

**COLLECTION AND INSTALLMENT PAYMENT PLAN POLICY FOR  
FOREST COVE SECTION II HOMEOWNERS ASSOC.**

THE STATE OF TEXAS                   \*  
  \*           KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF GALVESTON               \*

WHEREAS, Forest Cove Section II Homeowners Assoc. (the "Association"), a Texas non-profit corporation, which is governed by its Board of Directors (the "Board") is charged with administering and enforcing those certain covenants, conditions and restrictions contained in the recorded Deed Restrictions for Forest Cove Section II (hereafter collectively referred to as the "Deed Restrictions") filed on February 6, 2004 under Galveston County Clerk's File No. GAC2004007813 and refilled on July 5, 2005 under Galveston County Clerk's File No. GAC2005044545, and is also a domestic non-profit corporation formed by the Secretary of State of Texas on June 7, 2005, as Forest Cove Section II Homeowners Assoc., under File No. 800502445; and

WHEREAS, the Board is duly authorized to enact this Collection and Installment Payment Plan Policy for Forest Cove Section II Homeowners Assoc.; and

WHEREAS, Chapter 209 of the Texas Property Code was amended effective January 1, 2012, to add Section 209.0062 ("Section 209.0062") thereto regarding alternative payment schedules for annual assessments and special assessments ("Payment Plans"); and

WHEREAS, the Board desires to establish a policy for Payment Plans consistent with Section 209.0062 and to provide clear and definitive guidance to owners.

NOW, THEREFORE, the Board has duly adopted the following *Collection and Installment Payment Plan Policy*.

It is the policy of the Board to provide an alternative payment schedule by which an Owner may make payments to the Association for delinquent regular or special assessments or other amounts owed to the Association without accruing additional monetary penalties, as follows:

1. **Applicability.** This policy only applies to delinquent regular assessments, special assessments or other amounts owed to the Association prior to the debt being turned over to a "collection agent" as that term is defined by Section 209.0064 of the Texas Property Code.
2. **Term.** The term for the Payment Plan offered by the Association shall be a minimum of three (3) months and a maximum of eighteen (18) months from the date of the Owner's request for a Payment Plan. Payments being in equal monthly amounts over the duration of the Payment Plan.

3. **Payment Plan Agreement.** The Owner shall be obligated to execute a payment plan agreement ("Payment Plan Agreement") which sets forth the total amount to be paid, the term of the payment plan, the due date for and amount of each payment, and the address to which payments are to be mailed or delivered. A payment plan shall not be effective until the Owner executes the required Payment Plan Agreement.
4. **Sums Included in Plan.** The payment plan shall include all delinquent regular and/or special assessments and other sums owed to the Association as of the effective date of the Payment Plan Agreement. The payment plan shall not include any assessments which have not become due and payable to the Association as of the effective date of the Payment Plan Agreement. The Payment Plan Agreement shall provide that any assessments or other valid charges that become due and payable to the Association per the dedicatory instruments of the association during the term of the payment plan must be paid in a timely manner.
5. **Grace Period.** There will be a grace period of three (3) business days from the due date for a payment. If a payment is not received at the address set forth in the Payment Plan Agreement by the close of business on the third (3<sup>rd</sup>) business day following the date on which the payment is due, the Owner shall be deemed to be in default of the Payment Plan Agreement.
6. **Administrative Costs and Interest.** The Association shall add to the delinquent assessments and other amounts owe to the Association to be paid in accordance with the Payment Plan Agreement reasonable costs for administering the payment plan, as follows: \$25.00 for the preparation of a Payment Plan Agreement and \$5.00 per payment for receiving, documenting and processing each payment. During the term of the payment plan, interest shall continue to accrue on delinquent assessments, at the rate provided in the Amended and Refiled Declaration of Covenants, Conditions and Restrictions for Forest Cove Section II.
7. **Monthly Penalties.** During the term of the payment plan, the Association shall not impose any monetary penalties with respect to the delinquent assessments and other charges included in the payment plan, except as provided in Section 6. Monetary penalties include late charges and fees otherwise charged by the Association and added to the Owner's account as a result of the account being delinquent, if any.
8. **Default.** If an Owner fails to make a payment to the Association by the end of the grace period applicable to the due date for that payment, the Owner shall be in default of the Payment Plan Agreement, at which point the Payment Plan Agreement shall automatically become void. The Association may notify the Owner that the Payment Plan Agreement is void as a result of the Owner's default, but notice to the Owner shall not be a prerequisite for the

