

**THE HILLS AT FIREWHEEL ESTATES
HOMEOWNERS ASSOCIATION, INC.**

**Collections and Payment Plan Policy
(October 2012)**

WHEREAS, The Hills at Firewheel Estates Homeowners Association, Inc. ("Association") has authority pursuant to the (i) DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HILLS AT FIREWHEEL ESTATES, recorded on February 15, 1999, as Instrument No. 199900472012, Volume 99030, Page 03535 *et seq.* of the in the Real Property Records of Dallas County, Texas, and recorded on February 16, 1999, as Instrument No. 19990216000190440, Volume 4354, Page 0844 *et seq.* of the Official Public Records of Real Property of Collin County, Texas (the "Declaration"), as such may be amended and/or supplemented from time to time, and (ii) BYLAWS OF THE HILLS AT FIREWHEEL ESTATES HOMEOWNERS ASSOCIATION, INC., recorded on August 2, 2010, as Instrument No. 201000194415 of the Official Public Records of Dallas County, Texas and recorded on August 16, 2010, as Instrument No. 20100816000849240 of the Official Public Records of Collin County, Texas, (the "Bylaws"), as such may be amended and/or supplemented from time to time, to levy assessments against Owners of the lots (herein the "Lot" or "Lots") located within The Hills at Firewheel Estates (the "Development"); and

WHEREAS, the Board of Directors (the "Board") finds there is a need to establish orderly procedures for the collection of and payment of assessments levied against Lots, as well as any other debts owed to the Association, that remain unpaid beyond the prescribed due dates and the application of the payments made by Owners in order to encourage Owners to promptly pay their assessment obligations and/or any other obligations; and

WHEREAS, pursuant to the Declaration and Bylaws the Board has the right to enforce the provisions of the Declaration including, without limitation, the right to assess and collect annual and special assessments from the Owners.

NOW, THEREFORE, IT IS RESOLVED that the following procedures and practices are established for the collection of assessments and any and all payment obligations owing and to become owing by Owners in the Development, known as the "Collections and Payment Plan Policy" for the Association in the discharge of its responsibilities regarding collection of assessments, or any other charge, against Lots and the availability of payment plans to such Lots:

1. Policy Objectives. The collection of and payment of assessments, or any other charge, pursuant to the Declaration, Bylaws and this Collections and Payment Plan Policy will be governed by the following objectives:

- a. The Association will pursue collection of all assessments, including annual and special assessments, and/or any other charges, coming due.
- b. At each step within the collection process, the Board will analyze the facts and circumstances then known concerning a given delinquency to direct collection efforts toward the most expedient course of action.

2. Ownership Interests. Pursuant to Article II, Section 2 of the Declaration, the person who is the Owner of a Lot is personally liable for the payment of that assessment and/or other financial obligation(s). As used herein, the term "Delinquent Owner" refers to that person who held title to a Lot on the date an assessment, or other debt to the Association, became due. As used herein, the term "Current Owner" refers to that person who holds title to a Lot on the date relevant to the reference herein to such person. 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.

3. Due Dates. The due date for annual assessments shall be established from time to time by the Board of Directors. Annual assessments shall be assessed at a uniform rate and the rate at which each Lot will be assessed will be determined by the Board at least thirty (30) days in advance of each assessment period, pursuant to Article II, Section 3(a) of the Declaration. Annual assessments shall be due by January 31st of each year. Owners will have a grace period until February 15 to pay the annual assessment. The maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership of the Association, as provided in the Bylaws, pursuant to Article II, Section 3(a) of the Declaration.

The due date for a special assessment shall be the date stated in the notice of assessment, but if no date is stated in the notice of assessment, such shall be due within ten (10) days after the notice of the assessment is given. The due date for the annual and special assessments shall be collectively referred to in this Collections and Payment Plan Policy as the "Due Date". Any assessment which is not received by the Association on or before the Due Date is delinquent (the "Delinquency Date").

4. Required Notices and Correspondence.

Late Notice. After fifteen (15) days following the Due Date, the Association will send a reminder (referred to as the "Late Notice") to the Owner reminding the Owner that an assessment(s) is past due and requesting immediate payment.

Warning. In the event that any Owner has an outstanding balance at year-end, the Association will send another reminder (referred to as the "First Warning") to the Owner reminding the Owner that if the delinquency is not cured in full, including interest, if any, and/or other charges then owing, then any outstanding balance will be due and payable in full, in addition to the new assessment for the following year, by January 31 of the new assessment year.

