

**BRIAR MEADOWS CREEK OWNERS ASSOCIATION, INC.**  
**COLLECTION POLICY AND PAYMENT PLAN GUIDELINES**

STATE OF TEXAS                   §

COUNTY OF BRAZOS               §

WHEREAS, the property encumbered by these Collection Policy and Payment Plan Guidelines (the "Guidelines") is that property set forth as Briar Meadows Creek – Phase 1 recorded in Volume 8607, Page 70 of the Official Records of Brazos County, Texas; and Briar Meadows Creek – Phase II recorded in Volume 8685, Page 20 of the Deed Records of Brazos County, Texas; and Briar Meadows Creek – Phase IV recorded in Volume 9982, Page 144 of the Brazos County Real Property Records, as same has been restricted by Declaration of Covenants and Restrictions filed of record which may be amended from time to time ("Declaration), and any other property which has been or may be annexed thereto and made subject to the authority of the Briar Meadows Creek Owners Association, Inc. ("Association"). All capitalized terms are defined as set out in the Declaration unless otherwise noted herein; and

WHEREAS, pursuant to Chapter 209 of the Texas Property Code, the Board of Directors (the "Board") of the Association hereby adopts these Guidelines for the purposes of establishing a uniform and systematic procedure to collect Assessments (as defined herein) and other charges of the Association and identify the guidelines under which Owners may request an alternative payment schedules for certain Assessments; and

WHEREAS, the Board has determined that it is in the best interest of the Association to establish these Guidelines.

NOW, THEREFORE, BE IT RESOLVED THAT the Association does hereby adopt this Collection Policy and Payment Plan Guidelines, which shall run with the land and be binding on all Owners and lots within the subdivision. These Guidelines replace any previously recorded or implemented guidelines that address the subjects contained herein.

**I.       COLLECTION POLICY**

**1.       NOTICE**

**A. Regular Annual Assessment**

Per the terms of the Declarations, the Association has the authority to set, determine, assess, and collect the Regular Annual Assessment ("Annual Assessment"), and the authority to exercise remedies for the nonpayment thereof.

**B. Special Assessment**

Per the terms of the Declarations, the Association may levy a Special Assessment when the Annual Assessment assessed for any period is insufficient to provide for the continued operation and maintenance of the subdivision or any other purposes contemplated by the Declarations. Any Special Assessment may be levied by the Board whenever in the Board's opinion such Special Assessments are necessary.

**C. Address of Owner**

Each Owner shall have the obligation to notify the Association in writing of any change in address which shall become effective five (5) days after written notice has been received. Upon notification of change of ownership, the Association will send notification to the physical address of the Property. Otherwise, notice is sufficient if mailed via regular U.S. First Class Mail to the physical address of the Property, or to the last known address, where applicable.

## 2. DUE DATE

### A. Annual Assessment

The Annual Assessment shall be due annually on the first (1<sup>st</sup>) day of January, unless the Board allows or requires the Annual Assessment to be paid in monthly, quarterly or semi-annual installments.

### B. Special Assessment

Any Special Assessment shall be payable in the manner determined by the Board.

### C. Delinquency

If any Assessment or other sum due the Association is not paid in full and received by the Association by 5:00 p.m. on the date when due, then such Assessment shall be considered delinquent.

Payments received after the due date are considered delinquent and upon the Association's receipt of a written request from Owner, the entire amount due may be transferred to a Payment Plan as set forth in Section II of these Guidelines.

### D. Disputed Charges

Charges disputed by an Owner shall be verified by the Association and are considered delinquent until such time as they are paid in full.

## 3. DELINQUENCY NOTIFICATION

The Association may cause to be sent the following notification(s) to delinquent Owners:

a. PAST DUE NOTICE: In the event that an Assessment account balance remains unpaid thirty (30) days from the due date, a Past Due Notice may be sent via regular mail to each Owner with a delinquent account setting forth all Assessments, interest and other amounts due. The Past Due Notice will contain a statement that the Owner has the option to transfer the entire amount due to a Payment Plan as set forth in Section II of these Guidelines. A charge may be added to each delinquent Owner's account balance for administrative and postage costs related to the Payment Plan.

b. FINAL NOTICE: In the event the entire Assessment account balance, including any late fees, interest, self-help charges, and/or deed restriction violation fines, is not paid in full by the date specified in the Past Due Notice, or there is a default on the Payment Plan, a Final Notice may be sent via certified mail, return receipt requested and regular mail to each delinquent Owner. A charge of Thirty and 00/100 Dollars (\$30.00) will be added to each Owner's delinquent Assessment account for the administrative and postage costs related to the Final Notice. An additional twenty-five dollar (\$25.00) late fee will be added to your account as well. The Final Notice will set forth the following information and results of failure to pay, including an explanation of:

1. AMOUNTS DUE: All delinquent Assessments, interest and other amounts due and the total amount of the payment required to make the account current.
2. OPTIONS: The options the Owner has to avoid having the account turned over to a collection agent or legal counsel, including information regarding availability of a payment plan through the Association.

3. PERIOD TO CURE: A period of at least thirty (30) days for the Owner to cure the delinquency before further collection action is taken.

4. HEARING: Owners shall be given notice and opportunity for a hearing before the Board. A hearing shall be granted if a written request for a hearing is received by the Association not more than thirty (30) days from the Owner's receipt of the Final Notice.

