

**COLLECTION POLICY
FOR
CUMBERLAND RIDGE HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS §
 §
COUNTY OF SMITH §

WHEREAS, as provided in Article Two, Section 2.1 of the Amended and Restated Restrictive Covenants Cumberland Ridge, Units 1-8 Cumberland Ridge Homeowners Association, Inc. ("*Declaration*"), each Owner of a Lot is obligated to pay assessments to Cumberland Ridge Homeowners Association, Inc. ("*Association*"); and

WHEREAS, the Association's managing agent or management company representative is referred to herein as "*Management*"; and

WHEREAS, annual HOA assessments, annual road assessments and special assessments (collectively referred to as "*Assessments*") are established and determined as set forth in Article Two, Section 2.1 of the Declaration; and

WHEREAS, all sums assessed against any Lot pursuant to the Declaration, together with costs of collection, reasonable attorney's fees, and interest, are secured by a continuing lien on such Lot in favor of the Association as provided in Article Two, Section 2.4 of the Declaration; and

WHEREAS, pursuant to the Declaration and Bylaws of the Cumberland Ridge Homeowners Association, Inc. ("*Bylaws*"), the Association's Board of Directors ("*Board*") has the right to enforce the provisions of the Declaration including, without limitation, the right to Assessments from Owners.

NOW, THEREFORE, IT IS RESOLVED that the following procedures and practices are established for the collection of Assessments owing and to become owing by Owners to the Association, known as the "*Collection Policy*," to be followed by the Association in the discharge of its responsibilities regarding collection of Assessments against Lots:

1. **Ownership Interests**. Pursuant to Article Two, Section 2.1 of the Declaration, the person who is the Owner of a Lot at the time the assessment became due is personally liable for the payment of that assessment. As used herein, the term "*Delinquent Owner*" refers to that person who held title to a Lot on the date an assessment became due. As used herein, the term "*Current Owner*" refers to that person who holds title to a Lot on any relevant due date, delinquency date or collection action referenced herein. Unless expressly denoted otherwise, the "*Owner*" of a Lot refers to the Delinquent Owner or the Current Owner or both, as may be appropriate under the circumstances in question.

2. **Due Dates**. The Assessments are due in the first (1st) day of the month on which the

Assessment falls due ("*Due Date*"). Any special assessments shall be due as determined by the Board.

The due date for the Assessments shall be collectively referred to in this Collection Policy as the "*Due Date*".

3. Delinquency Date. Unless otherwise informed by the Board, any assessment not paid by the 30th day following the Due Date shall be delinquent ("*Delinquency Date*").

4. Required Notices and Correspondence.

Late Notice. If an assessment is not paid by the Delinquency Date, the Association or Management will send a reminder ("*Late Notice*") with a statement of account to the Owner reminding the Owner that an assessment(s) is past due and requesting immediate payment.

Default Letter. No sooner than thirty (30) days following the Due Date, the Association will send another reminder ("*Default Letter*") to the Owner making formal demand for immediate payment of all outstanding amounts. The Default Letter will be sent via certified mail and first-class United States mail, and will include the following information:

- a. The Default Letter will specify each delinquent amount (the unpaid Assessments, interest, late charges, and handling charges) incurred.
- b. The Default Letter will also specify the total amount of the payment required to make the account current.
- c. The Default Letter will describe the options the Owner has to avoid having the account turned over to a collection agent, including information regarding the availability of a payment plan through the Association.
- d. The Default Letter will inform the Owner that: (i) if the delinquency is not cured in full, including all accrued interest and other charges then owing, within forty-five (45) days of the date of the Default Letter, or (ii) if the Owner has not entered into a payment plan with the Association, within forty-five (45) days of the date of the Default Letter, the delinquency may be referred to the legal counsel for the Association for further collection action, including the possibility of seeking foreclosure of the assessment lien, and that once such referral has occurred the Owner will then become additionally liable for all legal fees and related costs incurred.
- e. If applicable, the Default Letter shall inform the Owner that if the delinquency is not cured or the Owner 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 will suspend the Owner's common area/amenity use privileges. The Board may suspend the Owner's right to use the recreational facilities within the common areas and/or suspend any other services provided by the Association. This includes, but is not limited to, the Owner's right to use, as applicable, the

community swimming pool, the amenity/community center, and pavilion area as well as the Owner's right to participate in Association-sponsored events.

