

Attachment B

ENFORCEMENT AND FINING POLICY

**COVENANT ENFORCEMENT AND FINE POLICY
FOR
ERWIN FARMS HOMEOWNER'S ASSOCIATION, INC.**

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

WHEREAS, the Board of Directors ("*Board*") of Erwin Farms Homeowner's Association, Inc., a Texas non-profit corporation (the "*Association*"), is empowered to govern the affairs of the Association pursuant to Article VI of the Declaration of Covenants, Conditions & Restrictions for Erwin Farms Homeowner's Association, Inc., recorded under Instrument Number 20150424000465750 of the Official Public Records of Collin County, Texas ("*Declaration*"), and the Texas Business Organizations Code; and

WHEREAS, the Declaration affects certain parcels or tracts of real property in the City of McKinney, Collin County, State of Texas ("*Property*"); and

WHEREAS, pursuant to authority set forth in the Declaration and Bylaws, the Association, acting by and through the Board, has the authority to enforce the provisions of the Declaration, the power to promulgate and enforce the provisions of the Declaration, including establishing and imposing reasonable monetary fines or penalties for the violation of the Association's dedicatory instruments, including, but not limited to, the Declaration, the Bylaws, rules and regulations, policies, resolutions, or design/architectural guidelines (collectively, the "*Governing Documents*"); and

WHEREAS, the Board has authority pursuant to the Declaration and the Bylaws to determine, in its reasonable discretion, the manner in which violations of the Governing Documents are to be remedied; and

WHEREAS, the Board has and does hereby find the need to establish rules, regulations, and procedures for the enforcement of the restrictions contained in the Governing Documents and for the elimination of violations which may be found to exist within the Property.

NOW THEREFORE, IT IS RESOLVED that the following rules, regulations, and procedures relative to the operation of the Association are hereby established for the enforcement of violations of the Governing Documents and for the elimination of such violations found to exist in, on or about the Property (hereinafter referred to as the "*Enforcement Policy*").

1. Establishment of a Violation related to Architectural and/or other Common Violations

a. Failure to Obtain Prior Approval regarding Architectural related violations. Any additions, improvements, modifications, and/or repairs of any kind or nature erected, placed, or altered on any Lot which (i) requires the prior approval of the Architectural Control Committee (the "*ACC*" or as defined or referred to in the

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Declaration) and (ii) has not been first approved by the ACC in writing is deemed a "Violation" under this Enforcement Policy for all purposes.

b. Failure to Abide by the Governing Documents.

- (i) Any construction, alteration or modification to any improvement on a Lot which does not in all respects conform to that which has been so approved, or any activity or condition existing or allowed to continue on any Lot that is in direct violation of the Governing Documents is also deemed a "Violation" under this Enforcement Policy for all purposes; and
- (ii) Failure to either (i) submit complete plans and specifications showing that the Violation will be remedied, (ii) cease all non-remedial work immediately upon receipt of the Notice of Violation, and/or (iii) remedy the current Violation existing upon the Lot within the number of days specified in the notice(s) provided by the Association shall constitute a continuing Violation and result in further enforcement actions; and
- (iii) Additionally, any violation of the Governing Documents or noncompliance of a deed restriction covenant is deemed a "Violation" under this Enforcement Policy for all purposes.

c. Common Violations. Exemplary violations are outlined in Exhibit 1 titled "Common Violations" notwithstanding, **this is not an exhaustive list of Violations** that are subject to enforcement by the Association.

2. Notification.

a. Initial Notice of Violation. Upon verification of the existence of a Violation by the Association or management company representative ("*Management*") of the Association, the Association may send to the Owner a written notice of the existence of the Violation ("*Initial Notice of Violation*"). According to Texas Property Code, a minimum of fourteen (14) total days must be provided for the Owner to cure a violation, notwithstanding, the Association may divide the amount of time allotted by sending one or more notices to the non-compliant owner. The Initial Notice of Violation on behalf of the Association shall generally be ten (10) days unless the Association or Management determine that an alternate number of days shall be given and will inform the Owner of the following:

- (i) The nature, description, and location of the Violation; and
- (ii) What needs to be done to cure the Violation and provide notice of the number of days in which the Violation must be cured^{1,2} to avoid further enforcement measures.

