

ATTACHMENT 4

THE ENCLAVE RESIDENTIAL COMMUNITY, INC.
ASSESSMENT COLLECTION POLICY

The Enclave is a community (the "**Community**") created by and subject to the Declaration of Covenants, Conditions and Restrictions for The Enclave, recorded in the Official Public Records of Dallas County, Texas, and any amendments or supplements thereto ("**Declaration**"). The operation of the Community is vested in The Enclave Residential Community, Inc., a Texas non-profit corporation (the "**Association**"), acting through its board of directors (the "**Board**"). The Association is empowered to enforce the covenants, conditions and restrictions of the Declaration, Certificate, Bylaws, Community Manual, and any rules and regulations promulgated by the Association pursuant to the Declaration, as adopted and amended from time to time (collectively, the "**Restrictions**"), including the obligation of Owners to pay Assessments pursuant to the terms and provisions of the Declaration.

The Board hereby adopts this Assessment Collection Policy to establish equitable policies and procedures for the collection of Assessments levied pursuant to the Restrictions. Terms used in this policy, but not defined, shall have the meaning subscribed to such term in the Restrictions.

SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST

- 1-A. Due Date. An Owner will timely and fully pay Assessments. Regular Assessments are assessed annually and are due and payable on the first calendar day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.
- 1-B. Delinquent. Any Assessment that is not fully paid when due is delinquent. When the account of an Owner becomes delinquent, it remains delinquent until paid in full – including collection costs, interest and late fees.
- 1-C. Late Fees & Interest. If the Association does not receive full payment of an Assessment by 5:00 p.m. on the due date established by the Board, the Association may levy a late fee of \$25 per month and/or interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1 and 1/2% per month) until paid in full.
- 1-D. Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorney's fees incurred by the Association in collecting the delinquency.
- 1-E. Insufficient Funds. The Association may levy a charge of \$25 for any check returned to the Association marked "not sufficient funds" or the equivalent.
- 1-F. Waiver. Properly levied collection costs, late fees, and interest may only be waived by a Majority of the Board.

SECTION 2. INSTALLMENTS & ACCELERATION

If an Assessment, other than a Regular Assessment, is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire Assessment in default and accelerate the due date on all remaining installments of the Assessment. An Assessment, other than a Regular Assessment, payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

SECTION 3. PAYMENTS

3-A. Application of Payments. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, any payment received by the Association shall be applied in the following order, starting with the oldest charge in each category, until that category is fully paid, regardless of the amount of payment, notations on checks, and the date the obligations arose:

(1) Delinquent assessments	(4) Other reasonable attorney's fees
(2) Current assessments	(5) Reasonable Fines
(3) Reasonable attorney fees and costs associated with delinquent assessments	(6) Any other reasonable amount

3-B. Payment Plans. The Association shall offer a payment plan to a delinquent Owner with a minimum term of at least three (3) months and a maximum term of twelve (12) months from the date the payment plan is requested for which the Owner may be charged reasonable administrative costs and interest. The Association will determine the actual term of each payment plan offered to an Owner in their sole and absolute discretion, but such term shall not be longer than eighteen (18) months. An Owner is not entitled to a payment plan if the Owner has defaulted on a previous payment plan in the last two (2) years. The Association is not required to make a payment plan available to a Member after the Delinquency Cure Period allowed under Paragraph 5-B expires. If an Owner is in default at the time the Owner submits a payment, the Association is not required to follow the application of payments schedule set forth in Paragraph 3-A.

3-C. Form of Payment. The Association may require that payment of delinquent Assessments be made only in the form of cash, cashier's check, or certified funds.

3-D. Partial and Conditioned Payment. The Association may refuse to accept partial payment (*i.e.*, less than the full amount due and payable) and payments to which the payer 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 refund the payment to the payer. A payment that is not 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 to continue pursuing its remedies for payment in full of all outstanding obligations.

