BAHIA POINT SUBDIVISION, PHASE II HOMEOWNERS ASSOCIATION, INC.:
Collection and Fine Policy

Date:	February 1, 2024
Property Owners Association:	**BAHIA POINT SUBDIVISION, PHASE II HOMEOWNERS ASSOCIATION, INC.**, a Texas non-profit corporation
Property Owners Association's Address:	5701 W. Expressway 83, Harlingen, Texas 78552
Subdivision:	Bahia Point Subdivision, Phase II, per map or plat recorded in the Map Records of the Cameron County, Texas, Document No. 14517, and 14518.

Declaration:

Declaration of the Bahia Point Subdivision, Phase II recorded as Doc. Number 2022-50174, Official Records of the Cameron County Clerk, Cameron County, Texas

The Declaration affords the Property Owners Association remedies for an Owner's defaults including, but not limited to, seeking foreclosure and amending expanding the powers of the Board. Additionally, the Declaration gives the Property Owners Association power to seek damages against any Owner for failure to comply with the Declaration. To provide conformity with Texas law and also provide uniformity in the manner the board exercises those remedies, the Property Owners Association adopts these procedures and guidelines, which will be enforceable on the recording of this document in the real property records of the Cameron County in which the property described by the Declaration is located. Capitalized terms used but not defined in this instrument have the meaning outlined in the Declaration or Bylaws.

A. Right to Vote.

Under Texas Property Code Sec. 209.0059, any provision in the Declaration, Bylaws, or any other dedicatory instrument that would disqualify an Owner from voting in a Property Owners Association's election of board members or on any matter concerning the rights or responsibilities of the owner is void.

B. Enforcement Procedures:

1. *Initial Notice.* Property Owners Association will send the Owner via regular mail a statement setting forth all assessments, interest, and other amounts due. The notice will contain a statement that the entire remaining unpaid balance is due or provide the upcoming due date and that the Owner is entitled to a Payment Plan outlined in Section C of this instrument. **In the event an Owner chooses to enter a payment plan, a monthly charge may be added to each delinquent Owner's account balance for administrative costs**

related to the payment plan, and such additional administrative costs will continue until the entire balance is paid in full.

2. *Violation Letter.*

   a. Before the Property Owners Association may (a) suspend an Owner's right to use a common area, (ii) file a suit against an Owner other than a suit to collect a Regular Assessment or Special Assessment or foreclose under the Property Owners Association's lien, (iii) charge an Owner for property damage, or (iv) levy a fine for a violation of the restrictions or Bylaws or Rules of the Property Owners Association, the Property Owners Association or its agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and must state any amount due to the Property Owners Association from the Owner. The Violation Letter may be combined with the Initial Notice described above if the violation is nonpayment of assessments.

   b. The notice also must inform the Owner that the Owner (i) is entitled to a reasonable period to cure the violation and avoid the fine or suspension, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; (ii) may request a hearing in accordance with Texas Property Code section 209.007 on or before the forty-fifth day after the date the Owner receives the notice; and (iii) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043) if the Owner is serving on active military duty.

   c. *Hearing.* If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter at issue before the Board. The Property Owners Association must hold a hearing under this provision not later than the forty-fifth day after the date the Board receives the Owner's request for a hearing and must notify the Owner of the date, time, and place of the hearing not later than the tenth day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement will be granted for a period of not more than ten days. Additional postponements may be granted by agreement of the parties. The Owner or the Property Owners Association may make an audio recording of the meeting. The hearing will be held in executive session, affording the alleged violator a reasonable opportunity to be heard. Before any sanction under these Rules becomes effective, proof of proper notice will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered the notice. The notice requirement will be satisfied if the alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any. The Board may, but will not be obligated to, suspend any proposed sanction if the violation is cured within 15 days or other period adopted by the Board. Such

suspension will not constitute a waiver of the right to sanction violations of the same or other provisions and rules by any person.

d. *Uncurable Violations.* An Owner is not entitled to receive a reasonable period to cure the violation under 2.b.i. above if the violation is not curable or poses a threat to public health and safety.

i. For purposes of this section, 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.

ii. For purposes of this section, a violation is considered uncurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

iii. The following are examples of acts considered uncurable for purposes of this section:

1. shooting fireworks;

2. an act constituting a threat to health or safety;

3. a noise violation that is not ongoing;

4. property damage, including the removal or alteration of the landscape; and

5. holding a garage sale or other event prohibited by a dedicatory instrument.

iv. The following are examples of acts considered curable for purposes of this section:

1. a parking violation;

2. a maintenance violation;

3. the failure to construct improvements or modifications in accordance with approved plans and specifications; and

4. an ongoing noise violation such as a barking dog.

