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**ENFORCEMENT AND FINE POLICY  
FOR  
LONG CREEK OWNERS ASSOCIATION, INC.**

I, Daniel A. Pedrotti Jr., President of the Long Creek Owners Association (the "LCOA"), certify that at a meeting of the Board of Directors of the LCOA (the "Board") duly called and held on the 18th day of August, 2020, with at least a quorum of the Board members being present and remaining throughout, and being duly authorized to transact business, the following Enforcement and Fine Policy was duly approved by a majority vote of the members of the Board.

**RECITALS:**

1. Article IX of the CC&Rs grants to LCOA the power and authority to enforce all covenants, conditions and restrictions set forth in the CC&Rs;
2. Article III and Article XIII Section B of the CC&Rs grant the LCOA and the Board the authority to establish rules and regulations and to levy reasonable fines against any Owner in violation of the Governing Documents and the rules and regulations;
3. Section 209.006 of the Texas Property Code sets forth notice requirements as part of the process of enforcement, including the imposition of fines;
4. The Board of Directors desires to adopt a policy relating to the enforcement of the CC&Rs and the other Governing Documents of the LCOA consistent with Section 209.006 of the Texas Property Code and the CC&Rs;

**POLICY:**

It is the policy of the LCOA to enforce its Governing Documents and the rules and regulations as established by the LCOA from time to time as provided below:

**Section 1. Definitions**

Capitalized terms used in this Policy have the following meanings:

- 1.1 Articles of Incorporation – the Restated Articles of Incorporation for the Long Creek Owners Association, Inc. adopted on January 28, 2003 and certified by the Secretary of State of the State of Texas on February 2, 2003;
- 1.2 Board or Board of Directors – The Board of Directors of the LCOA.
- 1.3 CC&Rs – means the Second Restatement of Declaration of Covenants, Conditions and Restrictions of Long Creek Subdivision, Guadalupe County, Texas July, 2004 recorded in the Official Public Records of Real Property of Guadalupe County, Texas on August 11, 2004 in Volume 2047 Page 521 and any other applicable amendments, annexations or supplements not included and any future amendments, annexations or supplements.
- 1.4 Governing Documents – The CC&Rs, the Articles of Incorporation, the Bylaws, all guidelines and policies applicable to the Subdivision and the rules and regulations of the

LCOA adopted by the Board and recorded in the Official Public Records of Real Property of Guadalupe County, Texas.

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

## **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 described below:

**2.1. Curable Violations** – By way of example and not in limitation, the Texas Property Code lists the following as examples of curable violations:

- a. a 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 such as a barking dog

**2.2 Uncurable Violations** – A violation that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. The nonrepetition of a one-time violation is not considered an adequate remedy. By way of example and not in limitation, the Texas Property Code lists the following as examples of uncurable violations:

- a. an act constituting a threat to health or safety;
- b. shooting fireworks;
- c. a noise violation that is not ongoing;
- d. property damage, including the removal or alteration of landscape; and
- e. holding a garage sale or other event prohibited by the Governing Documents

**2.3 Violation that is a Threat to Public Health or Safety** – Per the Texas Property Code, a violation that could materially affect the physical health or safety of an ordinary resident.

As provided in this Policy, there are two enforcement procedures to be followed depending on whether the violation is curable **and** does not pose a threat to public health or safety or whether the violation is uncurable **and/or** poses a threat to public health or safety. 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 which enforcement procedure will be followed. However, this Policy will not be construed to impose an obligation of the Board to pursue enforcement action with respect to a violation or alleged violation if the Board, in its reasonable good faith judgement, decides that enforcement action is not warranted or necessary.

### **Section 3 – Enforcement: Curable Violations that do not pose a Threat to Public Health or Safety**

If a violation is curable and does not pose a threat to public health or safety, the Owner will be given a reasonable period in which to cure the violation as provided below. The time period given to an Owner may vary depending upon the violation and the difficulty involved or the effort required to cure the violation. The Board may, but is not obligated to, consider any special circumstance relating to the violation and the cost to cure the violation. The enforcement procedure for this type of violation is as follows:

**3.1 Courtesy Letter (Optional)** – On verification of a violation, a courtesy letter may be sent to the Owner describing the violation and requesting that the Owner cure the violation within a stated time period. The LCOA is not required to send a courtesy letter.

