

**BUFFALO CREEK SUBDIVISION AT WELLINGTON
HOMEOWNERS ASSOCIATION
POLICY FOR COLLECTION OF UNPAID ASSESSMENTS
Effective: August 9, 2022**

1. **Introduction.** The Board of Directors ("**Board**") of Buffalo Creek Subdivision at Wellington Homeowners Association, a Colorado nonprofit corporation ("**Association**"), acting pursuant to the powers set forth in the Association's Bylaws, Articles of Incorporation, the Declaration of Protective Covenants, Conditions and Restrictions for Buffalo Creek Subdivision at Wellington (a Common Interest Limited Expense Planned Community), as amended ("**Declaration**") (such documents being collectively referred to as the "**Association Documents**"), and the Colorado Common Interest Ownership Act, as amended ("**CCIOA**"), has enacted the following Policy effective as of the date set forth above. Unless the context otherwise indicates, capitalized words and terms shall have the meanings set forth in the Association Documents and, if not defined in the Association Documents, then as set forth in CCIOA. This Policy supersedes any previously adopted Policy on the same subject matter.
2. **Policy Purpose.** The purpose of this Policy is to emphasize that collection of unpaid Assessments is an important part of governing the Association and such collection should be done in a uniform manner in accordance with the Association Documents and CCIOA, specifically as CCIOA has been amended by HB 22-1137. It is the intent of this Policy to provide a framework for the collection of past due Assessments in a timely and efficient manner.
3. **Collection of Unpaid Assessments.** To assist with the collection of unpaid Assessments in a timely and efficient manner, the Association shall do the following:
 - 3.1 **Due Date/Delinquent Payments.** Assessments are due upon the date specified by the Board. Any Assessment not paid within 10 days after its due date is considered past due and delinquent. A monthly late charge in the amount of \$25.00 will be assessed against the delinquent Owner. Daily late fees are prohibited. Furthermore, the Association may impose interest at any rate up to 8% per annum on past due Assessments from the date of delinquency.
 - 3.2 **Returned Payment Charge.** In addition to any other charges under the Association Documents and this Policy, if an Owner makes payment of Assessments to the Association by a check, ACH draft or other means which is not honored by the bank on which it was written or is returned by such bank for any reason whatsoever, including but not limited to insufficient funds, the Owner shall immediately pay the Association, as part of the Owner's Assessment, a reasonable returned payment charge not to exceed \$20.00.
 - 3.3 **Notice to Owner/Payment Plan.** If any Assessments are 30 days past due, and before the Association turns over a past due account over to a collection agency or an attorney for collection, the Association must contact the Owner, by written notice, regarding the delinquency. The required written notice must be delivered to the delinquent Owner by both certified mail, return receipt requested, and by posting on the

front door, or other conspicuous place, at the Owner's Unit or Lot. Additionally, the Association must also contact the Owner by one of the following means:

- 1st class mail;
- text message; or
- email.

The cost associated with posting the notice of delinquency shall be charged to the delinquent Owner.

The Association must keep a written record all attempts to contact an Owner regarding a delinquency, specifically including the date of each attempt, the time of each attempt, and the method by which Association made each attempt.

The Owner may designate another contact person for the Association to contact regarding any delinquency. Such designation shall be made in writing and sent to the Association. In such instance, the Association shall send the notice of delinquency to both the Owner and the Owner's designated contact person.

The Owner may designate that all notices regarding delinquency are to be in a language other than English. Such designation shall be made in writing and sent to the Association. In such case, the Association must provide the notice to the Owner in the preferred language as designated by the Owner and in English.

The delinquency notice to all Owners must include the following:

- An itemization of the past due balance, listing the past due amount broken down into past due assessments, fines, fees or other charges owed to the Association.
- That unless the Owner acquired the Owner's Unit or Lot through a foreclosure and does not occupy the Unit or Lot, the Owner will have an opportunity to enter into a payment plan that allows the Owner to pay off the past due amount in equal payments over eighteen (18) months, with monthly payments to be at a minimum \$25.00 per month. Under such a payment plan, the Owner will be required to make payment of the past due Assessments and also remain current with payment of the regular Assessments as they come due during the term of the payment plan. If the Owner does not comply with the payment plan, the Association can then pursue legal action against the Owner as set forth in this Policy.
- If the Owner enters into a payment plan, the Owner can pay the full past due amount at any time, without penalty.
- The contact information for the Association's property manager in the event the delinquent Owner wishes to enter into a payment plan or has any other questions about the amount owing to the Association.
- That action is required to cure the Owner's delinquency and if the Owner fails to do so within 30 days following the date of the Association's letter, the Owner's

past due account may be turned over to a collection agency or an attorney, a lawsuit may be filed against the Owner, a lien may be filed and foreclosed against the Owner's Unit or Lot if the delinquency is related to non-payment of Assessments, and the Association may pursue any other remedies available under Colorado law including the recovery of attorney fees and costs of collection.

- A description of the steps the Association must take before commencing legal action for collection of any unpaid assessments and a description of what legal action the Association may take to small claims court, including injunctive relief.

