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*Laura Richard*

Laura Richard, County Clerk

Fort Bend County Texas

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**VILLAGE OF DIAMOND BAY HOMEOWNERS ASSOCIATION, INC.****COLLECTION POLICY FOR DELINQUENT ACCOUNTS**

*This document shall replace and supersede the prior Collection Policy recorded under Doc. No. 2008041944 in the Official Public Records of Fort Bend County, Texas.*

**A. INTRODUCTION.**

The Board of Directors ("Board") of Village of Diamond Bay Homeowners Association, Inc. ("Association") is charged with the responsibility of collecting assessments ("Assessments") from the owners of Lots ("Owner") governed by the Association, as provided for in the Declaration of Covenants, Conditions and Restrictions for the Village of Diamond Bay, recorded under County Clerk's File No. 2005017655 in the Official Public Records of Fort Bend County, Texas, as amended and supplemented from time to time (the "Declaration"), and as further provided for in the Bylaws of Village of Diamond Bay Homeowners Association, Inc. In an effort to assist the Board in the collection of the Assessments and to provide clear guidelines to Owners, the Board has developed the following procedures for the billing and collection of the Assessments.

**B. BILLING AND COLLECTION PROCEDURES.**

1. **Initial Invoice and Record Address.** On or before December 1 of each year, the Board shall cause to be mailed to each Owner of a Lot governed by the Association and for which payment of the annual Assessment is due, an Assessment invoice or statement ("Initial Invoice") setting forth the annual Assessment amount. The Initial Invoice shall be sent to the Owner by regular U.S. First-Class Mail. The Initial Invoice and any other correspondence, documents, or notices pertaining to the applicable Lot shall be sent to the address which appears in the records of the Association for the Owner, or to such other address as may be designated by the Owner in writing to the Association. 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 the written notice has been received. The fact that the Association or its management company may have received a check from an Owner reflecting an address for the Owner which is different from the Owner's address as shown on the records of the Association, is not sufficient notice of a change of address for the Association to change its records regarding such Owner's address.
2. **Assessment Due Date.** All annual assessments shall be due and payable in advance on or before January 1. It is the responsibility of the Owner to ensure and verify that payments are received by the Association on or before such date. Charges disputed by an Owner are considered delinquent until such time as they are paid in full. The Association will not be responsible for delay by mail or any other form of delivery, including the failure to receive payment. Non-receipt of an invoice shall in no way relieve the Owner of the obligation to pay the amount due by January 1.

3. Delinquent Balances. If payment of the total Assessment and any other charges which may be due is not received by the Association on or before January 1, the account shall be delinquent.
  - a. Interest (also known as Finance Charge). If payment of the total Assessment and any other charges which may be due is not received by due Association on or before January 31, the Owner will be charged interest at the lesser of the rate of 18% per annum or the maximum legal rate of interest then prevailing, computed from January 1, the due date provided for in the Declaration, regardless of whether any demand letter has been sent to the Owner.
  - b. Late Fee. If payment of the total Assessment and any other charges which may be due is not received by due Association on or before January 31, the Owner will be charged a late fee in the amount of \$100.00, regardless of whether any demand letter has been sent to the Owner.

Further, Owners who remain delinquent after January 31 shall be subject to the collection procedures listed below, which may be modified on a case-by-case basis by the Board as circumstances warrant.

### **C. DEMAND FOR PAYMENT.**

1. Reminder Notice. On or after February 1, the Association may send the Owner a reminder Letter ("Reminder Notice") by regular U. S. First-Class Mail or email showing that the account is delinquent. The Reminder Notice will direct the Owner to make immediate payment of the delinquent balance, including interest and late fees owing thereon.
2. Final Notice. On or after February 1, the Association will send a Final Assessment Demand and Invoice ("Final Notice") to the Owner by certified mail and by regular U. S. First Class Mail. The Final Notice will:
  - a. Specify each delinquent amount owed and the total amount of the payment required to make the account current;
  - b. Describe the options the Owner has to avoid having the account turned over to an attorney, including information regarding availability of a payment plan through the Association; and
  - c. Advise the Owner that if the account is not paid or a payment plan established within 45 days of issuance of the Final Notice, the Association intends to turn the account over to an attorney, and the Owner will thereafter be responsible for the attorneys' fees and costs incurred, and such fees and costs will be charged to the Assessment account.
3. Notice of Lien. To further evidence the Association's lien securing unpaid Assessments, the Association or its attorney may, but is not required to, prepare a document entitled Lien Affidavit and Notice of Delinquent Assessments setting forth the amount of the delinquent Assessment(s), the name of the Owner of the property and a description of the property (the "Notice of Lien"). The Notice of Lien may be filed in the real property records of Fort Bend County, Texas, and will constitute further evidence of the lien against an Owner's Lot.

4. Remedies for Non-Payment. If the delinquent balance is not paid in full or a payment plan established within 45 days of issuance of the Final Notice, the Association will forward the delinquent account to its attorney for further handling. An attorney referral fee may be charged to the Assessment account when the account is turned over to the attorney for pursuit. It is contemplated that the attorney will send one (1) or more demand letters to the delinquent Owner as deemed appropriate. If the Owner does not satisfy the Assessment delinquency pursuant to the attorney's demand letter(s), the attorney shall contact the Board, or its designated representative, for approval to proceed with the Association's legal remedies in Court. Upon receiving approval from the Board, it is contemplated that the attorney will pursue any and all of the Association's legal remedies to obtain payment of the delinquent balance, including judicial or non-judicial foreclosure of the Association's lien.

