

AFTER RECORDING RETURN TO:

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# PEARSON PLACE AT AVERY RANCH FIRST AMENDMENT TO COMMUNITY MANUAL

## Amended and Restated Fine and Enforcement Policy

Cross reference to that certain (i) Amended and Restated Pearson Place at Avery Ranch Master Covenant recorded under Document No. 2016053617, Official Public Records of Williamson County, Texas, as amended from time to time; and (ii) Pearson Place at Avery Ranch Community Manual, recorded under Document No. 2016081009, Official Public Records of Williamson County, Texas, as amended and supplemented.

**PEARSON PLACE AT AVERY RANCH  
FIRST AMENDMENT TO COMMUNITY MANUAL**

This First Amendment to Pearson Place at Avery Ranch Community Manual (this "**Amendment**"), is made by **PEARSON PLACE AT AVERY RANCH OWNER'S ASSOCIATION, INC.**, a Texas nonprofit corporation (the "**Association**"), with the consent of **CENTURY LAND HOLDINGS II, LLC**, a Colorado limited liability company, **D/B/A CENTURY LH II, LLC** ("**Declarant**"), and is as follows:

**RECITALS:**

**A.** Declarant previously executed that certain: (i) Amended and Restated Pearson Place at Avery Ranch Master Covenant recorded under Document No. 2016053617, Official Public Records of Williamson County, Texas, as amended from time to time (collectively, the "**Covenant**"); and (ii) Pearson Place at Avery Ranch Community Manual recorded under Document No. 2016081009, Official Public Records of Williamson County, Texas, as amended and supplemented (collectively, the "**Community Manual**").

**B.** Pursuant to *Article 1* of the Declaration, the Community Manual may be amended by a Majority of the Board with the written consent of the Declarant during the Development Period.

**C.** The Development Period has not expired, and the Board, with the written consent of Declarant, desires to amend and restate Attachment 3 to the Community Manual.

EXECUTED to be effective on the \_\_\_\_ day of \_\_\_\_\_, 2019.

[SIGNATURE PAGES FOLLOW]

**ASSOCIATION:**

**PEARSON PLACE AT AVERY RANCH OWNER'S  
ASSOCIATION, INC.,** a Texas nonprofit corporation

By: \_\_\_\_\_  
Rudy Munoz, Director

By: \_\_\_\_\_  
Arlene Cruz, Director

By: \_\_\_\_\_  
Percy Kapadia, Director

THE STATE OF TEXAS     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Rudy Munoz, Director of the Board of Pearson Place at Avery Ranch Owner's Association, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

[SEAL]

\_\_\_\_\_  
Notary Public Signature

THE STATE OF TEXAS     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Arlene Cruz, Director of the Board of Pearson Place at Avery Ranch Owner's Association, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

[SEAL]

\_\_\_\_\_  
Notary Public Signature

THE STATE OF TEXAS     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Percy Kapadia, Director of the Board of Pearson Place at Avery Ranch Owner's Association, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

[SEAL]

\_\_\_\_\_  
Notary Public Signature

**ACKNOWLEDGED AND AGREED:**

**DECLARANT:**

**CENTURY LAND HOLDINGS II, LLC,**  
a Colorado limited liability company,  
**D/B/A CENTURY LH II, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS                   §

§

COUNTY OF \_\_\_\_\_               §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019  
by \_\_\_\_\_ of Century Land  
Holdings II, LLC, a Colorado limited liability company, d/b/a Century LH II, LLC, on behalf of  
said companies.

(SEAL)

