

### III. ASSESSMENT COLLECTION POLICY

Milestone Southpark Condominiums is a condominium regime created by and subject to the Declaration of Condominium Regime for Milestone Southpark Condominiums, recorded or to be recorded in the Official Public Records of Travis County, Texas County, Texas, as it may be amended (the "Declaration"). As a condominium regime, Milestone Southpark Condominiums is also subject to State laws, including Chapter 82 of the Texas Property Code – the Texas Uniform Condominium Act ("TUCA"). The operation of Milestone Southpark Condominiums is vested in the Milestone Southpark Condominium Community, Inc. (the "Association"), acting through its board of directors (the "Board"). The Association is empowered to enforce the covenants of the Declaration, including the obligation of owners to pay assessments. In addition to rights and remedies of the Association under the Declaration, TUCA gives the Association, acting through the Board:

1. Authority to adopt and amend rules regulating the collection of delinquent assessments and the application of payments. §82.102(a)(13).
2. Authority to impose interest and late charges for late payments of assessments, and returned check charges. §82.102(a)(12).
3. Authority to adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility. §82.102(a)(14).
4. Authority to suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments. §82.102(a)(18).
5. A private power of sale to foreclose the assessment lien nonjudicially, subject to a limited right of redemption by the unit owner. §82.113.

To establish equitable policies and procedures for the collection of delinquent assessments, the declarant adopts this policy for the benefit of the Association, as part of the initial project documentation.

#### SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST

- 1-A. Due Date. An owner will timely and fully pay regular assessments and special assessments. Regular assessments are due and payable on the first calendar day of each month.
- 1-B. Delinquent. Any assessment that is not fully paid when due is delinquent. When the account of a unit becomes delinquent, it remains delinquent until paid in full – including collection costs and late fees.

- 1-C. Late Fees & Interest. If the Association does not receive full payment of a regular assessment by 5:00 p.m. on the fifth calendar day of the month, the Association may levy a late fee of \$25 per month and/or interest of ten percent (10%) per annum from the first day of delinquency until the delinquency is paid in full. After the initial month of delinquency, a late fee of \$25 may be on the first day of each month the account is delinquent until the account is current.
- 1-D. Liability for Collection Costs. The defaulting owner is liable to the Association for the cost of title reports, credit 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.

**DRAFTER'S DICTUM**

*Users of this document should periodically review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by this document.*

- 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 not be waived by the Board, unless a majority of the directors determines that extraordinary circumstances warrant an adjustment to the account, in which case the adjustment must be described in detail in the minutes of the Board's meeting. Because of the potential for inadvertently effecting a waiver of the policies contained in this policy, the Board will exercise caution in granting adjustments to an owner's account.

**SECTION 2. INSTALLMENTS & ACCELERATION**

If a special 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 that assessment. A special 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 may 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) Collection costs and attorneys fees | (8) Delinquent Utility assessments  |
| (2) Fines                               | (9) Delinquent Regular assessments  |
| (3) Reimbursable expenses               | (10) Current Individual assessments |
| (4) Late charges and interest           | (11) Current Deficiency assessments |
| (5) Delinquent Individual assessments   | (12) Current Special assessments    |
| (6) Delinquent Deficiency assessments   | (13) Current Utility assessments    |
| (7) Delinquent Special assessments      | (14) Current Regular assessments    |

3-B. 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-C. 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 unit'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-D. 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-E. Correction of Credit Report. 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

The defaulting owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees, and other reasonable costs and attorney's fees incurred in the collection of the delinquency, which amounts are secured by a lien against the unit.

## 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 managing agent, 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 one or more written notices of nonpayment to the defaulting owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. 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. Collection by Attorney. After giving the owner notice of the delinquency, the Association may refer the delinquent account to an attorney for collection. In that event, the defaulting owner will be liable to the Association for its legal fees and expenses.
- 5-D. Verification of Owner Information. The Association may obtain a title report to determine the names of the owners and the identity of other lienholders, including the mortgage company.
- 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. Notice of Lien. The Association may cause a notice of the Association's assessment lien against the unit to be publicly recorded. In that event, a copy of the notice will be sent to the defaulting owner, and may be sent to his mortgage holder.
- 5-H. Foreclosure of Lien – Nonjudicially. The Board may instruct an attorney, officer, or agent of the Association to notify the defaulting owner of the Association's intent to foreclose its assessment lien, to post the property for public auction, and to conduct a public auction of the unit on the steps of the county courthouse in accordance with State law and the Association's documents. The Board may not foreclose a lien consisting solely of fines or securing money for which the Association has obtained a personal money judgment.
- 5-I. Foreclosure of Lien – Judicially. The Association may file suit against the owner for judicial foreclosure of the Association's assessment lien. This action may be combined with a claim against the owner's personal liability, for recovery of a money judgment.

- 5-J. Suit for Owner's Personal Liability. Whether or not the Association forecloses the Association's assessment lien, the Board may file suit for a personal judgment against the defaulting owner, and may execute on the judgment.
- 5-K. Possession Following Foreclosure. If the Association purchases the unit at public auction, the Board may immediately institute actions to recover possession.
- 5-L. Limited Right of Redemption. If the Association buys a unit at the nonjudicial foreclosure sale of its assessment lien, the Association's ownership is subject to a ninety (90) day right of redemption by the owner. TUCA's statutory right of redemption does not apply to judicial foreclosures or foreclosures of judgment liens.
- 5-M. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-N. 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-O. Suspension of Voting Rights. The Association may suspend the voting rights of an owner whose account with the Association is delinquent for at least thirty (30) days.
- 5-P. Suspension of Use of Certain Facilities or Services. The Association may suspend the use of the common element amenities by an owner, or his tenant, whose account with the Association is delinquent for at least thirty (30) days.
- 5-Q. Utility Shut-Off. The Association may terminate utility service to the unit for which assessments used to pay the cost of that utility are delinquent, according to the Association's utility shut-off policy.

## SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, manager, and attorney of the Association will 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 Association's Documents 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 Documents 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 special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

- 6-D. Notices. Unless the Documents, State 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 a unit is owned by two (2) or more persons, notice to one (1) co-owner is deemed notice to all co-owners. Similarly, notice to one (1) 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. Definitions. Words and phrases used in this policy have the same meanings given to them by the Declaration.