- 3-E. Notice of Payment. If the Association receives full payment of the delinquency after Recording a notice of lien, the Association will cause a release of notice of lien to be publicly Recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and Recording the release.
- 3-F. Credit Reporting. If the Association reports any delinquency, including delinquent fines, fees, or assessments, to a credit reporting service, the Association must first send the owner, via certified mail, hand delivery, or electronic delivery, a notice that includes: (i) a detailed report of all delinquent charges owed; and (ii) information about the opportunity to enter into a payment plan. Notice of the intent to report the delinquency may be combined with the 45-day notice set forth in *Paragraph 5-B* below. The Association or its agent may not report any delinquent fines, fees, or assessments to a credit reporting service that are the subject of a pending dispute between the owner and the Association. In addition to the foregoing requirements, the notice must be sent at least thirty (30) business days before the report is made. No fee may be charged back to the owner for the cost of the actual reporting of the delinquency to the credit reporting service. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

SECTION 4. LIABILITY FOR COLLECTION COSTS

- 4-A. Collection Costs. The defaulting Owner may be liable to the Association for the cost of title reports, certified mail, long distance calls, filing fees and other reasonable costs and attorney's fees incurred in the collection of the delinquency.

SECTION 5. COLLECTION PROCEDURES

- 5-A. 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 Association's Manager, an attorney, or a debt collector.
- 5-B. Delinquency Notices. If the Association has not received full payment of an Assessment by the due date, the Association may send written notice of nonpayment to the defaulting Owner, by certified mail, stating: (a) the amount delinquent and the total amount of the payment required to make the account current, (b) the options the Owner has to avoid having the account turned over to a collection agent, as such term is defined in Texas Property Code Section 209.0064, including information regarding availability of a payment plan through the Association, and (c) that the

Owner has forty-five (45) days for the Owner to cure the delinquency before further collection action is taken (the "Delinquency Cure Period"). The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.

- 5-C. Verification of Owner Information. The Association may obtain a title report to determine the names of the Owners and the identity of other lien-holders, including the mortgage company.
- 5-D. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-E. Notification of Mortgage Lender. The Association may notify the Mortgage lender of the default obligations.
- 5-F. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.
- 5-G. Collection by Attorney. If the Owner's account remains delinquent for a period of ninety (90) days, the Manager of the Association or the Board of the Association shall refer the delinquent account to the Association's attorney for collection. In the event an account is referred to the Association's attorney, the Owner will be liable to the Association for its legal fees and expenses. Upon referral of a delinquent account to the Association's attorney, the Association's attorney will provide the following notices and take the following actions unless otherwise directed by the Board:
- (1) Initial Notice: Preparation of the Initial Notice of Demand for Payment Letter. If the account is not paid in full within 45 days (unless such notice has previously been provided by the Association), then
 - (2) Lien Notice: Preparation of the Lien Notice and Demand for Payment Letter and Recordation of a Notice of Unpaid Assessment Lien. If the account is not paid in full within 30 days, then
 - (3) Final Notice: Preparation of the Final Notice of Demand for Payment Letter and Intent to Foreclose and Notice of Intent to Foreclose to Lender. If the account is not paid in full within 30 days, then
 - (4) Foreclosure of Lien: Only upon specific approval by a majority of the Board.
- 5-H. Notice of Lien. The Association's attorney may cause a notice of the Association's Assessment lien against the Owner's home to be publicly Recorded. In that event, a copy of the notice will be sent to the defaulting Owner, and may also be sent to the Owner's Mortgagee.
- 5-I. Cancellation of Debt. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.

- 5-J. Suspension of Use of Certain Facilities or Services. The Board may suspend the use of the Common Area amenities by an Owner, or his tenant, whose account with the Association is delinquent for at least thirty (30) days.

SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, Manager, and attorney of the Association may exercise their independent, collective, and respective judgment in applying this policy.
- 6-B. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect Assessments under the Restrictions and the laws of the State of Texas.
- 6-C. Limitations of Interest. The Association, and its officers, directors, Managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Restrictions or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Assessments, or reimbursed to the Owner if those Assessments are paid in full.
- 6-D. Notices. Unless the Restrictions, applicable law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed delivered to the Owner upon depositing same with the U.S. Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that an Owner's property is owned by two (2) or more persons, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one resident is deemed notice to all residents. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent, or attorney.
- 6-E. Amendment of Policy. This policy may be amended from time to time by the Board.