Payment Plan Agreement to become void. If the Association receives a payment after the expiration of the grace period and before the Association notifies the Owner that the Payment Plan Agreement is void, the Association may accept the payment and apply it to the Owner's account. The acceptance of a payment made by an Owner after the Payment Plan Agreement has become void shall not reinstate the Payment Plan Agreement.

9. **Owners Not Eligible for a Payment Plan.** The Association is not required to enter into a Payment plan with an Owner who failed to honor the terms of a previous payment plan during the two (2) years following the Owner's default under the previous payment plan.

**ANNUAL ASSESSMENTS:** The Annual Assessments ("Annual Assessments") are due and payable on or before January 31<sup>st</sup> of the current year.

**SPECIAL ASSESSMENTS:** Special Assessments ("Special Assessments") allowed by the covenants and restrictions shall be due and payable on the date set out in the note of the Special Assessment.

**OTHER:** Special Assessment which is levied only in the event of an unexpected expense usually to cover major repairs or improvements which are not covered by the HOA Annual Assessments. Typically this occurs if there is an unexpected disaster that causes damage to our neighborhood. The Third type of Assessment that Forest Cove may impose upon an Owner is a violation assessment which will be levied upon an Owner who is found to be in continued violation of any of the Association's covenants and restrictions.

**NONPAYMENT OF ANNUAL ASSESSMENT:** After the due date, the Annual Assessment, together with interest at a rate of six per cent (6%) per annum, compounded monthly, will accrue beginning April 1<sup>st</sup> of the current year. After April 1<sup>st</sup> of the current year, the Annual Assessment together with accrued interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing contractual lien upon the Lot against which each Assessment is made.

**NONPAYMENT OF SPECIAL ASSESSMENTS:** Any Special Assessment which is not paid within thirty (30) days of the due date shall bear interest from the due date at the rate of one and one-half percent (1 ½%) per month until paid. The Association may bring an action at law against the Owner personally to pay the same, or foreclose the lien against the property.

**FINES:** The Association shall be authorized to collect fines for any violations of the Declaration of Covenants and Restrictions, as they may be amended from time-to-time if the violation is not cured within thirty (30) days of receipt of the initial notice of violation by the Owner. Fines may be assessed for each additional thirty (30) day period when the violation is not cured.

**PAYMENT PLAN:** The Board of Directors may allow dues to be paid in five (5) successive equal monthly installments provided the owner executes an installment plan agreement on a form similar to the form attached hereto as Exhibit "A." The Owner must request such an agreement from the Association. Payments under a payment plan will incur an administrative fee and interest at the rate set out herein.

**ADMINISTRATIVE FEE:** The Association shall charge an administrative fee of \$25.00 for setting up each installment plan.

**ONLY ONE PAYMENT PLAN ALLOWED IN A TWELVE MONTH PERIOD.** Owners can make no more than one (1) request for a Payment Plan within a twelve (12) month period.

**INSTALLMENT PLAN FORM:** The Installment Plan form shall be executed on a form similar to Exhibit "A."

**ENFORCEMENT:** Failure to pay Annual Assessments, Special Assessments or Installment Plan shall result in the Association taking any and all appropriate legal action in seeking recovery of assessments, fines, interest, penalties, attorneys fees, and costs as provided in the Declaration of Covenants and Restrictions.