3.4 Owner's Failure to Respond or Comply with Repayment Plan. If after 30 days of the delinquency notice being sent to any delinquent Owner the Owner has not responded or has declined the offer of the eighteen (18) month repayment period, the Association may commence collection pursuant to Section 3.7 below.

If the Owner enters into a repayment plan of any length, should the owner fail to make any three (3) of the agreed upon monthly payments within fifteen (15) days of their due date or fails to pay three (3) regular assessments within fifteen (15) days of their due date then the Association may commence the collection process pursuant to Section 3.7 below.

3.5 Monthly Notice of Delinquency. The Association shall send monthly notices to all Owners with an outstanding balance. The monthly notices shall be sent via 1st class mail and email, if Owner provided the Association in writing with Owner's email address and shall include an itemized listing of the past due amount broken down into past due assessments, fines, fees or other charges owed to the Association. The monthly notice shall be sent to the Owner in English and such other preferred language as designated by the Owner. The Association shall not charge any Owner for an account statement showing the total amount the Owner owes.

3.6 Application of Payments on Delinquent Accounts. All payments received with regard to a delinquent Owner's account shall be applied in the following order:

3.6.1 Past due assessments;

3.6.2 Outstanding fines;

3.6.3 Association's attorneys' fees and costs and expenses of enforcement and collection;

3.6.4 Late charges and interest (if any);

3.6.5 Returned check charges; and

3.6.6 Other costs owing under the Association.

3.7 Collection Remedies. Before a delinquent Owner can be sent to a collection agency or to an attorney for collection, the majority of the Association's Board of

Directors must vote to take such action with regard to the delinquent Owner in an open Board of Director's meeting to which the delinquent Owner is invited to attend and in compliance with the Association's Conduct of Meetings Policy. The Board shall record its vote. The Association's Manager may not commence any collection action without first obtaining the approval of the Association's Board as set forth above. Discussion of the delinquency shall be in executive session pursuant to the Association's Conduct of Meetings Policy.

In the event payment is not received from any delinquent Owner within 30 days after the date of the Association's letter referenced above, the Association may pursue any one or all of the following remedies:

3.7.1 File an Assessment lien against the delinquent Owner's property;

3.7.2 Commence and maintain legal proceedings (lawsuits seeking personal judgments and foreclosure actions) for the recovery of delinquent Assessments, late fees, interest, attorney fees and costs as may be allowed by the Association Documents or CCIOA (foreclosure actions may not be initiated for unpaid fines, interest or late fees alone);

3.7.3 Pursue collection of judgments obtained against Owner;

3.7.4 Take all other lawful action necessary to collect delinquent Assessments in accordance with the Association Documents and Colorado law; and

3.7.5 Suspend the voting rights of the delinquent Owner during the duration of the delinquency.

If the Association fails to follow the procedures set forth above it shall not be construed as any waiver or release of a delinquent Owner's obligation to pay Assessments or the Association's right to collect the Assessments in accordance with this Policy, the Association Documents and CCIOA.

Should the Association pursue foreclosure of its assessment lien, no member of the Association's Board of Directors, the Association's Manager, or any of the Manager's employees, or the Association's legal representative or any member of said law firm, or any family member of any of the preceding, shall be permitted to purchase a foreclosed home or unit.

4. **Enforcement.** Either the Association or an Owner seeking to enforce this Policy, or any rights and responsibilities under the Governing Documents or this Policy related to disputes arising out of assessments, fines or fees owed to the Association and for which the amount does not exceed \$7,500.00, exclusive of interest and costs, may file a claim in Small Claims Court for such enforcement, including injunctive relief.

5. **Violation of Foreclosure Laws.** Should the Association violate this Policy, or any law of the State of Colorado with regard to foreclosure, the affected Owner may, within five (5) years of the violation, file a civil lawsuit in a court of competent jurisdiction to seek damages. The court

may award up to \$25,000.00, plus costs and reasonable attorney fees, if the Owner proves the violation by a preponderance of the evidence.

6. **Association's Attorney Fees and Costs.** Any delinquent Owner shall be responsible for attorney fees and costs incurred by the Association in the collection of past due Assessments pursuant to this Policy, the Association Documents and CCIOA. No attorney fees shall be assessed to any delinquent Owner until all notice requirements set forth in this Policy have been complied with. Where litigation is filed to collect past due Assessments, the Court shall determine the reasonableness of all attorney fees and costs.

7. **Foreclosure and Bankruptcy Notices.** If the Association receives any bankruptcy or foreclosure notice regarding an Owner with unpaid Assessments, the Association may seek advice from its attorney regarding the appropriate action to be taken.

8. **Variances.** The Board may from time to time vary from the requirements set forth in this Policy if the Board determines in its sole discretion that such variance is reasonable under the circumstances.

9. **Amendment.** This Policy may be amended from time to time by the Board.

CERTIFICATION

The undersigned, being the duly elected and acting President or Secretary of the Buffalo Creek Subdivision at Wellington Homeowners Association, a Colorado nonprofit corporation ("Association") certifies that the foregoing Policy for Collection of Unpaid Assessments was approved by the vote of a majority of the Association's Directors at a meeting of the Association's Board of Directors held on _____.

Buffalo Creek Subdivision at Wellington
Homeowners Association, a Colorado nonprofit
corporation

By: _____