

ENCLAVE FAIR LAKES HOMEOWNERS ASSOCIATION

ADMINISTRATIVE RESOLUTION NUMBER 2023-04

(Creation of Procedures to Ensure Due Process in Enforcement Cases)

WHEREAS, Article 1, Section 1.3 (d) of the Declaration for Enclave Fair Lakes (“Declaration”) provides that the Board of Directors (“Board”) is responsible for the management and Upkeep of the Property and the administration of the Enclave Fair Lakes Homeowners Association (“Association”) and unless otherwise specified in the Virginia Nonstock Corporation Act or the Association Documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board;

WHEREAS, Article 12, Section 12.1(h) of the Declaration provides that the Board or its Covenants Committee shall have the power to impose charges for violations and to suspend the rights of an Owner or other occupant, and the right of such Person’s household members, tenants, guests or invitees to use the Common Area for a reasonable period not to exceed sixty (60) days for any violation of any provision of the Association Documents or the Rules or Regulations or for any period during which any Assessment against the Owner’s Lot remains unpaid, provided, however that such Person is afforded reasonable due process rights;

WHEREAS, various provisions of the Declaration authorize the Board to exercise self-help to cure violations of the Rules and Regulations and breaches of the Association Documents; and

WHEREAS, the Board deems it desirable to formally adopt a resolution to establish a procedure for enforcement of the Association Documents and Rules and Regulations of the Association which are consistent with principles of due process.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors adopts the following due process procedures.

I. DEFINITIONS

- A. “Association Documents” means collectively, the Articles of Incorporation, Bylaws, the Declaration, any Supplementary Declaration, all as amended from time to time. Any exhibit, schedule, certification or amendment to an Association Document is an integral part of that document.
- B. “Design Guidelines” means the standards and guidelines developed by the Declarant during the Development Period or adopted by the Board pursuant to Article 9. Pursuant to Article 9, Section 9.1(b)(5) of the Declaration, the Design Guidelines approved by the Board (or Declarant during the Development Period) are incorporated by reference into the Declaration and shall be enforceable as if set forth in the Declaration in full. Therefore, the reference to the Association Documents in this Resolution encompasses the Design Guidelines.

- C. "Person" means a natural person, corporation, partnership, association, trust or other entity capable of holding title or any combination thereof.
- D. "Rules and Regulations" means rules and regulations governing the use, occupancy, operations, Upkeep, and physical appearance of the Property adopted from time to time by the Board.
- E. Any capitalized term not defined herein shall have the meaning ascribed to it in the Declaration.

II. PRELIMINARY PROCEDURES

- A. Covenants Committee. The Board will fulfill the functions of the Covenants Committee until and unless one is appointed by the Board and delegated duties. If a Covenants Committee, other committee of the Board, or managing agent is delegated any of the duties related to enforcement of the Association Documents or Rules and Regulations, they will apply the procedures outlined herein.
- B. Alleged Violations. Members of the Board, managing agent, or other persons authorized by the Board may perform periodic inspections of the Property to determine whether violations of the Rules and Regulations or Association Documents exists and may investigate alleged violations based on written complaints.

Complaints from residents must be submitted in writing to the managing agent; anonymous complaints will not be acted upon or investigated. If possible, complaints should identify the specific provisions in the Association Documents or Rules and Regulations that allegedly have been violated. Complaints should also specify the date, time, place, and person(s) involved so the Board, managing agent or other person authorized by the Board can determine if there are reasonable grounds to believe that a violation occurred or is occurring.

Violations related to nonpayment of assessments may be raised by the management agent, Board, or authorized committee of the Board.

- C. Informal Resolution. Before instituting formal due process procedures, the Board, managing agent, or other person authorized by the Board may attempt to resolve the matter informally.

III. DUE PROCESS PROCEDURES

- A. Notice of Violation. If there are sufficient grounds to believe that a violation has occurred or is occurring, the managing agent will provide a written notice and opportunity to cure ("Notice of Violation") to the defaulting Person at the address on record with the Association. Notice of Violation will generally specify (i) the nature of the violation and the related provision(s) of the Association Documents or Rules and Regulations that are alleged to have been violated; (ii) a reasonable time to cure the

violation, which may vary depending on the nature of the violation; and (iii) the action necessary to cure the violation. If the alleged violation constitutes a health, safety or other hazard, the period for correction shall be appropriate to the level of the potential threat and the Board or managing agent make take additional steps to mitigate danger or loss to person or property. A Notice of Violation may be combined with the Notice of Hearing referenced in subparagraph B below.

- B. Notice of Hearing. If the Board determines it will proceed to a hearing on the violation, a Notice of Hearing shall be issued in writing to the Person. The Notice of Hearing must:
- i. Be provided to the Person at least 14 days prior to the hearing date;
 - ii. Be sent by hand delivery or registered or certified mail, return receipt requested, to the Person at the address on record with the Association;
 - iii. Identify the remedial actions that the Association may take against the Person; and
 - iv. Notify the Person of the date, place, and time of the hearing and that the Person may attend and be represented by counsel at their own expense.

If the Person fails to attend the hearing, the opportunity for a hearing is deemed waived and the Board may proceed to determine what remedial action, if any, will be taken. The Notice of Hearing shall be deemed effective even if the Person fails or refuses to sign for any certified mailing from the Association.

