THE CROSSING AT KENBERG PROPERTY OWNERS ASSOCIATION

COLLECTION POLICY AND PAYMENT PLAN GUIDELINES
(AMENDMENT ONE)

STATE OF TEXAS

COUNTY OF KENDALL

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the property encumbered by these Collection Policy and Payment Plan Guidelines (the "Guidelines") is that property covered by the Restrictions, Reservations and Covenants, and applicable Amendments, legally described as: Mountain Creek Section, platted at Volume 1, Pages 77-81, Map and Plat Records of Kendall County, Texas; River Forest Section, platted at Volume 1, Pages 82-87, Map and Plat Records of Kendall County, Texas; and, Hidden Lake Section, platted at Volume 1, Pages 100-115, Map and Plat Records of Kendall County, Texas, hereinafter collectively referred to as "The Crossing". The Restrictions, Reservations and Covenants are hereinafter referred to as the "RR&Cs' as same have been or may be amended from time to time and made subject to the authority of The Crossing at Kenberg Property Owners Association hereinafter referred to as the "POA";

WHEREAS, pursuant to Chapter 209 of the Texas Property Code, the Board of Directors (the "Board") of the POA hereby adopts these Guidelines for the purposes of establishing a uniform and systematic procedure to collect assessments, both annual and special, and other charges of the POA and identify the guidelines under which owners may request and alternative payment schedule for certain assessments; and

WHEREAS, the Board has determined that it is in the best interest of the POA to establish these Guidelines.

NOW, THEREFORE, BE IT RESOLVED, that the POA does hereby adopt the Guidelines, which shall run with the land and be binding on all owners and lots within The Crossing. These Guidelines replace any previous recorded or implemented guidelines that address the subjects contained herein.

I. ANNUAL AND SPECIAL ASSESSMENTS

A. All annual assessments are invoiced each fiscal year via regular mail to the most recent address of the owner according to the records of the POA and in accordance with procedures defined within the RR&Cs and By-Laws of the POA. Invoicing for special assessments is also defined in the RR&Cs and By-Laws of the POA. Non-receipt of an invoice by the property owner does not negate that the assessment is due or entitle the property owner to a deferral of collection costs with regard to delinquent assessments on the basis of such owner’s failure to receive notice. Each owner shall have the obligation to notify the POA in writing of any change in address, which notice shall become effective five days after such notice has been received by the POA Business Manager.

B. All annual assessments are due in accordance with the timelines defined in the By-Laws of the POA. Special assessments are due on the date set by the Board of Directors of the POA.
C. All assessments unpaid by the due date are considered delinquent.

A past due notice shall be sent via certified mail, return receipt requested and regular mail to each owner with a delinquent account itemizing all amounts due. The letter shall provide a reasonable, specific deadline of no less than thirty days by which the owner may pay before further collection action is taken. The letter shall also inform the owner that they may have the option to avoid having their account turned over to an attorney for collection, and inform the owner about the availability of a payment plan. The letter shall also advise the owner that they have thirty days from their receipt of the letter to request a hearing before the Board of Directors of the POA. Finally, the letter shall inform the owner that they 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.). The form of the notice letter is contained in Annex A attached.

D. Hearing: A hearing shall be granted if a written request for a hearing is received by the POA not more than thirty (30) days from the owner’s receipt of the POA delinquency letter. If a hearing is not requested within thirty (30) days from receipt of the delinquency letter, the owner’s use of recreational facilities and common properties may be suspended. If a hearing is requested within thirty (30) days from receipt of the delinquency notice, further collection procedures are suspended until the hearing process is completed. The Board shall set a hearing date to occur not later than thirty (30) days after receipt of owner’s request for a hearing, and shall notify the requesting party of that date no less than ten (10) days in advance. Either party may request a postponement, which shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of both parties. Further collection steps will be determined by the action of the Board.