¹ For purposes of this Enforcement Policy, the term "days" shall mean calendar days.

² The Board may require certain Violations be cured within three (10) days from the date of the letter.

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The Association may issue a First Notice providing fourteen (14) days in which to cure and thereafter, the Association or Management may proceed immediately to the notice set forth in subparagraph (b) below once the Initial Notice of Violation expires, or the Association may divide notices in any manner it deems appropriate so long as not less than fourteen (14) days total is allotted to an Owner to remedy a Violation except in the case of emergencies or threats to the safety, health, and welfare of a person or property.

b. Notice of Violation.

(i) Failure to Obtain Prior Approval regarding Architectural related violations. If the Owner has (i) failed to submit plans and specifications for the offending improvement or modification to the ACC, or the ACC has denied the approval of plans and specifications initially submitted, and/or (ii) the Violation is continuing and the number of days allotted in the Violation Notice provided under subparagraph (a) has expired, then the Association shall send to the Owner a "Notice of Fine Warning and/or Corrective Action" providing Owner a description and/or nature of the violation and a specified number of days to cure. The notice shall contain certain specific information in regard to the violation and depending on the nature of the violation, the steps required to remedy the violation.

(ii) Failure to Remedy all Other Violations. If the Owner has failed to remedy the Violation(s) and the number of days allotted in the Violation Notice provided under subparagraph (a) has expired, then the Association shall send to the Owner a "Notice of Fine Warning and/or Corrective Action" providing Owner a description and/or nature of the violation and a specified number of days to cure. The notice shall contain certain specific information in regard to the violation and depending on the nature of the violation, the steps required to remedy the violation, see below for the more common enforcement measures or actions taken. Certain Violations considered to be an emergency or threatens the health, safety, and welfare of a person or property may be escalated by the Association with no notice required.

- Issuance of a Fine Warning and/or Corrective Action followed immediately by a Notice of Fine if the Violation(s) are not remedied within the timeframe allotted.
- Notification that if the Violation described in the Notice of Fine Warning and/or Corrective Action is not corrected or eliminated by the date specified in the notice, the Association or Management may proceed with Fines and/or may initiate Corrective Actions as the Board or Management may deem appropriate or necessary. The Notice shall include the amount of fine to be levied and the number of days the Owner has to remedy; and
- If the Violation continues and the enforcement process has reached or exceeded the Third Fine (3rd Fine) stage, the Association shall have the right effective the Fourth Notice (4th Notice) forward to continue fines and exercise additional enforcement actions as outlined in Article VI and elsewhere in the Covenants to include, but not limited to imposing sanctions for Violation, such sanctions may include all

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remedies available at law and/or in equity and all remedies set forth in this Policy and/or the Covenants of the Association, including any rules, guidelines or standards adopted pursuant to the Covenants, any Policy, or other governing document of the Association.

- The Board or Management may, when deemed necessary or appropriate, initiate Corrective Action in regard to any violation as outlined in this Policy. Should Corrective Actions (aka "Self-Help") be initiated, the Association shall issue a three (3) day notice which shall be posted to the front door of the residence. **No further notice is required, and all costs and fees associated with the abatement of Violation(s) through Corrective Actions shall be levied to the Owner's account for reimbursement to the Association.**

3. Incurable Violations

a.

(i) In the event the Violation is deemed to be an incurable violation or violation posing a threat to health or safety, the Association is not required by law to provide an opportunity to cure and may impose an immediate fines or Corrective Actions. The following are examples of acts considered incurable: (1) shooting fireworks or discharging a firearm; (2) an act constituting a threat to health or safety; (3) a noise violation that is not ongoing; (4) damaging Association property, including the removal or alteration of landscape; and (5) holding a garage sale or other event prohibited by a dedicatory instrument.