Final Delinquency Notice. If full payment for the past due assessments, including interest, if any, and/or other charges then owing to the Association, in addition to the assessments due for the new year, are still not received within approximately 30 days of the First Warning letter, a final notice (referred to as the "Final Delinquency Notice") will be sent to the Owner and will make a formal demand for immediate payment for all outstanding amounts.

The Final Delinquency Notice will be sent via certified mail, return receipt requested, and first-class United States mail, and will include the following information:

- a. The Final Delinquency Notice will specify each delinquent amount (the unpaid assessments, interest, late charges, handling charges, and any other debts owed to the Association) incurred.
- b. The Final Delinquency Notice will also specify the total amount of the payment required to make the account current.
- c. The Final Delinquency Notice 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 Final Delinquency Notice will inform the Owner that: (i) if the delinquency is not cured in full, including all accrued interest and other charges then owing, within thirty (30) days of the date of the Final Delinquency Notice , or (ii) if the Owner has not entered into a payment plan with the Association, within thirty (30) days of the date of the Final Delinquency Notice , 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.

5. Late Charges. Pursuant to Article II, Section 4 of the Declaration, in the event that an Owner becomes delinquent in the payment of any assessment to the Association, a late charge in an amount determined and established from time to time by the Association, shall be assessed against the non-paying Owner for each month, or portion thereof, that any portion of an assessment remains unpaid. Such late charge, as and when levied, will become part of the assessment upon which it has been levied and, as such, will be subject to recovery in the manner provided herein for assessments. The Board may, in its sole discretion, waive the collection of any late charge; provided, however, that the waiver of any late charge shall not constitute a waiver of the Board's right to collect any future assessments or late charges. The Board has set the current late charge at \$50.00. Late charges, if levied, will be levied on approximately February 16, April 16, July 16, and September 16.

6. Interest. Pursuant to Article II, Section 4 of the Declaration, any assessment not paid within ten (10) days after the Due Date, at the Board's discretion, shall bear interest from the due date at the highest non-usurious rate of interest allowed by Texas law or 18% per annum, whichever is less, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot. Such interest, as and when it accrues, will become part of the assessment upon which it has accrued and, as such, will be subject to recovery in the manner provided herein for assessments.

7. Handling Charges and Return Check Fees. In order to recoup for the Association the costs incurred because of the additional administrative expenses associated with collecting delinquent assessments, collection of the following fees and charges are part of the Collections and Payment Plan 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 of \$25.00 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 7 will be 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.

8. Application of Funds Received. 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.

If, at the time the Association receives a payment from the Current Owner, the Current Owner is in default under a payment plan entered into with the Association:

- a. The Association is not required to apply the payment in the order of priority specified by Subsections "a.-f." above; and
- b. In applying the payment, a fine assessed by the Association may not be given priority over any other amount owed to the Association.

9. 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, the Bylaws and this Collections and Payment Plan Policy 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.

10. Notification of Owner's Representative. If an Owner has notified the Association via a written communication (such does not include email), signed by the Owner and sent to the Association's management company ("Management Company"), that his interests are being handled by a representative or agent of such Owner, any notice or communication from the Association pursuant to this Collections and Payment Plan Policy will be deemed full and effective for all purposes if given to such representative or agent.

11. Mortgagee Notification. The Association may, at its option, or as may be required by the Declaration or by law, notify any mortgagee of a Lot of the existence and extent of the delinquency of an Owner. The Owner will be informed in writing that its mortgagee has been so notified.

12. Payment Plans. In order to assist Owners in remedying delinquencies and remaining current on the payment of amounts owed to the Association, Owners may request and then make partial payments to the Association for amounts owed without accruing additional penalties. The Association hereby adopts the following payment plan policy.

- a. Eligibility. To be eligible for a payment plan pursuant to the Association's alternate payment plan schedule, an Owner must meet the following criteria:
 - (i) The Owner must currently be delinquent in the payment of regular assessments, special assessments, or any other amounts owed to the Association;
 - (ii) The Owner must not have defaulted on a prior payment plan within the prior two (2) year period; and
 - (iii) The Owner must submit a signed payment plan as defined below, along with the Owner's initial payment to the address designated by the Association for correspondence, which currently is: Excel Association Management, P.O. Box 941169, Plano, Texas 75094.
- b. Payment Plan Schedule/Guidelines. The Association hereby adopts the following alternate payment guidelines and makes the following payment plan schedule available to Owners in order to make partial payments for delinquent amounts owed:
 - (i) Requirements of Payment Plan Request. Within thirty (30) days of the date of the Default Letter set forth in Paragraph 4 above, which informs the Owner

of the right to request a payment plan, an Owner must submit a signed acceptance of the payment plan schedule described below to the Management Company.