**PRIORITY OF PAYMENTS:**

(a) Except as provided by Subsection (b), a payment received by the Association from the Owner shall be applied to the Owner's debt in the following order of priority:

- (1) Any delinquent Assessment.
- (2) Any current Assessment.
- (3) Any attorneys' fees or third party collection costs incurred by the Association associated with assessments or any other charge that could provide the basis for foreclosure.
- (4) Any attorney's fees incurred by the Association that are not subject to Subdivision (3).
- (5) Any fines assessed by the Association.
- (6) Any other amount owed to the Association.

(b) If, at the time the Association receives a payment from an Owner, the Owner is in default under a Payment Plan entered into with the Association:

- (1) The Association is not required to apply the payment in the order of priority specified by Subsection (a).
- (2) In applying the payment, a fine assessed by the Association may not be given priority over any other amount owed to the Association.

**THIRD PARTY COLLECTIONS:**

- (a) The Association may not hold an Owner liable for fees of a collection agent retained by the Association unless the Association first provided written notice to the Owner by certified mail, return receipt requested and first-class mail.
  - (1) Specifies each delinquent amount and the total amount of the payment required to make the account current.
  - (2) Described the options the Owner has to avoid having the account turned over to a collection agent, including information regarding availability of a Payment Plan through the Association.
  - (3) Provides a period of at least thirty (30) days to the Owner to cure the delinquency before further collection action is taken.

**HEARING BEFORE THE BOARD:**

- (a) The Owner has a right to submit a written request for a hearing to discern and verify facts and resolve the matter by a committee appointed by the Board or by the Board of the Association if the Board does not appoint a committee.
- (b) The Committee appointed by the Board or the Board shall hold a hearing within thirty (30) days of receipt of the Owner's request for a hearing. The Board shall give the Owner notice of the date, time, and place of the hearing at least ten (10) days before the hearing.
- (c) The two foregoing provisions do not apply if the Association files a suit seeking a temporary injunction or temporary restraining order or files a suit that includes foreclosure of a cause of action.

**ATTORNEY'S FEE:**

- (a) The Association may collect reimbursement of reasonable attorneys' fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing restrictions or the bylaw or rules of the Association only if the Owner is provided a written notice that attorneys' fees and costs will be charged to the Owner if the delinquency or violation continues after a certain date.

- (b) The Owner is not liable for attorneys' fees incurred by the Association relating to a matter described by the notice under Section 209.006 of the Texas Property Code if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 of the Texas Property Code or, if the Owner does not request a hearing under that Section before the date by which the Owner must request a hearing. The Owner's presence is not required to hold a hearing under Section 209.007.
- (c) All attorneys' fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at financial institution in the name of the Association or its managing agent. Only members of the Association's Board or its managing agent or employees of its managing agent may be signatories on the account.
- (d) On written request from the Owner, the Association shall provide copies of invoice for attorneys' fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

Owner may have special rights or relief related to this enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty.

The Association establishes these Guidelines to allow Owners who are delinquent in payment of debt to the Association to pay the debt in partial payments to avoid monthly penalties.

This Collection and Installment Payment Policy was approved by a majority vote of the Board of Directors and now appears in the books and records of the Association. This Policy is effective upon recordation in the Public Records of Galveston County, Texas and supersedes any policy regarding alternative payment schedules which may have previously been in effect. Except, as affected by Section 209.0062 and/or by this Policy, all other provisions contained in the Deed Restrictions or any other dedicatory instruments of the Association shall remain in full force and effect.

TO CERTIFY which witness my hand this 28<sup>th</sup> day of August, 2014.

FOREST COVE SECTION II HOMEOWNERS ASSOC.

BY:



Elizabeth L. Conner

President/Director

Forest Cove Section II Homeowners Assoc.