4. Failure to Remedy and Notice of Fine. Failure to either (i) submit complete plans and specifications showing that the Violation will be remedied, (ii) cease all non-remedial work immediately upon receipt of the Notice of Violation, and/or (iii) remedy the current Violation existing upon the Lot within the number of days specified in the notice(s) provided by the Association shall constitute a continuing Violation and result in one or more of the following:

- (a) the imposition of violation fines as determined by the Board against the Owner; and/or
- (b) the suspension of the right to enter upon and/or use any recreational facilities within the Common Area(s); and/or
- (c) the pursuit of any other remedy available at law or in equity, under the Governing Documents or this Enforcement Policy including, but without limitation, the recording in the County Clerk's office, of a Notice that the Lot in question is in violation of restrictive covenants or an action for injunctive relief and civil damages.

Fine Structure. Unless otherwise provided herein, any single fine imposed pursuant to the provisions of this Enforcement Policy may not exceed \$500.00 as determined by the Board and an Initial Fine of not less than \$50.00 may be imposed for failure to remedy or cure the Violation. In the event the Owner fails to respond or comply by remedying or curing the Violation within fourteen (14) days after the Initial Fine, additional fines may be imposed as follows:

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Curable Violations	
The fine amounts noted can be any amount up to the maximum amount noted to the right of each column	
VIOLATIONS	
1 st Fine	Up to \$50.00
2 nd Fine	Up to \$75.00
3 rd Fine	Up to 100.00
4 th Fine & After	If compliance is not met after the end of ten (10) days from the date of the third letter is sent, the Owner will receive one (1) final notice advising that fines shall escalate at the rate of \$25.00 per for every ten (10) days in which the violation remains until the maximum fine amount of \$500.00 is reached at which time the violation will start over and be treated as a recurring violation subject to additional fees
Notice penalties for all types of violations may vary as set forth in (b),(ii) above. If Fine is Levied, fine amount shall be set by the Board of Directors, but shall not exceed \$500.00. Fines are in addition to other enforcement actions available to the Association at the Board's sole discretion.	
Uncurable Violations and Violations	
Fine	Up to \$500.00 per Violation
ALL FINES ARE LEVIED ON A PER OCCURRENCE BASIS AND ONCE MAXIMUM FINE IS REACHED, THE FINING SEQUENCE STARTS OVER AND MAY BE CONTINUOUS UNTIL THE VIOLATION(S) ARE REMEDIED.	

Fines and the frequency of fines, are to be determined by the Board, may be imposed every day that the Violation continues to exist after the Notice of Fine date. There shall be no limit to the aggregate amount of fines that may be imposed for the same Violation. The Owner may be notified by the Association in writing of the amount of fines accrued to Owner's account. The Board may modify, from time to time, the schedule of fines. The Board reserves the right to adjust these fine amounts based on the severity and/or frequency of the Violation(s).

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Right to a Hearing Before the Board of Directors. If the Association receives a written request for a hearing on or before the thirtieth (30th) day after the date of the Notice of Violation, the Board shall hold a hearing not later than the thirtieth (30th) day after the date the Association receives the written request for a hearing delivered by Certified Mail. The Association shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may only be granted by agreement of the parties. The Owner's presence is not required to hold a hearing under this paragraph. The Association or Owner may make an audio recording of the hearing. Prior to the hearing, proof of proper notice of the hearing shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by an Officer, Director or agent who delivered such notice. The notice requirement shall be satisfied if the Owner appears at the hearing or meeting if hearing is held in executive session. The minutes shall contain a statement of the results of the hearing and the sanction, if any, imposed. For additional hearing procedures, including relevant provisions of the Texas Property Code Section 209.007, which have been amended and, govern the hearing afforded to homeowners following a notice of enforcement action, please refer to the Association's covenant enforcement resolution and hearing before the Board.