If a hearing is requested within thirty (30) days from receipt of the Final Notice, further collection procedures are suspended until the hearing process is completed. The Board shall set a hearing date not later than thirty (30) days after receipt of Owner's request for a hearing. Either party may request a postponement, which shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of both parties.

Further collection steps will be determined by the action of the Association.

5. COMMON AREA RIGHTS SUSPENSION: If a hearing is not requested within thirty (30) days from receipt of the Final Notice, the Owner's use of common properties and facilities may be suspended.

6. MILITARY NOTICE: If the Owner is serving on active military duty, the Owner may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U.S.C. app. Section 501 et seq.).

c. TURNOVER TO COLLECTION AGENT/ATTORNEY: If a hearing is not requested within thirty (30) days from receipt of the Final Notice, member privileges will be suspended, the account may be sent to a collection agent and/or the Association's attorney for collection and any fees and expenses will be charged.

Upon referral of the account to the Association's attorney, the attorney is authorized to take whatever action is necessary, in consultation with the Association, including but not limited to: sending demand letters, filing a lawsuit against the delinquent Owner for a money judgment, instituting and expedited foreclosure action; and, filing necessary claims, objections and motions in the bankruptcy court and monitoring the bankruptcy case in order to protect the Association's interest.

As a prerequisite to foreclosure of the Association's lien, either the Association's attorney or the Association will send notification via certified mail return requested to any other holder of a lien of record on the Owner's property whose lien is inferior or subordinate to the Association's lien as evidenced by a deed of trust. Said notice will provide such lien holder with the total amount of the delinquency giving rise to the foreclosure and an opportunity to cure before the sixty-first (61<sup>st</sup>) day after the day the notice is received.

In the event the Association has determined to foreclose its lien provided in the Declarations, and to exercise the power of sale thereby granted, such foreclosure may be accomplished pursuant to the requirements of Section 209.0092 of the Texas Property Code by first obtaining a court order in an application for expedited foreclosure under the rules adopted by the Supreme Court of Texas.

4. REQUIRED ACTION

Nothing contained herein, not otherwise required by the Declarations or by Texas or federal law, shall require the Association to take any of the specific actions contained herein. The Board of the Association shall have the right, but not the obligation, to evaluate each delinquency on a case-by-case basis as in its best judgment deems reasonable.

**II. PAYMENT PLAN**

1. PAYMENT PLAN SCHEDULE

The Association hereby establishes a Payment Plan schedule by which an Owner may make partial payments to the Association for delinquent Assessments, or any other amount owed to the Association without accruing additional monetary penalties. Monetary penalties do not include interest or reasonable costs associated with administering the Payment Plan. The Payment Plan Schedule is as follows:

- a. The term for the Payment Plan is three (3) months;
- b. A Payment Plan shall require one-third (1/3) of the delinquent amount to be paid at the inception of the Payment Plan, with the balance being due and payable in two (2) equal payments due on the first day of each month thereafter;
- c. Failure to pay the initial payment of one-third (1/3) of the delinquent amount shall be considered a default of the Payment Plan;
- d. An Owner, upon written request, may request a longer period of time; and
- e. The Association is not required to honor the terms of a previous Payment Plan during the two (2) years following an Owner's default under a previous Payment Plan.

2. APPLICATION OF PAYMENTS

a. Except as provided in subsection (b) immediately below, a payment received by the Association shall be applied in the following order of priority:

1. Any delinquent Special Assessment;
2. Any delinquent Annual Assessment;
3. Any current Special Assessment;
4. Any current Annual Assessment;
5. Attorney's fees or third party collection costs incurred by the Association associated solely with Assessments or other charge that can be the basis of foreclosure;
6. Attorney's fees not subject to "5" above;
7. Fines; and
8. Any other amount owed to the Association.

b. If/when an Owner defaults on a Payment Plan, the remaining delinquent amount will become due in full and the Association may begin further collection action as set out above in Article

I(1)(5). Any payment(s) received by the Association after such default of a Payment Plan shall be applied in the following order of priority:

1. Costs;
2. Attorney Fees;
3. Interest;
4. Late fees;
5. Any delinquent Special Assessment;
6. Any delinquent Annual Assessment;
7. Any current Special Assessment;
8. Any current Annual Assessment;
9. Any other amount owed to the Association; and
10. Fines.

3. PAYMENTS RETURNED NON-SUFFICIENT FUNDS

An Owner will be assessed a service charge for any check that is returned or Automatic Clearing House (ACH) debit that is not paid for any reason, including but not limited to Non-Sufficient Funds (NSF) or stop payment order. The amount of the service charge assessed will be the customary amount charged.

**CERTIFICATION**

I hereby certify that , as President of the Briar Meadows Creek Owners Association, Inc. , the foregoing Collection Policy and Payment Plan Guidelines were approved on the \_\_\_\_ day of \_\_\_\_\_, 2015, at a meeting of the Board of Directors at which a quorum was present.

\_\_\_\_\_  
Frank Dworaczyk  
Title: President

STATE OF TEXAS       §  
                                  §  
COUNTY OF BRAZOS   §

BEFORE ME, on this day personally appeared Frank Dworaczyk, the President of the Briar Meadows Creek Owners Association, Inc. , known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that s/he executed the same for the purposes herein expressed and in the capacity herein stated, and as the act and deed of said corporation.

Given under my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public-State of Texas

*AFTER RECORDING, PLEASE RETURN TO:*  
Briar Meadows Creek Owners Association, Inc.  
c/o Association Services  
427 Dellwood St.  
Bryan, TX 77801 USA