5. Interest. Pursuant to Article Two, Section 2.7 of the Declaration, any assessment not paid by the Delinquency Date shall accrue interest at the rate of 18% per annum from the Delinquency Date until paid.

6. Alternative Payment Schedule. Section 209.0062 of the Texas Property Code requires that the Association adopt reasonable guidelines to establish an alternate payment schedule by which an owner may make partial payments for delinquent amounts owed to the Association in certain circumstances.

Upon request of an Owner, the Association shall allow such Owner to pay any delinquent assessment or any other annual or special assessments. The minimum payment schedule term is three (3) months and the maximum payment schedule term is eighteen (18) months with equal payments due on the first day of each of month. In order to request an Alternative Payment schedule, the delinquent Owner must send written request to the Association within ten (10) business days of the date such assessment is due. If a written request is made in a timely manner, the Association will within ten (10) business days of the date such request is received, notify such Owner of (i) the amount of each monthly payment request under the Alternative Payment Schedule, which amount shall include reasonable costs associated with administering the Alternative Payment Schedule and interest on the delinquent amounts (but shall not include any other monetary penalties), and (ii) the dates on which the monthly installments requested under the Alternative Payment Schedule are due.

If, at the time the Association receives a payment from an Owner and such Owner is in default under an Alternative Payment Schedule, then the Association may apply such payment in any order determined the Association; provided, however, that, in applying such payment, any fine or penalty assessed by the Association may not be given priority over any other amount owed to the Association. If an Owner fails to make a monthly payment in the full amount required by the Alternative Payment Schedule, the full amount of the delinquent assessment shall be considered immediately due and payable without the necessity of any further action on the part of the Owner or the Association.

In addition, an Owner is *not* statutorily entitled to an Alternative Payment Schedule if the Owner has defaulted on a previous Alternative Payment Schedule in the last two (2) years from the date such Owner defaulted under its obligation with request to such Alternative Payment Schedule.

7. 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.

8. Handling Fees and Return Check Fees. In order to recoup for the Association, the costs of collection incurred because of additional administrative expenses associated with collecting delinquent Assessments, collection of the following fees and charges are part of this Collection Policy:

- a. Any handling charges, administrative fees, postage, or other expenses incurred by the Association in connection with the collection of any assessment or related amount owing beyond the Delinquency Date for such assessment will become due and owing by the Delinquent Owner.
- b. A charge not to exceed \$30.00 per item, along with all bank charges, will become due and payable for any check tendered to the Association, which is dishonored by the drawee of such check, the charge being in addition to any other fee or charge which the Association is entitled to recover from an Owner in connection with collection of Assessments owing with respect to such Owner's Lot.
- c. Any fee or charge becoming due and payable pursuant to this Paragraph 6 will be deemed a cost of collection and added to the amount then outstanding and is collectible to the same extent and in the same manner as the assessment, the delinquency of which gave rise to the incurrence of such charge, fee, or expense.

9. Application of Funds Received. Except as allowed by law, all monies received by the Association, regardless of whether an Owner has placed a restrictive notation on the check or other form of payment, or in correspondence accompanying the payment, will be applied to amounts outstanding to the extent of and in the following order:

- a. First, to any delinquent assessment;
- b. Next, to any current assessment;
- c. Next, to any attorney 's fees or third party collection costs incurred by the Association associated solely with Assessments or any other charge that could provide the basis for foreclosure;
- d. Next, to any attorney's fees incurred by the Association that are not subject to Subsection "c" above;
- e. Next, to any fines assessed by the Association; and
- f. Last, to any other amount owed to the Association.

10. 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 until such time as there is actual receipt by the Association of written notification of any change in the identity or status of such Owner or its address or both.

11. 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 Collection Policy will be deemed full and effective for all purposes if given to such representative or agent.

12. 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 the management company, an attorney, or a debt collector.

13. Referral to Legal Counsel. If the delinquency is not cured in full, including all other charges then owing, within forty-five (45) days of the date of the Default Letter, or (ii) if the Owner has not entered into a payment plan with the Association, within forty-five (45) days of the date of the Default Letter, management company, on behalf of the Board, or the Board may, as soon as possible thereafter, refer the delinquency to the legal counsel for the Association for the legal action as required by this Collection Policy. Any attorney's fees and related charges incurred by virtue of legal action taken will become part of the assessment obligation and may be collected as such as provided herein.