\_\_\_\_\_  
Notary Public Signature

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## ATTACHMENT 3

### PEARSON PLACE AT AVERY RANCH OWNER'S ASSOCIATION, INC. AMENDED AND RESTATED FINE AND ENFORCEMENT POLICY

1. Background. Pearson Place at Avery Ranch is subject to that certain Amended and Restated Pearson Place at Avery Ranch Master Covenant recorded in the Official Public Records of Williamson County, Texas, as the same may be amended from time to time (“**Covenant**”). In accordance with the Covenant, PEARSON PLACE AT AVERY RANCH OWNER'S ASSOCIATION, INC., a Texas non-profit corporation (the “**Association**”) was created to administer the terms and provisions of the Covenant. Unless the Covenant or Applicable Law expressly provides otherwise, the Association acts through a majority of its board of directors (the “**Board**”). The Association is empowered to enforce the covenants, conditions and restrictions of the Covenant, Certificate, Bylaws, Community Manual, the Design Guidelines (if adopted), any applicable Development Area Declaration, any applicable Notice of Applicability, and any rules and regulations promulgated by the Association pursuant to the Covenant or any Development Area Declaration, as each may be adopted and amended from time to time (collectively, the “**Documents**”), including the obligation of Owners to pay assessments pursuant to the terms and provisions of the Covenant and the obligations of the Owners to compensate the Association for costs incurred by the Association for enforcing violations of the Documents.

The Board hereby adopts this Fine and Enforcement Policy to establish equitable policies and procedures for the levy of fines within the Association in compliance with the Chapter 209 of the Texas Property Code, titled the “Texas Residential Property Owners Protection Act,” as it may be amended (the “**Act**”). To the extent any provision within this policy is in conflict with the Act or any other applicable law, such provision shall be modified to comply with the applicable law.

Terms used in this policy, but not defined, shall have the meaning subscribed to such term in the Documents.

2. Policy. The Association uses fines to discourage violations of the Documents, and to encourage compliance when a violation occurs – not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Documents. The Association’s use of fines does not interfere with its exercise of other rights and remedies for the same violation.
3. Owner’s Liability. An Owner is liable for fines levied by the Association for violations of the Documents by the Owner and the relatives, guests, employees, and agents of the Owner and residents. Regardless of who commits the violation, the Association may direct all communications regarding the violation to the Owner.
4. Amount. The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Documents. If the Association allows fines to accumulate, the

Association may establish a maximum amount for a particular fine, at which point the total fine will be capped.

5. Courtesy Warning Notice and Violation Notice. Except as set forth in *Section 5(C)* below, before levying a fine, the Association will give: (i) a written courtesy warning notice to the Owner (at the Owner's last known address as shown in the Association records) (the "**Courtesy Warning Notice**"); (ii) a written violation notice via certified mail to the Owner (at the Owner's last known address as shown in the Association records) (the "**Violation Notice**"); and (iii) an opportunity to be heard, if requested by the Owner. The Association's Violation Notice will contain the following items: (1) the date the Violation Notice is prepared or mailed; (2) a description of the violation or property damage that is the basis for the Individual Assessment, suspension action, or other charge; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation and a reasonable timeframe in which the violation is required to be cured to avoid the fine or suspension; (5) the amount of the possible fine; (6) a statement that no later than the thirtieth (30<sup>th</sup>) day after the date the notice was mailed, the Owner may request a hearing pursuant to Section 209.007 of the Texas Property Code, and further, if the hearing held pursuant to Section 209.007 of the Texas Property Code is to be held by a committee appointed by the Board, a statement notifying the Owner that he or she has the right to appeal the committee's decision to the Board by written notice to the Board; and (7) a statement that 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. app. section *et seq.*), if the Owner is serving on active military duty. The Violation Notice sent out pursuant to this paragraph is further subject to the following:
  - A. First Violation. If the Owner has not been given notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months, the Violation Notice will state those items set out in (1) – (7) above, along with a reasonable timeframe by which the violation must be cured to avoid the fine. The Violation Notice must state that any future violation of the same rule may result in the levy of a fine. A fine pursuant to the *Schedule of Fines* may be levied if an Owner does not cure the violation within the timeframe set forth in the notice.
  - B. Uncurable Violation/Violation of Public Health or Safety. If the violation is of an uncurable nature or poses a threat to public health or safety (as exemplified in Section 209.006 of the Texas Property Code), then the Violation Notice shall state those items set out in (1), (2), (3), (5), (6), and (7) above, and the Association shall have the right to exercise any enforcement remedy afforded to it under the Documents, including but not limited to the right to levy a fine pursuant to the *Schedule of Fines*.
  - C. Repeat Violation without Attempt to Cure. If the Owner has been given a Violation Notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months but commits the violation again, then the Owner shall not be entitled to an additional Violation Notice or a hearing pursuant to Section 209.007 of the Texas Property Code, and the Association shall have the right to exercise any enforcement remedy afforded to it under the Documents, including but not limited to the right to levy a fine pursuant to the *Schedule of Fines*. After an Owner has been provided a Violation Notice as set forth herein and assessed fines in the amounts set forth in the *Schedule of Fines*, if the Owner has never cured the violation in response to any Violation Notices sent or any fines levied, then the Board, in its sole discretion, may determine that such a circumstance is a continuous violation which warrants a levy of a fine based upon a daily, monthly, or quarterly amount as determined by the Board.

