Owner, the violation must be cured within the time frame set forth in the final notice letter. If authorized by the Restrictive Covenants and/or state law fines, suspension of the right to use the Common Open Area, and other remedies available to the Association may, if the notice required by law, if any, has been given, be implemented after the expiration of the thirty (30) day time frame provided to the Owner to request a hearing. Notwithstanding any language to the contrary herein, the Association may file a temporary restraining order lawsuit and/or a temporary injunction hearing at any time in which a violation of the Restrictive Covenants is in existence.

3.7. **Remedies/Attorney's Fees** – The Owner is liable for, and the Association may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the Association after the conclusion of a hearing, or, if a hearing is not requested, after the date by which the Owner must request a hearing. Additionally, the Association may, but is not obligated to, exercise any self-help remedies set forth in the Declaration. Further, the right to use the Common Open Area may be suspended if authorized by the Restrictive Covenants and/or state law.

The Association reserves the right under the Restrictive Covenants and under Texas law to file a suit for the recovery of damages and/or injunctive relief prior to sending and/or without sending a Courtesy/Violation Letter or Final Notice Letter.

A notice of violation or similarly named document may also be recorded in the Official Public Records of Real Property of Harris County, Texas any time after the Board determines that a violation exists, or that a violation is believed to exist in the opinion of the Board, on a property under the jurisdiction of the Association.

Section 4. Enforcement – Uncurable Violations. A violation letter(s) may be sent to the Owner. The violation letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier. The violation letter will be sent to the Owner's last known address as shown in the records of the Association. It is the Owner's obligation to provide the Association with the Owner's current

mailing address. The violation letter may, at the Board's discretion, also be sent by any other method that the Board determines will cause the letter to be received by the Owner.

4.1. **Content of the Violation Letter** - The letter will include the following:

- a. A description of the violation of the Restrictive Covenant;
- b. Notice that the Owner may request a hearing before the Board of Directors, such request to be made in writing on or before the 30th day after the date the notice was mailed to the Owner; and
- c. Notice that Owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 *et seq.*), if the Owner is serving on active military duty.

4.2. **Hearing Requested** - If a hearing is properly requested in writing by the Owner, the hearing will be held in accordance with Texas Property Code Section 209.007.

4.3. **Remedies** - Regardless of whether the Owner requests a hearing, the Association exercise other legal remedies to enforce the Restrictive Covenants after mailing the violation letter. The Owner is liable for, and the Association may collect reimbursement of, reasonable attorneys' fees and other reasonable costs incurred by the Association as authorized by state law and/or the Restrictive Covenants. Additionally, the Association may, but is not obligated to, exercise any self-help remedies set forth in the Declaration. Further, the right to use the Common Open Area may be suspended if authorized by the Restrictive Covenants and/or state law.

The Association reserves the right under the Restrictive Covenant and under Texas law, to file a suit for the recovery of damages and/or injunctive relief.

A notice of violation may also be recorded in the real property records should the violation not be cured within the specified time frame.

Section 5. Fines. In addition to any other remedy allowed by law, the Association may levy a fine(s) for a violation of the Restrictive Covenants in accordance with the Fining Policy attached hereto as Exhibit A and fully incorporated by reference herein. In the event that a fine(s) is levied, any of the violation/notice/demand letters referenced above may include the notice language required by the Texas Property Code related to fines for a violation of the Restrictive Covenants. The Association reserves the right to send a separate fine letter that complies with the requirements of the Texas Property Code. Fines are in addition to, not in lieu of, any other legal remedy that the Association may exercise seeking enforcement of and/or compliance with the Restrictive Covenants.

Section 6. Subsequent Violation. If an Owner has been given notice in accordance with Section 3 or Section 4 of this Policy in the preceding six (6) month period, notice is not required for the recurrence of the same or a similar violation. If proper notice was given, the Association may impose fines or suspend the Owner's right to use the Common Open Area without first sending another demand for compliance.

Section 7. Self-Help Authority. If authorized by the Declaration or state law, the Association may, in addition to taking any action under this Policy to enforce the Restrictive Covenants, exercise the Association's self-help authority to enter onto the Owner's property and cure the violation(s) to the extent allowed by the Declaration.