THE STATE OF TEXAS

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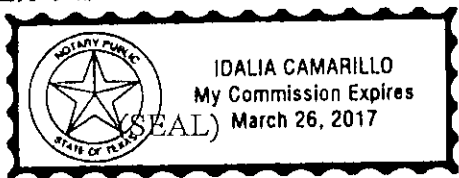
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COUNTY OF GALVESTON

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BEFORE ME, the undersigned authority, on this day, personally appeared ELIZABETH L. CONNER, President and a Director for Forest Cove Section II Homeowners Assoc. known to me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared that she is the person who signed the foregoing document in her capacity as President and a Director, and that the statements contained therein are true and correct to the best of her knowledge and belief.

GIVEN under my hand and seal of office this 28<sup>th</sup> day of August, 2014.



Idalia Camarillo  
Notary Public, State of Texas

Idalia Camarillo  
Notary's Printed Name

My commission expires on March 26, 2017

After Recording, return to:

Forest Cove Section II Homeowners Assoc.  
P.O. Box 237  
Dickinson, Texas 77539

EXHIBIT "A"

INSTALLMENT PAYMENT PLAN

Date: \_\_\_\_\_, 20\_\_\_\_

Debtor: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Debt: Principal Amount of Debt: \$ \_\_\_\_\_  
Annual Interest Rate: \_\_\_\_\_  
Annual Interest Rate on Matured, Unpaid Amounts: \_\_\_\_\_  
Administrative Fee: \$ \_\_\_\_\_

Homeowners' Association: **FOREST COVE SECTION II HOMEOWNERS ASSOC.**

Place of Payment: \_\_\_\_\_  
\_\_\_\_\_

Maturity Date: \_\_\_\_\_, 20\_\_\_\_.

Terms of Payment: \_\_\_\_\_  
\_\_\_\_\_

Debtor promises to pay to the order of Forest Cove Section II Homeowners Assoc. the Principal Amount of Debt plus interest at the Annual Interest Rate and the Administrative Fee. The Debt is payable at the Place of Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. If any amount is not paid either when due under the Terms of Payment or an acceleration of maturity, Debtor promises to pay any unpaid amount plus interest from the date the payment was due to the date of payment at the Annual Interest Rate on Matured, Unpaid Amounts.

If Debtor defaults in the payment of this Agreement, Forest Cove Section II Homeowners Assoc. may declare the unpaid principal balance, earned interest, and any other amounts owed immediately due. Debtor and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest and notice of protest, to the extent permitted by law.

Debtor also promises to pay reasonable attorney's fees and court and other costs if this Agreement is placed in the hands of an attorney to collect or enforce. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid, Amounts.



Debtor will pay Forest Cove Section II Homeowners Assoc. these expenses and interest on demand at the place for Payment. These expenses and interest will become part of the Debt evidenced by this Agreement.

Interest on the Debt will not exceed the maximum rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be created on the Principal Amount of Debt or, if the Principal Amount of Debt has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment, if the excess interest has already been paid, credited on the Principal Amount of Debt or, if the Principal Amount of Debt has been paid, refunded. This provision overrides any conflicting provisions in this Agreement and all other instruments concerning the Debt.

Each Debtor is responsible for all obligations represented by this Agreement.

When the context requires, singular nouns and pronouns include the plural.

Debtor: \_\_\_\_\_  
\_\_\_\_\_

**FILED AND RECORDED**

Instrument Number: 2014048942

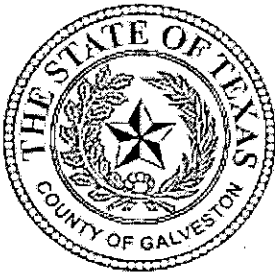
FILED FOR RECORD

Recording Fee: 58.00

Number Of Pages: 10

Filing and Recording Date: 08/28/2014 12:44PM

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Galveston County, Texas.



*Dwight D. Sullivan*

Dwight D. Sullivan, County Clerk  
Galveston County, Texas

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the clerk.

**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*