

**POLICY REGARDING THE COLLECTION AND PAYMENT OF  
ASSESSMENTS AND OTHER CHARGES AND FEES  
FOR  
CUMBERLAND RIDGE  
HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS                   §  
  §  
COUNTIES OF CHEROKEE       §  
AND SMITH                           §

**WHEREAS**, the Board of Directors (“*Board*”) of Cumberland Ridge Homeowners Association, Inc., a Texas non-profit corporation (“*Association*”), is empowered to govern the affairs of the Association pursuant to the Amended and Restated Restrictive Covenants for Cumberland Ridge, Units 1-8, recorded under Instrument Number 20200100014839 of the Official Public Records of Smith County, Texas, and Instrument Number 689539 of the Official Public Records of Cherokee County, Texas (“*Declaration*”), Article Four of the Bylaws of the Association (“*Bylaws*”), and the Texas Business Organizations Code; and

**WHEREAS**, the Board, on behalf of the Association, has determined that there is a need to adopt or amend a specific collection policy (“*Policy*”) regarding the collection and payment of assessments<sup>1</sup> and other charges and fees owed to the Association pursuant to the Declaration; and

**WHEREAS**, it is the intent that this Policy shall rescind, amend, and restate all prior policies adopted by the Association governing the collection of assessments, shall be applicable to all Members<sup>2</sup> of the Association, and shall remain in effect until otherwise rescinded, modified, or amended by the Board pursuant to the governing documents.

**NOW, THEREFORE BE IT RESOLVED THAT**, the following Policy on the collection and payment of assessments and other charges and fees owed by the Members pursuant to the Declaration is hereby adopted by the Board:

**Due Date for Assessment** – Assessments are billed annually and are due in June each year (“June 30”). Arrangements can be made for monthly payments.

**Delinquency Date for Assessment** – Any assessment not paid by 5:00 p.m., on the 1<sup>st</sup> day of July, shall be delinquent (“*July 2nd*”).

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<sup>1</sup> The term “assessments” may include, as authorized by the Declaration, regular assessments, special assessments, and other sums assessed against any Lot. The Board may establish alternate payment schedules for certain assessments.

<sup>2</sup> The terms “Members” and “Owners” are used interchangeably in this Policy.

**Late Charges, Handling Fees, and Interest** – Any assessment, fine, or charge not paid by the Delinquency Date shall result in the imposition of a late charge. In addition to an administrative charge (if applicable), a late charge of not less than \$25.00 may be imposed each month in which an account reflects a late un-paid balance, until the late unpaid balance is paid in full. The late interest charge shall be in the amount of eighteen percent (18%) per annum.

**Returned Check Fees** – A fee of not less than \$30.00 may be levied by the Association for any check returned to the Association marked “not sufficient funds” or the equivalent. Such returned check fee shall be in addition to any charges made by the Association’s bank due to the dishonored check. Notwithstanding this provision, the Association may elect to pursue additional remedies at any time in accordance with applicable law. In addition, if two (2) or more of a Member’s checks are returned unpaid by the bank within any 12-month period, the Association may require that all of the Member’s future payments, for a period of one (1) year, be made by certified check or money order.

**Ownership Records** – All collection notices and communications will be directed to those persons shown by the records of the Association as being the Owner of a Lot for which assessments are due and will be sent to the most recent address of such Owner solely as reflected by the records of the Association. Any notice or communication directed to a person at an address, in both cases reflected by the records of the Association as being the Owner and address for a given Lot, will be valid and effective for all purposes pursuant to the Declaration and this Policy until such time as there is actual receipt by the Association of written notification from the Owner of any change in the identity or status of such Owner or its address or both. It is the responsibility of the Owner to update the Association with regards to any address, telephone number, or e-mail address changes.

**Notification of Owner's Representative** – Where the interests of an Owner in a Lot have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interests in a Lot have been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Policy will be deemed full and effective for all purposes if given to such representative or agent.

### **MAILINGS AND ACTION STEPS**

The Association shall take the following actions to collect any assessment, fine, or charge not paid by the Delinquency Date, unless otherwise directed by the Board. In addition to the above-described collection expenses, the Owner is responsible for all administrative expenses incurred in collecting the delinquent amount. Collectively, these actions shall be referred to herein as the “*Collection Steps*”:

**Reminder Statement of Account** – A Reminder Statement of Account, Notice of Delinquency, or similarly titled document (hereinafter referred to “Reminder Statement of Account”), will be mailed after any assessment becomes delinquent. The Reminder Statement of Account must be provided by first class mail to the Owner’s last known mailing address or by email, if an email address has been provided by the Owner. It is the responsibility of the Owner to update the Association with regards to any address, telephone number, or e-mail address changes.

**Association Demand Letter** – An Association Demand Letter will be mailed no earlier than thirty (30) days *after* the Reminder Statement of Account is mailed or emailed, as applicable. The Association Demand Letter shall: (i) be sent via Certified Mail and First-Class U.S. Mail; (ii) specify each delinquent amount and the total amount of the payment required to make the account current; (iii) provide a period of at least forty-five (45) days to bring the account current; and (iv) provide information relative to the availability of a payment plan.