5. Corrective Action (Self-Help). Notwithstanding the provisions contained in Paragraph 2 hereof, where a Violation of Declaration or duly promulgated rules and regulations or design/architectural guidelines is determined to exist pursuant to any provision of this Enforcement Policy, Management, with the approval of the Board, may undertake to cause the Violation to be corrected, removed or otherwise abated by qualified contractors or service providers if the Association, in its reasonable judgment, determines that such Violation may be readily corrected, removed, or abated without undue expense and without breach of the peace. Where Management is authorized by the Board to initiate any action by qualified contractors or service providers, the following shall apply:

a. The Association, through Management, must first provide the Owner with an Initial Notice as provided above which shall be posted to the front door of the residence and shall provide at least three (3) days' notice except in the case of emergencies or matters determined to be a threat to the health, safety and welfare of persons and property. The Notice of Corrective Action shall include the specific Violation(s) the Association intends to remedy along with notice that all costs and fees associated with the Corrective Action taken shall be levied to the Owner's account for reimbursement to the Association. **Entrance onto the property by the Association, its Agent, or any vendor or contractor dispatched by the Association does not constitute trespass.**

b. For purposes of illustration and not limitation, Violations that pose a threat to public health or safety shall include the need for fire, police, or other governmental entities to be onsite, trash, debris and discarded items that can cause harm to public health and safety, chemical spills, oil spills and other toxic waste, or a Violation that can cause serious harm and financial damage to the Association and/or property values. This is not an

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exhaustive list. Any Violation in which the three day notice requirement is waived shall be at the discretion of the Board of Directors.

c. Any cost incurred in correcting or eliminating a Violation shall be charged to the Owner's account.

d. The Association, the Board, and its agents, contractors or service providers shall not be liable to the Owner or any third party for any damages or costs alleged to arise by virtue of action taken under this Paragraph 5 where the Association, the Board, its agents, contractors, or service providers have acted reasonably and in conformity with this Enforcement Policy.

e. The Association, the Board, and its agents, contractors and service providers shall not be liable to the Owner or any third party for trespassing alleged to arise by virtue of action taken under this Paragraph 4 where the Association, the Board, its agents, contractors and service providers have acted reasonably and in conformity with this Enforcement Policy.

6. Referral to Legal Counsel. Where a Violation is determined to exist by the Board pursuant to any of the provisions of this Enforcement Policy and where the Board deems it to be in the best interests of the Association, the Board may, at any time and without prior notice to the Owner under the Enforcement Policy, refer the Violation to legal counsel for purposes of seeking to correct or otherwise abate the Violation, including an action for injunctive relief and/or civil damages against the Owner, or any other legal or equitable remedy that may be available to the Association.

7. Notices.

a. Any notice required by this Enforcement Policy to be given, sent, delivered, or received in writing will be deemed to have been given, sent, delivered, or received, as the case may be, upon the earlier to occur of the following:

- (i) When the notice is delivered by electronic mail, the notice is deemed delivered and received when the sender "sends" the electronic mail and receives a confirmation or report acknowledging the time and date it was delivered. It is an Owner's duty and responsibility to keep an updated electronic mail address registered with the Association.
- (ii) The Notice of Corrective Action shall be sent to the Owner by posting such Notice of Corrective Action on the door of the residence and, if the Association deems it necessary, by electronic communication.

b. Where the Lot is occupied by a tenant or where the interests of an Owner

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have been handled by a representative or agent of such Owner, any notice or communication from the Association or Management pursuant to this Enforcement Policy will be deemed full and effective for all purposes if given to the Owner at the address on record with the Association. The Association may, as a courtesy, also provide notice to the tenant or a representative known to have the right or official capacity to receive such notices on behalf of the Owner.

8. Cure of Violation During Enforcement. An Owner may correct or eliminate a Violation at any time during the pendency of any procedure prescribed by this Enforcement Policy. Upon verification by the Association that the Violation has been corrected or eliminated, and any fines imposed by the Board has been paid, the Violation will be deemed to no longer exist, and the Notice of Violation shall be voided or closed except as hereinafter provided. Owners are herein advised by the Association of the consequences of the future Violation of the same provision of the Governing Documents as set forth in the following paragraph. The Owner will remain liable for all fines levied under this Enforcement Policy, which fines, if not paid upon written demand thereof by the Association, may be referred to the Association's legal counsel for collection. The Board, however, in its sole and absolute discretion, reserves the right to suspend or waive some or all of the fines imposed. The suspension or waiver of fines shall not constitute a waiver of the right to sanction Violations of the same or other provisions and rules by any person.