- (ii) Term. The term of the payment plan is four (4) months.
- (iii) Date of Partial Payments under Plan. The Owner must submit an initial payment at the time of the submission of the Owner's payment plan request. Such submission must be signed by all Owners of the Lot. The initial payment must be in an amount equal to twenty-five percent (25%) of the delinquent amount owed.

Thereafter, the Owner must make all additional monthly installments under the payment plan agreement in equal amounts commencing on 1st day of the month following the expiration of 30 days after the date of the execution of the payment plan agreement.

The Owner may pay off, in full, the balance under the payment plan at any time. All payments must be received by the Association at the Association's designated mailing address or lock box for all payments. Payments may be made through auto draft bill payment, by check or certified funds.

- (iv) Correspondence. Any correspondence to the Association regarding the amount owed, the payment plan, or such similar correspondence must be sent to the address designated by the Association for correspondence. Such correspondence shall not be included with an Owner's payment.
- (v) Amounts Coming Due During Plan. Owners are responsible for remaining current on all assessments and other charges coming due during the duration of the Owner's payment plan and must, therefore, timely submit payment to the Association for any amounts coming due during the duration of the Owner's payment plan.
- (vi) Additional Charges. An Owner's balance owed to the Association shall not accrue late fees or other monetary penalties (except interest, should the Board desire to charge an Owner for such) while such Owner is in compliance with a payment plan under the Association's alternate payment plan schedule.

Owners in a payment plan are responsible for reasonable costs associated with administering the plan, and for interest on the unpaid balance, calculated at the highest rate allowed by the governing documents or by law.

The costs of administering the plan and interest shall be included in calculating the total amount owed under the payment plan and will be included in the payment obligation. The costs of administering the payment plan includes the charge for preparation and creation of the plan, as well as

a monthly monitoring fee. The cost for the above is a one time charge of \$40.00.

- (vii) Other Payment Arrangements. At the discretion of the Board of Directors, and only for good cause demonstrated by an Owner, the Association may accept payment arrangements offered by Owners which are different from the above-cited guidelines, provided that the term of payments is no less than three (3) months nor longer than eighteen months.

The Association's acceptance of payment arrangements that are different from the approved payment plan schedule/guidelines hereunder shall not be construed as a waiver of these guidelines nor authorize an owner to be granted a payment plan which differs from the one herein provided.

- c. Default. If an Owner fails to timely submit payment in full of any installment payment (which installment payment must include the principal owed, the administration fees assessed to the plan and interest charges, with such interest charges being at the Board's discretion), or fails to timely pay any amount coming due during the duration of the plan, the Owner will be in default. If an Owner defaults under a payment plan, the Association may proceed with collection activity without further notice. If the Association elects to provide a notice of default, the Owner will be responsible for all fees and costs associated with the drafting and sending of such notice. In addition, the Owner is hereby on notice that he/she will be responsible for any and all costs, including attorney's fees, of any additional collection action which the Association pursues.
- d. Board Discretion. Any Owner who is not eligible for a payment plan under the Association's alternate payment plan schedule may submit a written request to the Board for the Association to grant the Owner an alternate payment plan. Any such request must be directed to the person or entity currently handling the collection of the Owner's debt (i.e. the Management Company or the Association's attorney). The decision to grant or deny an alternate payment plan, and the terms and conditions for any such plan, will be at the sole discretion of the Association's Board of Directors.

13. Referral to Legal Counsel. If the delinquency is not cured in full, including all accrued interest, at the Board's discretion, and other charges then owing, such as, late fees, administrative fees, and other charges, within thirty (30) days of the date of the Default Letter, or (ii) if the Owner has not entered into a payment plan with the Association, within thirty (30) days of the date of the Default Letter (as provided for in 4 above), the 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 Collections and Payment Plan 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 Courses. At each step in the collection process the Board, acting with input and recommendations from its Management Company and counsel, will evaluate which course of legal action appears to be in the best interest of the Association for recovery of unpaid assessments. Such legal action may include, but is not limited to, pre-judgment and post-judgment garnishment of rents, bank accounts and other debts (to the extent permitted by applicable law), foreclosure of the Association's assessment lien, and/or pursuit of a personal judgment against the Delinquent Owner, including but not limited to pursuit of such in small claims or justice court. 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 Collections and Payment Plan Policy are followed.
- b. Demand Letter. As the initial correspondence to a Delinquent Owner, counsel will send a demand letter (the "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 or as may be allowed by law, as may be determined from time to time by the Board of Directors.
- c. Title Search. 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, order a search of the land records to determine a current ownership of the Lot on which the delinquency exists. If the title report indicates that the Current Owner is other than the Delinquent Owner, counsel will communicate that fact to the Association. A determination will then be made by the Board whether to pursue collection of the unpaid assessments from the Delinquent Owner or the Current Owner or both. Based on that determination, the Board and/or Management will direct counsel to proceed according to this Collections and Payment Plan Policy. Where the title report confirms that the Current Owner is the Delinquent Owner, the Association, Management and counsel will likewise proceed according to this Collections and Payment Plan Policy.
- d. Notice of Lien. Where the Board has determined that foreclosure of the Association's assessment lien is to be pursued, if an Owner fails to pay in full any amounts owing, counsel, upon being requested to do so by the Board and/or Management Company, will cause to be prepared and executed, and recorded in the county records, a written notice of lien (referred to as the "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 County Clerk's office, together with an additional demand for payment in full of all amounts then outstanding, within thirty (30) days of the date of the transmittal to the Owner of the Notice of Lien.