6. Violation Hearing. If the Owner is entitled to an opportunity to cure the violation, then the Owner has the right to submit a written request to the Association for a hearing before the Board or a committee appointed by the Board to discuss and verify the facts and resolve the matter. To request a hearing, the Owner must submit a written request (the “**Request**”) to the Association’s manager (or the Board if there is no manager) within thirty (30) days after receiving the Violation Notice. The Association must then hold the hearing requested no later than thirty (30) days after the Board receives the Request. The Board must notify the Owner of the date, time, and place of the hearing at least ten (10) days before the date of the hearing. The hearing will be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. 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 be granted by agreement of the parties. Notwithstanding the foregoing, the Association may exercise its other rights and remedies as set forth in Section 209.007(d) and (e) of the Texas Property Code. Any hearing before the Board will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner shall attend the hearing in person, but may be represented by another person (i.e., attorney) during the hearing, upon advance written notice to the Board. If an Owner intends to make an audio recording of the hearing, such Owner’s request for hearing shall include a statement noticing the Owner’s intent to make an audio recording of the hearing, otherwise, no audio or video recording of the hearing may be made, unless otherwise approved by the Board. The minutes of the hearing must contain a statement of the results of the hearing and the fine, if any, imposed. A copy of the Violation Notice and Request should be placed in the minutes of the hearing. If the Owner appears at the meeting, the notice requirements will be deemed satisfied. Unless otherwise agreed by the Board, each hearing shall be conducted in accordance with the agenda attached hereto as Exhibit A.
7. Due Date. Fine and/or damage charges are due immediately if the violation is incurable or poses a threat to public health or safety. If the violation is curable, the fine and/or damage charges are due immediately after the later of: (1) the date that the cure period set out in the first Violation Notice ends and the Owner does not attempt to cure the violation or the attempted cure is unacceptable to Association, or (2) if a hearing is requested by the Owner, such fines or damage charges will be due immediately after the Board’s final decision on the matter, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.
8. Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 5.11* of the Covenant and all costs of collection, including attorney’s fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.1.2* of the Covenant. The fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to *Article 5* of the Covenant.
9. Levy of Fine. Any fine levied shall be reflected on the Owner’s periodic statements of account or delinquency notices.
10. Foreclosure. The Association may not foreclose its assessment lien on a debt consisting solely of fines.

11. Amendment of Policy. This policy may be revoked or amended from time to time by the Board. This policy will remain effective until the Association records an amendment to this policy in the county's official public records.

**Schedule of Fines**

The Board has adopted the following general schedule of fines. The number of notices set forth below does not mean that the Board is required to provide each notice prior to exercising additional remedies as set forth in the Documents. The Board may elect to pursue such additional remedies at any time in accordance with applicable law. The Board also reserves the right to set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effect of the violation:

**FINES‡:**

<p><b><u>New Curable Violation:</u></b></p> <p>Courtesy Warning Notice</p> <p>Violation Notice</p>	<p><b>Fine Amount:</b></p> <p>\$0.00</p> <p>\$25.00 (if a curable violation, may be avoided if Owner cures the violation by the time specified in the notice)</p>
<p><b><u>Repeat Curable Violation:</u></b></p>	<p><b>Fine Amount:</b></p> <p>1st Notice \$50.00</p> <p>2nd Notice \$100.00</p> <p>3rd Notice \$125.00</p> <p>(Increases \$25.00 for each additional Notice)</p>
<p><b><u>No Right to Cure or Uncurable Violation:</u></b></p> <p>Violation Notice</p>	<p><b>Fine Amount:</b></p> <p>\$50.00 or property damage assessment</p>
<p><b><u>Repeat No Right to Cure or Uncurable Violation:</u></b></p>	<p><b>Fine Amount:</b></p> <p>1st Notice \$75.00</p> <p>2nd Notice \$100.00</p> <p>3rd Notice \$125.00</p> <p>(Increases \$25.00 for each additional Notice)</p>
<p><b><u>Continuous Violation (Curable or Uncurable Violation):</u></b></p> <p>Continuous Violation Notice</p>	<p><b>Fine Amount:</b></p> <p>TBD</p>

‡ The Board reserves the right to adjust these fine amounts based on the severity and/or frequency of the violation.

**CONSTRUCTION FINES:**

Pursuant to the Documents, any prohibited construction activities within Pearson Place at Avery Ranch are **subject to Construction Fines**. Construction Fines commence upon the expiration of the cure period provided in the First Notice. There is no Courtesy Warning Notice. Construction Fines may be assessed pursuant to the schedule of fines as follows:

Premature Clearing	\$500
Construction Without Pearson Place at Avery Ranch Reviewer Approval	\$500 plus \$100/day
Inadequate Construction Entry	\$250
Inadequate/Removed Silt Fence	\$250
Excessive Mud/Debris on Street	\$250 plus \$50/day
Excessive Construction Debris	\$250 plus \$50/day
No Dumpster Provided	\$150 plus \$50/day
No Chemical Toilet Provided	\$150 plus \$25/day
Violation of designated Construction Times	\$100
Encroachment on Adjacent Properties	\$500 plus repair cost
Damage to Streets, Curbs, Infrastructure	\$500 minimum
Failure to Obtain Inspection from Pearson Place at Avery Ranch Reviewer upon completion of Construction	\$500 minimum
Miscellaneous Violation of Construction Rules	TBD by Reviewer

‡ The Board reserves the right to adjust these fine amounts based on the severity and/or frequency of the violation.

## EXHIBIT A

### HEARING BEFORE THE BOARD

**Note:** An individual will act as the presiding hearing officer. The hearing officer will provide introductory remarks and administer the hearing agenda.

**I. Introduction:**

**Hearing Officer.**

The Board has convened for the purpose of providing [Owner] an opportunity to be heard regarding a notice of violation of the Documents sent by the Association.

The hearing is being conducted as required by Section 209.007(a) of the Texas Property Code, and is an opportunity for [Owner] to discuss, verify facts, and attempt to resolve the matter at issue. The Board may be able to resolve the dispute at the hearing or the Board may elect to take the matter under advisement and conclude the hearing. If the matter is taken under advisement, a final decision will be communicated in writing within fifteen (15) days.

**II. Presentation of Facts:**

**Hearing Officer.**

This portion of the hearing is to permit a representative of the Association the opportunity to describe the violation and to present photographs or other material relevant to the violation, fines or penalties. After the Association's representative has finished his presentation, the Owner or its representative will be given the opportunity to present photographs or other material relevant to the violation, fines or penalties. The Board may ask questions during either party's presentation. It is requested that questions by [Owner] be held until completion of the presentation by the Association's representative.

[Presentations]

**III. Discussion:**

**Hearing Officer.**

This portion of the hearing is to permit the Board and [Owner] to discuss factual disputes relevant to the violation. Discussion regarding any fine or penalty is also appropriate. Discussion should be productive and designed to seek, if possible, a mutually agreed upon resolution of the dispute. The Hearing Officer retains the right to conclude this portion of the hearing at any time.

**IV. Resolution:**

**Hearing Officer.**

This portion of the hearing is to permit discussion between the Board and [Owner] regarding the final terms of a mutually agreed upon resolution, if such resolution was agreed upon during the discussion phase of the hearing. If no mutually agreed upon resolution was reached, the Hearing Officer may: (i) request that the Board enter into executive session to discuss the matter; (ii) request that the Board take the matter under advisement and adjourn the hearing; or (iii) adjourn the hearing.