9. Repeated Violation of the Same Provision of the Governing Documents. Whenever an Owner, who has previously cured or eliminated a Violation after receipt of an Initial/Courtesy Notice, commits a separate Violation of a similar provision of the Governing Documents within six (6) months from the date of the Notice of Violation, the Association shall reinstate the Violation, including the fines previously imposed related to such Violation that were waived by the Board, and pursue the procedures set forth herein as if the Violation had never been cured or eliminated. For purposes of illustration only, in the event the Owner cured the Violation after having received an Initial/Courtesy Notice, the second Violation of the same provision shall prompt the Association to send a Notice of Violation. Similarly, in the event the Owner cured the Violation after having received a Notice of Violation, the second Violation shall prompt the Association to send a Notice of Fine as provided hereunder. In the event an Owner cured the Violation after having received a Notice of Fine, the second Violation shall prompt the Association to commence the levying of violation fines without further notice to the Owner. In the event of a repeated Violation, the Board shall be authorized to double the fine amount.

10. Payment of Violation Fines. Payment of the violation fine amount does not imply or constitute a waiver of enforcement or the granting of a variance for the Violation. All Violations must be corrected and brought into compliance with the Governing Documents. If there is a subsequent Violation of a similar rule, the fine amount will be imposed pursuant to the Fine Structure provision. Failure to pay fines may result in a lien on the Owner's Property. The Owner shall be responsible for any fines and enforcement costs assessed on the Property. If applicable, it is the Owner's responsibility to pursue reimbursement of the fines from the tenant(s).

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11. **Authority of Management to Act.** The Board hereby authorizes and empowers Management to do all such things and perform all such acts as are necessary to implement and effectuate the purposes of the Enforcement Policy and compliance with Texas Property Code Section 209.0051(h), including the levying of violation fines, without further action by the Board

12. **Binding Effect.** The terms and conditions of this Enforcement Policy, as may be amended from time to time by the Board, shall bind all Owners including their heirs, successors, transferees or assigns, and all Lots as defined in the Declaration, and the Property shall hereafter be held, occupied, transferred, and conveyed subject to the terms and conditions of this Enforcement Policy, as adopted by the Board.

13. **Definitions.** The definitions contained in the Association's Governing Documents are hereby incorporated herein by reference.

IT IS FURTHER RESOLVED, This Enforcement Policy is hereby adopted by resolution of the Board and replaces and supersedes, in all respects, all prior policies and resolutions with respect to the enforcement of Violations by the Association, and shall remain in force and effect until revoked, modified, or amended by the Board.

IN WITNESS WHEREOF, the undersigned, being the Board President of the Association has executed this Notice as of the 15th day of December 2023.

Erwin Farms Homeowner's Association, Inc., a
Texas non-profit corporation

Name: 
Title: Brock Babb, Board President

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EXHIBIT 1

Common Violations*

Holiday Decorations (if not removed within time allotted)
Property used for storage (boats, vehicles, trailers, ATV, RVs, oversized work trucks, and any other oversized vehicle, etc.)
Trash cans, trash bags and recycling left in public view on days other than designated city trash pick-up days
Trash, debris, bulk trash or items or refuse on property
Unapproved signs in yards or on property, including commercial/vendor signs
Home maintenance/repairs that do not conform with other homes in the subdivision (ex: rotting wood/siding, broken, missing or dilapidated fence pickets/fences, fence staining, sagging gutters, damaged garage door, replacing broken light fixtures, etc.)
Exterior painting needed (ex: house, front door, siding)
Failing to maintain lawn, including irrigation equipment, remove weeds from flower beds and tree wells, trim bushes, etc.
Littering in Common Areas
Modification, and/or addition made to Property without prior approval from the ACC
Failing to keep pet on a leash when outside the confines of the home or fenced yard and failure to pick up after your pet in your own yard, in a neighboring yard, in a common area or any other area within or upon community property, including exterior portions of the community outside screening or retaining walls
Vehicle violations, include, but are not limited to, any vehicle without a current (or missing) license plates or inspection sticker, wrecked (undrivable), dismantled in any way or discarded is considered inoperable
Vehicle parking violations
Unapproved roof repairs or replacement
Recreational equipment
Livestock or poultry kept on property
Violations of the leasing or occupancy related rules

*** This is not an exhaustive list of violations.**