3. *Third Party Collections.*

a. The Property Owners Association may not hold an owner liable for fees of a collection agent retained by the Property Owners Association unless the association

first provides written notice to the owner by certified mail, which may be included in Violation Letter discussed immediately above, that:

i. specifies each delinquent amount and the total amount of the payment required to make the account current;

ii. describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding the availability of a payment plan through the association;

iii. the Owner may request a hearing in accordance with Texas Property Code section 209.007 on or before the forty-fifth day after the date the Owner receives the notice;

iv. 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. §§ 3901–4043) if the Owner is serving on active military duty; and

v. provides a period of at least 45 days for the owner to cure the delinquency before further collection action is taken.

b. An owner is not liable for fees of a collection agent retained by the Property Owners Association if:

i. the obligation for payment by the Property Owners Association to the Property Owners Association's collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or

ii. the payment agreement between the Property Owners Association and the Property Owners Association's collection agent does not require payment by the association of all fees to a collection agent for the action undertaken by the collection agent.

c. The agreement between the Property Owners Association and the Property Owners Association's collection agent may not prohibit the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.

d. The Property Owners Association may not sell or otherwise transfer any interest in the Property Owners Association's accounts receivables for a purpose other than as collateral for a loan.

e. Upon referral of the account to the Property Owners Association's attorney, the attorney is authorized to take whatever action is necessary, in consultation with the Board, including but not limited to: sending demand letters, filing a lawsuit against the delinquent owner for a money judgment, instituting an expedited foreclosure

action; and, filing necessary claims, objections and motions in the bankruptcy court and monitoring the bankruptcy case in order to protect the Property Owners Association's interest.

C. Priority of Payments:

1. Except as provided in subpart 2 immediately below, a payment received the Property Owners Association will be applied in the following order of priority:
    a. any delinquent assessment;
    b. any current assessment;
    c. any attorney's fees or third-party collection costs incurred by the Property Owners Association associated solely with assessments or any other charge that could provide the basis for foreclosure;
    d. any attorney's fees incurred by the Property Owners Association that are not subject to Subdivision (c);
    e. any fines assessed by the Property Owners Association; and
    f. any other amount owed to the Property Owners Association.

2. If, at the time the Property Owners Association receives a payment from an Owner, the Owner is in default under a payment plan entered into with the Property Owners Association:
    a. the association is not required to apply the payment in the order of priority specified by Subsection (1); and
    b. in applying the payment, a fine assessed by the Property Owners Association may not be given priority over any other amount owed to the association, but any such payment may be applied in the following order of priority:
        i. Costs;
        ii. Attorneys fees
        iii. Interest;
        iv. Late fees;
        v. Delinquent assessments;
        vi. Current assessments; and
        vii. As to each category identified in this subsection, payment shall be applied to the oldest arrearage first.

3. **Notwithstanding any acceptance of late or partial payments in the past, acceptance of partial or late payments by the Property Owners Association or its agents and attorneys: (i) does not waive any of the Owner's defaults; (ii) does not waive any rights and/or remedies available to Property Owners Association resulting from Owner's defaults; and (iii) is not an election of remedies resulting from any defaults that may exist under the dedicatory instruments. Furthermore, the acceptance by Property Owners Association of any payment in an amount less than the full amount required by the dedicatory instruments will be an acceptance on account only, and the failure by Owner to pay the full amount required by the dedicatory instruments shall not prejudice Property Owners Association's enforcement of remedies discussed herein or otherwise afforded the Property Owners Association by the dedicatory instruments or Texas law.**

D. Amount of Fines:

Prior to levying a fine for a violation of the restrictions or rules of the Property Owners Association, the Property Owners Association must abide by the Enforcement Procedure set forth in Section B above. In setting the amount of fines, this entire section relating to fines is a guideline only. **The board reserves the right to levy lesser or greater fines, and provide additional warnings or fewer warnings before fines are assessed as may be determined on a case-by-case basis.**

Violations will be categorized as one of the following types:

- Nuisance violations
  - trash cans visible from the street
  - hanging clothes outside
  - debris in front yard, etc.
  - noxious activity such as late night and excessively noisy parties
  - parking
  - signs
  - animals

- Landscaping violations:
  - overgrown lawn grasses
  - overgrown or excessive weeds
  - trees and/or vegetation in need of trimming, etc.