- C. Hearing. Hearings shall be held before the Board and may be held in person or via electronic means. At the hearing, the Person has the right to have counsel present at their own expense however, for the Association to be similarly represented, the Board reserves the right to reschedule a hearing if the Person brings counsel without sufficient prior notice. If the Person is not present at the hearing, the hearing shall proceed in the Person's absence. If the Person is present, the person presiding over the hearing will present the Person with the facts related to the alleged violation and the Person will have a reasonable amount of time to be heard, to present information which relates to the alleged violation, and to present witnesses. The hearing need not be conducted according to the technical rules of evidence applied in a court of law or administrative hearing. Following the hearing, the Board will determine whether satisfactory proof of the alleged violation was presented, and if so, whether remedial action will be taken. Once a decision is made, the Board will vote in open session.
- D. Notice of Hearing Results. After the hearing, the managing agent will send a Notice of Hearing Results to the Person. Notice of Hearing Results must:

- i. Be provided to the Person not more than 3 days following the hearing date, if the Person was given the option for a hearing and requested a hearing before any charge is imposed or action taken; or within 7 days

following the hearing date if the Person was summoned to a hearing by the Board;

- ii. Be sent by hand delivery or mailed by registered or certified mail, return receipt requested, to the Person at the address on record with the Association; and
- iii. Identify the decision and/or remedial action that the Board determined to take at the hearing.

E. Remedial Actions. In accordance with the authority established in the Association Documents, Rules and Regulations, and the Virginia Property Owners' Association Act, remedial actions sought by the Board includes, without limitation, the power to:

- i. Impose monetary charges for any violation of the Association Documents or Rules and Regulations. For violations of a non-continuing nature, such charges shall not exceed \$50.00 per violation. If the violation is of a continuing nature, such charges shall not exceed \$10.00 per day for a period not to exceed 90 days. An offense of a continuing nature is defined as a violation which, by its nature, remains a violation continuously for more than twenty-four (24) hours unless corrected.
- ii. Suspend a Person's right to use the Common Area and other rights for nonpayment of Assessments that are more than 60 days past due and for a period not to exceed 60 days for any violation of the Association Documents or Rules and Regulations.
- iii. Exercise self-help to abate or remove violations and assess the costs of such action against the Person responsible.
- iv. File suit for injunctive relief.
- v. Exercise any other remedy afforded to the Association under the Association Documents and Rules and Regulations, or otherwise available at law or in equity.

IV. MISCELLANEOUS

- A. In accordance with Article 12, Section 12.1(h) of the Declaration, the Board or Covenants Committee may determine to take certain other actions, including, without limitation, towing vehicles or performing Upkeep on a Lot pursuant to Sections 6.2 and 7.2 of the Declaration without providing a hearing. Prior to towing a vehicle, notice will be provided as set forth in Article 8, Section 8.2(o) of the Declaration and prior to exercising self-help, notice will be given in accordance with Article 7, Section 7.2 or Article 8, Section 8.2(l) of the Declaration.
- B. Pursuant to Article 12, Section 12.1(h)(3) and Article 9, Section 9.1(b)(6) of the Declaration, upon receipt of a written request made within 10 days after the date of an

action by the Covenants Committee, the Board may afford any Person deemed by the Board to have standing as an aggrieved party the right to appeal to the Board, and the Board may reconsider, review, modify or reverse any action taken by the Committee. All appeal requests must be in writing and submitted to the managing agent and it is the obligation of the Person seeking appeal to confirm receipt of their appeal with the managing agent. Once received, the Board will determine if the requester is an aggrieved party and if so, the aggrieved party will be given reasonable notice of the date, time, and location of the meeting in which the appeal will be heard. Such notice may include such additional terms and provisions that Board deems reasonable to fully understand the nature of the appeal. The aggrieved party will be advised of the Board's decision within a reasonable time thereafter.

- C. Failure or refusal to accept delivery of any Association notice shall not constitute ineffective notice.
- D. An omission or failure to conduct any enforcement process in exact conformity with this Resolution shall not invalidate the results of such process.
- E. Failure by the Board to enforce any right, provision, covenant, or condition which may be granted by the Association Documents shall not constitute a waiver of the right of the Board to enforce such right, provision, covenant or condition in the future. All rights, remedies, and privileges granted to the Association or Board pursuant to any term, provision, covenant or condition of the Association Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the Association exercising the same from exercising such privileges as may be granted to the Association by the Association Documents or at law or in equity.
- F. If legal action is initiated to enforce any provision of the Association Documents or Rules and Regulation, the Association will seek recovery of its incurred costs, including legal fees, from the offending person or the Person responsible under the Association Documents or applicable law.

The Effective Date of this Administrative Resolution shall be September 27,
2023.

ENCLAVE FAIR LAKES HOMEOWNERS ASSOCIATION

By: 
President

ENCLAVE FAIR LAKES HOMEOWNERS ASSOCIATION.

RESOLUTIONS ACTION RECORD

Resolution Type: **Administrative**

No. 2023-04

Pertaining to: **Creation of Procedures to Ensure Due Process in Enforcement Cases**

Duly adopted by the Board of Directors via unanimous written consent on

September 27, 2023.

Effective Date: September 27, 2023.

FOR ASSOCIATION RECORDS

I hereby certify that a copy of the foregoing Resolution was provided to the Members of Enclave Fair Lakes Homeowners Association on this 28th day of September, 2023.



Managing Agent