Section 8. Referral of Restrictive Covenant Violation(s) to the Association's Attorney. Once a letter that complies with the requirements of Texas Property Code Chapter 209 has been sent to an Owner and the complained-of violation(s) has not been corrected, the Association, the Board, an individual Board member (if authorized by the Board), or the Association's management agent may, without further approval of or action needed by the Board other than the adoption of this Policy in the open session of a properly noticed Board meeting and filing same in the appropriate county records, refer any violation(s) of the Restrictive Covenants to the Association's attorney for an enforcement action. Upon referral of a violation(s) to the Association's attorney, the Association's attorney is authorized to, without further instruction from the Board, take whatever action is necessary to seek enforcement of and/or compliance with the Restrictive Covenants including, but not limited to, sending demand letters, filing a lawsuit against the applicable Owner and/or tenant of the property on which the violation is being conducted or maintained, seeking enforcement of any judgment obtained by the Association related to a violation(s) of the Restrictive Covenants, filing a motion(s) for contempt if necessary, seeking collection of the amounts awarded to the Association in a Restrictive Covenant violation judgment by any means allowed by the Declaration or state law including, but not limited to, foreclosing on the applicable property or on any non-exempt assets of an Owner, and, in the event an Owner is in bankruptcy or files bankruptcy, sending demand letters to the Owner's bankruptcy attorney and/or filing necessary claims, objections and motions in the bankruptcy court and monitoring the bankruptcy case in order to protect the Association's interests. Notwithstanding any language to the contrary in this Policy, the Association, the Board, an individual Board member (if authorized by the Board), or the Association's management agent may, without further approval of or action needed by the Board other than the adoption of this Policy in the open session of a properly noticed Board meeting and filing same in the appropriate county records, also refer any violation(s) of the Restrictive Covenants to the Association's attorney at any time (whether or not a letter that complies with the requirements of Texas Property Code Chapter 209 has been sent) for a temporary restraining order lawsuit and/or a temporary injunction lawsuit.

I hereby certify that I am the duly elected and acting Secretary of the Association and that this Policy was approved by at least a majority vote of the Board of Directors as set forth above and now appears in the books and records of the Association, to be effective upon recording in the Official Public Records of Real Property of Harris County, Texas.

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VILLAGE CREEK COMMUNITY ASSOCIATION, INC.

By: _____
Its: Secretary

Name Printed: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this _____ day of _____, 2022, personally appeared _____, as Secretary of Village Creek Community Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purpose and in the capacity therein expressed.

Notary Public in and for the State of Texas

FINING POLICY

1. All capitalized terms in this Fining Policy ("Policy") have the same meaning ascribed to them in the Declaration unless otherwise defined in this Policy.
2. Each Owner is responsible for assuring that the Owner and the Owner's tenant(s), occupant(s), guest(s) and invitees comply with the provisions of the Association's Restrictive Covenants that are applicable to the properties under the jurisdiction of the Association. In the event that an Owner, tenant, occupant, guest or invitee of an Owner violates any of the provisions of the Restrictive Covenants, the Association's Board of Directors ("Board") shall have the authority to impose a fine as described below upon the Owner and/or occupant of a Lot under the jurisdiction of the Association.
3. The Association will, before a fine is imposed, send the Owner of the Lot the notice required by law, if any. The Board may, in its sole and absolute discretion, also provide the notice required by law, if any, to the occupant(s) of the Lot.
4. If the violation continues from day to day without intervening activity (a "Curable Violation") as determined at the sole and absolute discretion of the Board, the Fine Schedule will be as follows:

\$100.00 per day until corrected

4.1 Curable Violations – By way of example and not in limitation, the following are examples of Curable Violations:

- a. An ongoing parking violation;
 - b. A maintenance violation;
 - c. An ongoing noise violation.
5. If the violation consists of single occurrence (an "Uncurable Violation") or separate occurrences (i.e., repeat instances of an Uncurable Violation) as determined at the sole and absolute discretion of the Board, the Fine Schedule will be as follows:

First Violation: \$100.00 per occurrence

Each Additional Similar or Substantially Similar Violation: \$200.00 per occurrence

EXHIBIT A

5.1 Uncurable Violation – A violation that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. By way of example and not in limitation, the following are examples of Uncurable Violations:

- a. An act constituting a threat to health or safety;
- b. A one-time or non-ongoing parking violation;
- c. A one-time noise violation that is not ongoing;
- d. Holding a garage sale or other event prohibited by the Association's Restrictive Covenants.

6. Notwithstanding any language to the contrary in this Policy, the Fine Schedule for a violation of any term or provision of Article VI (Architectural Control) of the Declaration will be as follows:

\$200.00 per day until corrected

7. The Board is hereby authorized in its sole and absolute discretion to impose a lesser fine or no fine at all for a violation of the Restrictive Covenants. Any adjustment to the Fine Schedule by the Board shall not be construed as a waiver of the Fine Schedule or the Restrictive Covenants.

8. Per Article XI, Section 1 of the Declaration, any fine imposed under this Policy may be added to the Owner's assessment account and collected in the manner provided in Article V of the Declaration.

9. This Policy is in addition to any other remedy the Association may have to pursue a violation of the Association's Restrictive Covenants and in no way limits or estops the Association from pursuing any other remedy to enforce the Association's Restrictive Covenants.