- (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.
 - (ii) Notice will also be provided to holder of an outstanding valid and subsisting first mortgage lien by giving the holder of such first mortgage sixty (60) days written notice of the Association's intent to enforce its lien, and such notice shall be sent to the nearest office of the lienholder by prepaid U.S. registered mail, and shall contain a statement of the delinquent maintenance charges upon which the proposed action is based.
- e. Non-judicial foreclosure. When the Board has directed, or as may be allowed by law, that the collection action to be taken is non-judicial foreclosure of the assessment lien, upon the expiration of the time period given in the demand letter accompanying the Notice of Lien, the continued delinquency of unpaid assessments owing will be reported to the Board by the Management Company (if any), together with all pertinent facts concerning the delinquency and the ramifications of the proposed foreclosure of the Lot. As soon as practical thereafter, the Board and/or the Management Company (if any) will direct counsel to initiate non-judicial foreclosure of the Lot, pursuant to Article II, Section 4 of the Declaration and the provisions of State law regulating non-judicial foreclosure sales. In any foreclosure proceedings, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. 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.
- f. Judicial Foreclosure or Personal Judgment Suit. When the Board has directed that the collection action to be taken is a suit for personal judgment against the Owner and/or for foreclosure of the assessment lien, upon the expiration of the time period given in the demand letter accompanying the Notice of Lien, or the most recent demand for payment from counsel as the case may be, the continued delinquency of unpaid assessments owing will be reported to the Board by the Management Company (if any), together with all pertinent facts concerning the delinquency and

the ramifications of the proposed foreclosure of the Lot. As soon as practical thereafter, the Board and/or the Management Company will direct counsel to initiate legal proceedings in a court of competent jurisdiction seeking foreclosure of the assessment lien and/or recovery of a personal judgment against the Current Owner and, where different, the Delinquent Owner, or from the Current Owner only, for all amounts owing arising from the unpaid assessments and the collection thereof, including all attorney's fees and costs.

15. Verification of Indebtedness. For so long as the collection of assessments may be subject to the requirements of the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*) (the "FDCPA") and the Texas Debt Collection Act (Tex. Rev. Civ. Stat., art 5096 *et seq.*) (the "TDCA"), all communications from legal counsel will include such required notices as are prescribed by the FDCPA and the TDCA. Furthermore, where an Owner requests verification of the indebtedness, the Management Company (if any) 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 and the TDCA to the extent such acts may apply.

16. Compromise of Assessment Obligations. 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 assessment, interest, late charge, handling charge, finance charge, legal fee or any other applicable charge. The Association may, at its option, notify the Internal Revenue Service of the waiver or forgiveness of any assessment obligation.

17. Credit Bureaus. The Association may also notify any credit bureau of an Owner's delinquency. The Association will notify the Owner that it has filed such a report and will comply with any local, state, or federal laws in connection with the filing of such report.

18. Active Military Duty. Please take note that you 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 501 *et seq.*), if you are serving on active military duty. If this provision applies to you, please notify the Association and/or its representatives and agents.

IT IS FURTHER RESOLVED that this Collections and Payment Plan Policy replaces and supersedes in all respects all prior policies and resolutions with respect to the collection of assessments and any other fees, costs, and/or fines by the Association and is effective upon adoption hereof, to remain in force and effect until revoked, modified or amended.

IT IS FURTHER RESOLVED that the Board and/or Management Company may seek legal advice related to collection enforcement, and it is entitled to follow the advice of legal counsel, even if it deviates from the above processes, so long as such complies with all relevant law relating to collection activities.

IT IS FURTHER RESOLVED that the purpose of the payment plan portion of this policy is to satisfy the legal requirements of Section 209.0062 of the Texas Property Code. 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.