- Maintenance violations
  - Worn paint on siding and/or trim
  - Fencing in need of completion, repair or re-staining
  - Roof in need of repair/shingle replacement
  - Siding or trim in need of replacement, etc.

- Blatant violations
  - Construction defaults and making modifications without approval as required by the Declaration
  - destruction or damage to Common Properties

Initial Fine Schedule:

- Nuisance violations $25 for each occurrence
- Landscaping violations $50 for each week the violation is not cured or reoccurs within 180 days from the latest notice of enforcement action
- Maintenance violations $100 for each month the violation remains uncured
- Blatant violations $200.00 to $2,000.00 per month until cured

If the violation condition is corrected ("cured") and remains "cured" for 180 days, the process will begin again as a 1st violation for any future violations of the same type.

If uncured within the time afforded to the owner, the board may levy a fine of up to double the prior fine amount for each month the condition is not cured or does not remain "cured" in the prior 180 days.

The fines will used to offset the cost of management, loss of aesthetic values for the community, and enforcement of the neighborhood rules. The amount of the fine should be tailored to that goal as reasonably possible and should not be punitive in nature.

[SIGNATURE PAGE FOLLOWS]

BAHIA POINT SUBDIVISION, PHASE II HOMEOWNERS ASSOCIATION, INC.

By: _____
Patricia C. Baugh, Director

By: _____
Kevin Campbell, Director

By: _____
Irma Leal, Director

STATE OF TEXAS §

COUNTY OF CAMERON §

This instrument was acknowledged before me on February 28, 2024 by Patricia C. Baugh, as Director, of BAHIA POINT SUBDIVISION, PHASE II HOMEOWNERS ASSOCIATION, INC., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

_____
Notary Public, State of Texas

JANELY CAROLINE MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-30-2024
Notary ID 132420780

STATE OF TEXAS §

COUNTY OF CAMERON §

This instrument was acknowledged before me on February 28, 2024 by Kevin Campbell, as Director, of BAHIA POINT SUBDIVISION, PHASE II HOMEOWNERS ASSOCIATION, INC., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

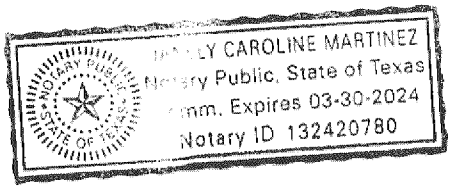
_____
Notary Public, State of Texas

JANELY CAROLINE MARTINEZ
Notary Public, State of Texas
Comm. Expires 03-30-2024
Notary ID 132420780

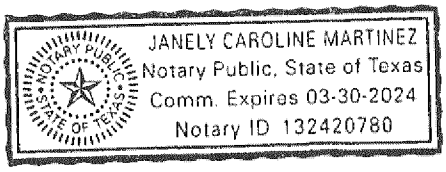
STATE OF TEXAS §

COUNTY OF CAMERON §

This instrument was acknowledged before me on February 28, 2024 by Irma Leal, as Director, of BAHIA POINT SUBDIVISION, PHASE II HOMEOWNERS ASSOCIATION, INC., a Texas nonprofit corporation, on behalf of said nonprofit corporation.



Janely Martinez
Notary Public, State of Texas



Cameron County
Sylvia Garza-Perez
Cameron County Clerk

Instrument Number: 2024-7603

eRecording - Real Property

Recorded On: March 04, 2024 04:17 PM

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" Examined and Charged as Follows: "

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********** **THIS PAGE IS PART OF THE INSTRUMENT** **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

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STATE OF TEXAS
COUNTY OF CAMERON

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of County, Texas.**

Sylvia Garza-Perez
Cameron County Clerk
Cameron County, TX