**Attorney Demand Letter** – If no payment is received, an Attorney Demand Letter will be mailed no earlier than forty-five (45) days *after* the Association Demand Letter is sent.

**Notice of Assessment Lien or Unpaid Lien** – If no payment is further received, a Second Attorney Demand Letter will be mailed and a Notice of Assessment Lien or similarly titled instrument will be filed with the office of the county clerk, no earlier than thirty (30) days after the initial Attorney Demand Letter is sent.

The Notice of Assessment Lien may not be filed until at least ninety (90) days *after* the date of the Association Demand Letter is sent to the Owner.

### **Inferior Lien Notice of Default and Opportunity to Cure**

If there are one or more subordinate Deed of Trust liens on the property of the Owner, then the attorney will also:

- (a) provide written notice of the total amount of the delinquency giving rise to the foreclosure to any other holder of a lien of record on the property whose lien is inferior or subordinate to the Association's lien as is evidenced by a deed of trust; and
- (b) provide the recipient of the notice an opportunity to cure the delinquency before the sixty-first (61<sup>st</sup>) day after the date the recipient receives the notice.

**Foreclosure Proceedings** – Foreclosure proceedings will be initiated as approved by the Board. In the event the Member fails to cure the delinquency, the Board may direct the attorney to pursue foreclosure of the Assessment Lien. In any foreclosure proceedings, the Member shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.

**Expedited Foreclosure Pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure.** The Board may decide to foreclose its Assessment Lien by exercising its power of sale granted by the Declaration. In such event, the attorney may commence an expedited foreclosure lawsuit under Rules 735 and 736 of the Texas Rules of Civil Procedure.

**Judicial Foreclosure.** The Association may file suit for judicial foreclosure of the Assessment Lien. Such judicial foreclosure suit may also seek a personal money judgment.

**Lawsuit for Money Judgment** – The Association may file suit for a money judgment in any court of competent jurisdiction.

**Bankruptcy** – Upon notification of a petition in bankruptcy, the Association may refer the account to the attorney.

**Remedies Not Exclusive** – All rights and remedies provided in this Policy are cumulative and not exclusive of any other rights or remedies that may be available to the Association, whether provided by law, equity, the Association's governing documents, or otherwise.

**Delegation of Collection Procedures** – From time to time, the Association may delegate some or all of the collection procedures, as the Board, in its sole discretion deems appropriate, to Management, an attorney, or a debt collector.

### **SUSPENSION OF PRIVILEGES**

If applicable, the Association Demand Letter shall inform the Member that if the delinquency is not cured or the Member fails to deliver a timely written request for a hearing with the Board to discuss and verify facts and attempt to resolve the matter, the Association may suspend the Member's common area/amenity use privileges, and or suspend any other services provided by the Association. This includes, but is not limited to, the Member's right to use, as applicable, the marina, Primitive Park, and pavilion area as well as the Member's right to participate in Association-sponsored events.

## **PAYMENT APPLICATION POLICY**

Except as otherwise provided for and authorized by law, any payment received by the Association from a Member whose account reflects an unpaid balance shall be applied to the outstanding balance in the following order:

1. Any delinquent Assessment;
2. Any current Assessment;
3. Cost of collection, including attorney's fees and any other charges that could serve as the basis for foreclosure;
4. Any attorney's fees which were not incurred to collect assessments;
5. Violations fines; and
6. Any other amount owed to the Association.

## **PAYMENT PLANS**

It is the intention of the Association to work with Members who have a legitimate reason and/or hardship interfering with their ability to satisfy their obligation to pay assessments to the Association, without penalizing those Members who make their payments on time. Therefore, in an effort to assist these Members in the payment of their assessments to the Association, a Member shall have the right to enter into a Payment Plan Agreement, subject to the following, as applicable:

1. Assessments that become due during the term of the Payment Plan Agreement must also be included and be paid as part of the payment plan.
2. The Payment Plan Agreement must include the total debt to the Association including late fees, interest, fines, collection costs, attorney's fees (if applicable) and the costs incurred by the Association to prepare the Payment Plan Agreement. Additional costs associated with administering the Payment Plan Agreement and interest on the unpaid balance on the Member's account will be added to the Member's account during the term of the Payment Plan Agreement. During the term of the Payment Plan Agreement, late charges shall accrue but shall be suspended and not added to the Member's account.
3. There shall be no waiver of any charges on the Member's account.
4. To be eligible for the payment plan, the Member must not have defaulted on a prior Payment Plan Agreement within the twenty-four (24) month period preceding the request for a payment plan.
5. The Payment Plan Agreement must contain a schedule setting forth the date each payment is required to be made under the Payment Plan Agreement ("*Schedule Due Date*"), as well as the amount of each payment, and all payments must be received on or before the Scheduled Due Date.
6. The minimum payment schedule term is three (3) months, and the maximum payment schedule term is eighteen (18) months with equal payments.
7. Any Payment Plan Agreement approved *after* the foreclosure sale proceedings have commenced may include delivery of a percentage, as determined by the Association, of the outstanding balance payable in certified funds.