#### **D. ENFORCEMENT COSTS.**

All costs incurred by the Association as a result of an Owner's failure to pay Assessments and other charges when due (including any attorneys fees and costs incurred) will be charged against the Owner's Assessment account and shall be collectible in the same manner as a delinquent Assessment.

#### **E. PAYMENT AGREEMENTS FOR DELINQUENT ACCOUNTS.**

The Association shall make payment agreements for delinquent accounts available to an Owner upon the terms and conditions set forth herein. The Association may require that the request for a payment agreement be in writing. All payment agreements are subject to the following conditions:

1. All payment agreements must be in writing and signed by the Owner.
2. The minimum term for a payment agreement offered by the Association shall be three (3) months and the minimum down payment shall be 50% of the balance owed. Subject to such minimum terms, the Board or its attorney shall determine the appropriate term of the payment agreement in their sole discretion.
3. As long as the Owner is not in default under the terms of the payment agreement, the Owner shall not accrue additional monetary expenses. However, the Owner shall be responsible for all interest which accrues during the term thereof, as well as being responsible for the costs of administering the payment agreement.
4. If the Owner defaults under the payment agreement, the account may immediately be moved over to the attorney without any further notice to the Owner.
5. The Association shall not be required to enter into a payment agreement with an Owner who failed to honor the terms of a previous payment agreement during the two (2) years following the Owner's default under the previous payment agreement.
6. The Association is not required to make a payment agreement available to an Owner after the period for cure described in Section C(2)(c) expires.
7. The Association is not required to allow an Owner to enter into a payment agreement more than once in any twelve (12) month period.

**F. PAYMENTS AND APPLICATION OF FUNDS.**

1. **Partial Payments.** Partial payments will not prevent the accrual of interest on the unpaid portion of the Assessment. Unless an Owner is making a timely payment under a payment agreement as provided for herein, an Owner will still be considered delinquent upon making a partial payment. The Association is not obligated to accept any partial payment that is late or does not cover the entire balance owed, including Assessments, late fees, interest, and attorneys fees.
2. **Owner Not in Default Under Payment Agreement.** If at the time the Association receives a payment from an Owner, the Owner is not in default under a payment agreement with the Association, the Association shall apply the payment in the following order of priority: any delinquent Assessment, any current Assessment, any attorneys' fees or third-party collection costs incurred by the Association associated solely with Assessments or any other-charge which could provide the basis for foreclosure, any attorneys' fees incurred by the Association other than those described in the immediately foregoing category, any fines assessed by the Association (if applicable), and then to any other amount owed to the Association.
3. **Owner in Default Under Payment Agreement.** If at the time the Association receives a payment from an Owner, the Owner is in default under a payment agreement with the Association, the Association may return the payment or deposit the payment. If the payment is deposited, the Association shall apply the payment in the following order of priority: attorneys' fees, interest, handling charges, and other costs of collection, and then to Assessment reduction and fines (if applicable), satisfying the oldest obligations first, followed by more current obligations, in accordance with the foregoing order of priority, or in such other manner or fashion or order as the Association shall determine, in its sole discretion, provided however, in exercising its authority to change the order of priority in applying a payment, a fine assessed by the Association (if applicable) may not be given priority over any other amount owed to the Association.

**G. BANKRUPTCY.**

In the event a delinquent Owner files bankruptcy, the Association reserves the right to file a proof of claim, pursue a motion to lift the automatic stay, or take any other action it deems appropriate to protect its interest in the pending bankruptcy action, including modifying any procedures hereunder as necessary or advisable. To the full extent permitted by the United States Bankruptcy Code, the Association shall be entitled to recover any and all attorneys' fees and costs incurred in protecting its interests, and such fees and costs shall be charged to the Owner's Assessment account.

**H. RETURNED CHECKS.**

At the election of the Association, an Owner will be charged a reasonable fee for any check returned by the bank, which fee will be charged to the Owner's Assessment account. A notice of the returned check and the fee may be sent to the Owner by the Association's management company or attorney. If two or more of an Owner's checks are returned unpaid by the bank within

any one (1) year period, the Board may require that all of the Owner's future payments for a period of two (2) years be made by cashier's check or money order.

**I. OWNER'S AGENT OR REPRESENTATIVE.**

If the Owner expressly or impliedly indicates to the Association that the Owner's interest in the property is being handled by an agent or representative, any notice from the Association to such agent or representative pursuant to this Collection Policy shall be deemed to be full and effective notice to the Owner for all purposes.

**J. REQUIRED ACTION.**

Nothing contained herein, not otherwise required by the Declaration or by 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.

**CERTIFICATION**

I, the undersigned, being the President of the Village of Diamond Bay Homeowners Association, Inc., hereby certify that the foregoing Collection Policy for Delinquent Accounts was adopted by at least a majority of the Village of Diamond Bay Homeowners Association, Inc.'s Board of Directors.

Approved and adopted by the Board of Directors on the 22 day of April 2022.

DocuSigned by:

SARA RIGGINS

SARA RIGGINS

\_\_\_\_\_, President of  
Village of Diamond Bay Homeowners  
Association, Inc.

STATE OF TEXAS

COUNTY OF

Fort Bend  
Brazoria

Before me, the undersigned authority, on this day personally appeared Sara Higgins, President of Village of Diamond Bay Homeowners Association, Inc., a Texas corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that s/he had executed the same as the act of said corporation for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 22 day of April, 2022.

Cherish Dunford  
Notary Public, State of Texas

RECORDED BY:

**ISG** | SEARS  
BENNETT  
& GERDES, LLP

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