II. PAYMENT PLAN

A. Payment Plan: A payment plan shall be available to any eligible owner with a delinquent annual or special assessment or any other amount owed to the POA without accruing additional monetary penalties. Monetary penalties do not include reasonable costs associated with administering the Payment Plan. Any Payment Plan submitted to the Business Manager of the POA must first be approved by the Board of the POA and a copy of the plan will be held in the POA records, as well as sending the owner a copy for future reference. A copy of the delinquent assessment Payment Plan Request Form, which may be amended from time to time, and on file with the Business Manager of the POA, is contained in Annex B.

1. The minimum term for the Payment Plan may be three (3) months, but may not be more than eighteen (18) months from the date of the owner’s request for a Payment Plan. The POA is not required to enter into a Payment Plan with an owner who failed to honor the terms of a previous payment plan during the preceding two years.

2. Upon receipt of any notice of a bankruptcy of an owner, the account may be turned over to the POA’s attorney so that the POA’s interests may be protected.

3. Except as provided in subsection 4 immediately below, a payment received by the POA shall be applied in the following order of priority:
a. Any delinquent assessment;
b. Any current assessment;
c. Attorney’s fees or third party collection costs incurred by the POA associated solely with assessments or other charge that can be the basis of foreclosure;
d. Attorney’s fees not subject to the “3.c” above;
e. Any other amount owed to the POA.

4. If/when an owner defaults on a Payment Plan, the remaining delinquent amount will become due in full and the POA may begin further collection action as set out immediately below in paragraph B. Any payment(s) received by the POA after such default of a Payment Plan shall be applied in the following order of priority:

a. Costs;
b. Attorney fees;
c. Delinquent assessments;
d. Current assessments;

As to each category identified in this subsection 4, payment shall be applied to the oldest charge first. The acceptance of a partial payment on an owner’s account does not constitute a waiver of the POA’s right to collect the full outstanding balance due on said owner’s account.

B. In the event there is a default on the Payment Plan, the POA shall notify the owner in writing of their default, inform them of their balance and provide them with a deadline to pay all amounts owed.

C. Delinquent assessments may be secured through any legal means available to the POA to include (but not limited to) a lien processed by the attorney of the POA and filed with the Clerk of Kendall County and potential foreclosure of the affected property. A copy of each lien processed shall be filed in the records of the POA and a copy shall be forwarded to the Property Owner concerned.

D. Payments returned for non-sufficient funds: an owner will be assessed a service fee for any check that is returned or automatic clearing house (ACH) debit that is not paid for any reason, including, but not limited to non-sufficient funds or stop payment order. The amount of the service charge assessed will be the customary amount charged.
CERTIFICATION

I hereby certify that, as President of The Crossing at Kenberg Property Owners Association, the foregoing Collection Policy and Payment Plan Guidelines was approved on the 15th day of September 2015, by a majority vote of the Board of Directors at a duly-called meeting.

DATED, this 15th day of September, 2015.

Neil Ciotola
President

STATE OF TEXAS

COUNTY OF KENDALL

BEFORE ME, on this day personally appeared Neil Ciotola, the President of The Crossing of Kenberg Property Owners Association, known by me to be the person whose name is subscribed to this Instrument, and acknowledged to me that he executed the same for the purposes herein expressed and in the capacity herein stated, and as the act and deed of said corporation.

Given under my hand and seal this the 15th day of September, 2015.

Notary Public – State of Texas

After Recording, Return To:
Tom L. Newton, Jr.
Allen, Stein & Durbin, P.C.
6243 IH-10 West, 7th Floor
San Antonio, Texas 78201
DEAR MR./MS. [NAME]:

On behalf of the Association, you are hereby respectfully notified that your assessment account has become seriously delinquent. You must pay the full amount shown above, or get into a payment plan, within thirty days of your receipt of this notice. The law requires that the Association give you the option of a payment plan to avoid becoming responsible for legal fees, unless you have defaulted on a previous payment plan in the last two years. If you want a payment plan and have not defaulted on a previous payment plan in the last two years, please contact this office to set up a payment plan. Otherwise, you need to pay the balance in full within thirty days of your receipt of this notice to avoid becoming responsible for legal fees.