8. All violations of the Declaration must be resolved by the Member prior to engaging in a payment plan.

Should the Member default or otherwise violate their Payment Plan Agreement:

1. The Association's Collection Steps shall be reinstated at the point of interruption when the Payment Plan Agreement was entered into by both parties.
2. All suspended and accrued late fees shall be reinstated to the Member's account.
3. The Member's unpaid balance shall become immediately due and payable.

Any payments received after the breach of an approved Payment Plan Agreement shall be applied as set forth in the aforementioned Payment Application Policy.

### **FEE WAIVER REQUEST**

It is the intention of the Board to work with Members who have a legitimate reason for making a late payment, but not to the detriment of Members who make their payments on time. The Board recognizes that extenuating circumstances may prevent a Member from paying assessments before they become delinquent. Therefore, the Board may grant a waiver to the payment of a portion of the fees owed due to delinquent assessments (*i.e.*, late fees or charges, collection fees, or interest charges) owed by a Member subject to the following limitations:

1. Requests for waivers shall not be granted for any assessment, out of pocket collection costs to the Association, *i.e.*, demand letters, attorney's fees, other collection expenses, etc.
2. Requests for waivers shall not be granted to any Member who has previously received such a waiver within the past twenty-four (24) months.
3. Requests for waivers shall not be granted to any Member who has defaulted on a previously approved Payment Plan Agreement.
4. All approved waivers will be subject to the Member's unpaid balance being received within five (5) business days of the date the waiver approval was communicated to the Member. If a Member is unable to pay the unpaid balance within this time-period, the waiver will be denied but the Member will be allowed the opportunity to request a payment plan, if eligible under the terms of this Policy.
5. Late fees or other waived charges shall not be removed from the Member's account until the Member's final payment has been received and cleared.

### **PARTIAL OR CONDITIONED PAYMENT**

The Association may refuse to accept partial payments (*i.e.*, less than the full amount due and payable) and payments to which the payor attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Owner's account. If the Association does not accept the payment at that time, it will promptly return or refund the payment to the payer. A payment that is not returned or refunded to the payer within thirty (30) days after being deposited by the Association may be

deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent assessments does not waive the Association's right to pursue or continue pursuing its remedies for payment in full of all outstanding obligations.

### **DEFINITIONS**

Capitalized terms used but not defined in this Policy shall have the meaning subscribed to such terms in the Declaration.

### **CONFLICT**

Notwithstanding the foregoing, no term or provision contained herein shall amend the Declaration. In the case of any conflict between this Policy and the Declaration, the Declaration shall control.

### **INDEPENDENT JUDGMENT**

Notwithstanding the contents of this Policy, the officers, directors, managing agent or community manager, and the attorney of the Association may exercise their independent, collective, and respective judgment in applying this Policy.

### **VERIFICATION OF INDEBTEDNESS AND COMPLIANCE WITH THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT**

For so long as the collection of assessments may be subject to the requirements of the Fair Debt Collection Practices Act ("*FDCPA*"), all communications from Management and the attorney will include such required notices as are prescribed by the FDCPA, the Soldiers and Sailors Relief Act ("*SCRA*"), and the Texas Property Code. Furthermore, when an Owner requests verification of the indebtedness, Management will, upon notification of the Owner's request, supply such verification before any further collection action is taken with respect to such Owner. The exercise of the collection rights of the Association regarding assessments will, in all ways, comply with the FDCPA, the SCRA, and the Texas Property Code, to the extent such acts may apply.

### **SEVERABILITY AND LEGAL INTERPRETATION**

In the event that any provision herein shall be determined by a court with jurisdiction to be invalid or unenforceable in any respect, such determination shall not affect the validity or enforceability of any other provision, and this Policy shall be enforced as if such provision did not exist. Furthermore, in the event that any provision of this Policy is deemed by a court with jurisdiction to be ambiguous or in contradiction with any law, this Policy and any such provision shall be interpreted in a manner that complies with an interpretation that is consistent with the law. In the event any provision of this Policy conflicts with the Declaration, the Declaration shall control.

**IT IS FURTHER RESOLVED** that this Policy replaces and supersedes, in all respects, all prior policies and resolutions addressing the collection of assessments by the Association, and is

effective upon its filing with the office of the county clerk, and shall remain in force and effect until revoked, modified, or amended by the Board.

**IN WITNESS WHEREOF**, the Board has caused this Policy to be effective and executed by its duly authorized representative as of the \_\_\_\_\_, 20\_\_\_\_.

**CUMBERLAND RIDGE HOMEOWNERS  
ASSOCIATION, INC.,  
a Texas non-profit corporation**

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