**3.2 Violation Letter (Optional)** – After the expiration of the time set forth in a courtesy letter (if one is sent), or as the initial notice, a violation letter may be sent to the Owner. Depending on the severity of the violation and/or the history of prior violations by the Owner, the violation letter may be the first letter sent to the Owner. The LCOA is not required to send a violation letter. If sent, the violation letter will include:

- a. a description of the violation;
- b. the action required to correct the violation;
- c. the time by which the violation must be corrected; and
- d. notice that if the violation is not corrected within the time provided or if there is a subsequent violation of the same nature, a warning that a fine may be imposed or other enforcement action may be initiated. However, the imposition of a fine may not be undertaken without the issuance of a Demand Letter (except as provided in Section 5).

**3.3 Demand Letter** – Either upon initial verification of a violation, or after the expiration of the time period stated in the courtesy letter and/or violation letter (if sent), a demand letter may be sent to the Owner. The demand letter must be sent by certified mail. The demand letter must be sent to the Owner's last known address as shown in the records of the LCOA. Additionally, the Board may use any other method of delivery if the Board determines that it may aid in the receipt of the demand letter by the Owner. Depending on the severity of the violation and/or the history of prior violations by the Owner, the demand 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.

**3.4 Content of the Demand Letter** – The demand letter will include the following:

- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due to the LCOA;
- b. notice that the Owner is entitled to a reasonable period to cure the violation and avoid the enforcement action, suspension, charge or fine;

- c. a specific date, which must be a reasonable period given the nature of the violation, by which the Owner must cure the violation. If the Owner cures the violation before the date specified, a fine may not be assessed for the violation;
- d. a notice that the Owner may request a hearing before the Board, such request to be made in writing on or before the 30<sup>th</sup> day after the date the notice was mailed to the Owner; and
- e. 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.

**3.5 Hearing Requested** – If a hearing is properly requested by the Owner, the hearing will be held not later than the 30<sup>th</sup> day after the date the LCOA receives the Owner's written request for a hearing. Notification of the date, time and place of the hearing will be sent no later than the 10<sup>th</sup> day before the hearing. If a postponement of the hearing is requested by either the LCOA or the Owner, a postponement must be granted for a period of not more than ten days. Any additional postponement may be granted by agreement of the parties.

**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 demand letter. Fines, suspension of the right to use common areas, and other remedies available to the LCOA may be implemented after the expiration of the thirty day time frame provided to the Owner to request a hearing.

**3.7. Remedies** – The Owner is liable for, and the LCOA may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the LCOA after the conclusion of a hearing, or, if a hearing is not requested, after the date by which the Owner must request a hearing. Further, the right to use common areas may be suspended.

In addition to charging fines as provided in Section 6, the LCOA reserves the right under the Governing Documents 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 if the violation is not cured within the specified time period.

#### **Section 4 – Enforcement – Uncurable Violations and/or Violations that Pose a Threat to Public Health or Safety.**

Upon initial verification of an uncurable violation and/or threat to public health or safety, a demand letter may be sent to the Owner. The demand letter must be sent by certified

mail. The demand letter must be sent to the Owner's last known address as shown in the LCOA's records. Additionally, the Board may use any other method of delivery if the Board determines that it may aid in the receipt of the demand letter by the Owner.

**4.1 Content of the Demand Letter** – The demand letter will include the following:

- a. a description of the violation or property damage that is the basis for the enforcement action, suspension action, charge, or fine and any amount due to the LCOA.
- b. a notice that the Owner may request a hearing before the Board, such request to be made in writing on or before the 30<sup>th</sup> day after the date the notice was mailed to the Owner; and
- c. 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.