You are entitled to a reasonable period to cure the violation and avoid any penalty unless you were given notice and a reasonable opportunity to cure a similar violation within the preceding six months. According to the records of the Association you [have not*/ have**] been given notice and a reasonable opportunity to cure a similar violation within the last six months.

*include: Therefore, you may cure this problem no later than [specify reasonable date within which to cure], and no further action will be taken. If you do not cure this problem by that date, then the Association will be forced to exercise its legal enforcement rights to address this situation. In addition, the Association may involve its legal counsel. If that occurs you may be held responsible for legal fees. Also, your right to use common areas may be suspended.

**include: Therefore, you are subject to immediate rights of enforcement against you by the Association. Your rights, and the rights of your family, tenants, and guests to use Association common recreation areas is hereby suspended (until your assessments and all late fees and collections costs are paid in full) or (for sixty days, or until you cure this deed violation, whichever comes first.]

[NAME]
[ADDRESS]
[CITY, STATE, ZIP]

RE: FINAL DELINQUENCY WARNING
[HOA Name]
[Property address]
$ - [balance owed]
You have a right to request a hearing before the Board of Directors to discuss and verify facts and to resolve the matter. Your request for a hearing must be made in writing, and it must be sent on or before 30 days after the date you receive this letter. If you do ask for a hearing then you will be provided with a hearing date in writing. One postponement of up to ten days is available to both you and the Board, if requested.

The Board of Directors may refer this matter to the Association’s legal counsel if this continues and is not taken care of by the deadline stated above. If that happens, the attorney's fees and costs will be charged to you.

You may have special rights or relief related to 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 that applies to you please let us know, and forward written proof that you are active duty military. If you do not do so we will assume that you have no such rights.

Please contact us if you wish to try to work this out. Thank you for your cooperation.
Annex B: Payment Plan Request Form according to The Crossing at Kenberg Property Owners Association Collection Policy and Payment Plan Guidelines

The Crossing at Kenberg Property Owners Association
Payment Plan Request Form

Property Owner Name: ____________________________ Date: ________________

Property Address: _______________________________________________________

Mailing Address (if different than above): __________________________________

Phone Number: _______________________________________________________

E-mail address (optional): _______________________________________________

How long of a payment plan are you requesting?

3-months to 18-months (specify months) __________________________ Per Month $

Total amount owed? $__________________(this amount will be verified by the POA Office)

Are you able to make an immediate payment: If so, how much: $__________________ I submit this application (with documentation) presenting my request for a payment plan to The Crossing at Kenberg POA Board of Directors. I understand this form does NOT represent acceptance of my proposed payment plan. I also understand that after review of my request, I will be notified within 30 days of the Board's decision and will be provided a copy of the Board approved payment plan. I acknowledge that this payment plan is in addition to the regular assessment billed annually as well as any special assessments that may be approved by the members of the POA.

Owner Signature__________________________________________________________

Return form to: The Crossing at Kenberg Property Owners Association
205 Hidden Lake Drive
Boerne, Texas 78006

Approved by the Board on ______

Business Manager

To check on the status of your request, contact The Crossing POA Manager at 830-336-2192
Filed & Recorded in:

KENDALL COUNTY
DARLENE HERRIN
COUNTY CLERK

09/18/2015  01:55PM

Document Number : 00296096
Total Fees : $50.00

Receipt Number - 59416
By Deputy: Paula Pfeiffer

This Document has been received by this Office for Recording into the Official Public Records.

We do hereby swear that we do not discriminate due to Race, Creed, Color, Sex or National Origin.

STATE OF TEXAS, COUNTY OF KENDALL
I hereby certify that this instrument was filed in File Number Sequence on the date and at the time stamped hereon and was duly recorded in the OFFICIAL RECORDS Records of Kendall County, Texas on

09/18/2015
DARLENE HERRIN, COUNTY CLERK
Kendall County, Texas

By: ________________________ Deputy