14. Legal Action. Legal counsel for the Association will take the following actions with regard to delinquencies referred to it:

- a. **Alternative Collection Remedies.** At each step in the collection process the Board, acting with input and recommendations from the management company and counsel, will evaluate which remedy to pursue which appears to be in the best interest of the Association for recovery of unpaid Assessments. Determination at one point to pursue one course of action will in no way limit or impair the right of the Association to initiate action in a different or supplemental direction, provided all procedures and steps called for by the Declaration, the Bylaws and this Collection Policy are followed.
- b. **Demand Letter.** As the initial correspondence to a Delinquent Owner, counsel will send a demand letter ("*Demand Letter*") to the Owner making formal demand for all outstanding Assessments and related charges, adding to the charges the attorney's fees and costs incurred for counsel's services. The Demand Letter will require the Owner to pay in full all amounts demanded within thirty (30) days of the date of the Demand Letter. The Association may skip the Demand Letter process set forth in this subsection (b) and proceed with collection procedures set forth below only to the extent allowed by law, and as may be determined from time to time by the Board.

- c. **Notice of Assessment or Unpaid Lien.** If a Delinquent Owner fails to pay the amounts demanded in the initial Demand Letter sent by counsel within thirty (30) days of the date of the Demand Letter, counsel will, upon direction from the Board and/or management company, order a search of the land records to determine a current ownership of the Lot on which the delinquency exists and cause to be prepared and executed, and recorded in the Official Public Records of Smith County, a written notice of lien ("*Notice of Lien*") setting forth therein the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot covered by the lien. A copy of the Notice of Lien will be sent to the Owner contemporaneously with the filing of same with the Smith County Clerk's office, together with an additional demand for payment in full of all amounts then outstanding, within no less than twenty (20) days of the date of the transmittal to the Owner of the Notice of Lien.
- d. **Inferior Lien Notice of Default and Opportunity to Cure.**
- (i) If there is subordinate Deed of Trust lien on the property of the Owner, then counsel 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 and is evidenced by a deed of trust; and
 - (b) provide the recipient of the notice an opportunity to cure the delinquency before the 61st day after the date the recipient receives the notice.
- e. **Foreclosure.** In the event the Owner fails to cure the delinquency, the Board may direct legal counsel to pursue foreclosure of the lien. In any foreclosure proceedings, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.
- (i) **Expedited Foreclosure Pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure.** The Board may decide to foreclose its lien by exercising its power of sale granted by the Declaration. In such event, counsel may commence expedited foreclosure lawsuit under Rules 735 and 736 of the Texas Rules of Civil Procedure. Upon receipt from the Court of an order authorizing foreclosure of the Lot, counsel may post the Lot at the County Courthouse for a foreclosure sale. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The Association may institute, a personal judgment suit against the former Owner for any deficiency resulting from the Association's foreclosure of its assessment lien.

- (ii) **Judicial Foreclosure.** The Association may file suit for judicial foreclosure of the assessment lien, which suit may also seek a personal money judgment. Upon receipt from the Court of an order foreclosing the Association's assessment lien against the Lot, the sheriff or constable may post the Lot for sheriff's or constable's sale. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.
- f. **Lawsuit for Money Judgment.** The Association may file suit for a money judgment in any court of competent jurisdiction.
- g. **Bankruptcy.** Upon notification of a petition in bankruptcy, the Association may refer the account to legal counsel.
- h. **Remedies Not Exclusive.** All rights and remedies provided in this Policy and herein above 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.

15. Independent Judgment. Notwithstanding the contents of this details Collection Policy, the officers, directors, management company or community manager, and attorney of the Association may exercise their independent, collective, and respective judgment in applying this Collection Policy.

16. Compromise of Obligations Other than Assessments. In order to expedite the handling of collection of delinquent Assessments owed to the Association, the Board may, at any time, compromise or waive the payment of any handling charge, finance charge, legal fee, or any other applicable charge.

17. 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 Collection Policy shall be enforced as if such provision did not exist. Furthermore, in the event that any provision of this Collection Policy is deemed by a court with jurisdiction to be ambiguous or in contradiction with any law, this Collection 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 Collection Policy conflicts with the Declaration, the Declaration controls.

IT IS FURTHER RESOLVED that this Collection 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 Smith County Clerk, and shall remain in force and effect until revoked, modified, or amended by the Board.

IN WITNESS WHEREOF, this Collection Policy was adopted by the Board at a duly convened meeting of held on _____, 20____, and executed by its duly authorized representative as of the _____, 20____.

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

By: _____
Its: _____