**4.2 Hearing Requested** – If a hearing is properly requested by the Owner, the hearing must be held no later than the 30<sup>th</sup> day after the date the LCOA receives the Owner's written request for a hearing. Notification of the date, time, and place of the hearing will be sent not later than the 10<sup>th</sup> day before the hearing. If a postponement of the hearing is requested by either the LCOA or the Owner, a postponement must be granted for a period of not more than ten days. Any additional postponement may be granted by agreement of the parties.

**4.3 Remedies** – Regardless of whether the Owner requests a hearing, fines, suspension of the right to use common areas, and other remedies available to the LCOA may be implemented after mailing the demand letter. The Owner is liable for, and the LCOA may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the LCOA.

In addition to charging fines, the LCOA reserves the right under the Governing Documents 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 – Subsequent Violations**

If an Owner has been given notice by way of certified mail in accordance with Section 3 or Section 4 of this Policy in the preceding six month period, notice is not required in the event of the recurrence of the same or similar violation. The LCOA may impose fines and suspend the Owner's right to use common areas without first sending another demand for compliance.

## **Section 6 – Fines**

Subject to the notice provisions set forth in Section 3 or Section 4 of the Policy, as applicable, the LCOA may impose monetary fines against an Owner which will become the personal obligation of the Owner in accordance with the schedule below until the violation is cured (if of a curable nature). The time to cure a violation may vary dependent upon the violation with such determination to be within the sole and absolute discretion of the Board

Notice	Time to Cure (estimate)	Fine Amount if not Cured
1 <sup>st</sup> Notice (Chapter 209 – Demand Letter)	15-30 days	\$75
2 <sup>nd</sup> Notice of Fine Letter	5-10 days	\$100
Subsequent Notice of Fine Letter	5-10 days	\$150
Fine Letter for Uncurable Violations or Violations that are a threat to Public Health or Safety	N/A	up to \$500

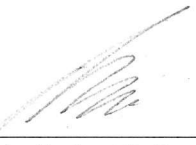
## **Section 7. Effect of Change in State and Federal Law Upon Enforcement And Fine Policy**

This Enforcement and Fine Policy is adopted in compliance with state law. The Board shall not be required to comply with or enforce any provision stated herein should such provision be in conflict with future state or federal law. In the event of such conflict, the Board in exercising its discretionary authority for the enforcement of the CC&Rs, shall have the right to do so in accordance with the then current state and federal law on any matter addressed herein.

I hereby certify that I am the duly elected, qualified and acting President of the LCOA and that the foregoing Enforcement and Fine Policy was approved by a majority vote of the Board of Directors as set forth above and now appears in the books and records of the LCOA, to be effective upon recording in the Official Public Records of Real Property of Guadalupe County, Texas.

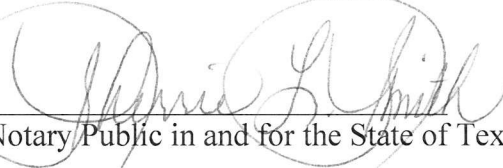
TO CERTIFY which witness my hand this the 19 day of August, 2020.

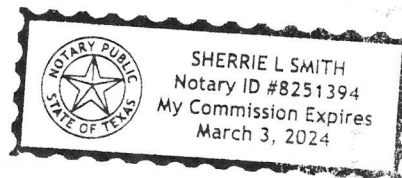
Long Creek Owners Association, Inc.

  
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Daniel A. Pedrotti, Jr., President

THE STATE OF TEXAS       §  
COUNTY OF Kendall       §  
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Before me, the undersigned notary public, on this 19 day of August, 2020, personally appeared Daniel A. Pedrotti, Jr., President of the Long Creek Owners Association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and in the capacity therein expressed.

  
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Notary Public in and for the State of Texas



Return to:  
Long Creek Owners Association  
PO Box 1071  
McQueeney, TX 78123

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I certify this instrument was FILED and RECORDED  
in the OFFICIAL PUBLIC RECORDS  
of Guadalupe County, Texas on  
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TERESA KIEL, COUNTY CLERK

