

**RESOLUTION  
OF  
ROXBOROUGH PARK FOUNDATION  
REGARDING POLICY AND PROCEDURES FOR COLLECTION OF UNPAID  
ASSESSMENTS**

**SUBJECT:** Adoption of a policy and procedure regarding the collection of unpaid assessments.

**PURPOSE:** To provide notice of the Foundation's adoption of a uniform and systematic procedure to collect assessments and other charges of the Foundation.

**AUTHORITY:** The Amended and Restated Protective Covenants ("Protective Covenants"), Articles of Incorporation and Bylaws of the Foundation and Colorado law.

**EFFECTIVE DATE:** JANUARY 21, 2019

**RESOLUTION:** The Foundation hereby adopts the following policy:

It is in the best interest of the Foundation to refer delinquent accounts promptly to an attorney for collection so as to minimize the Foundation's loss of assessment revenue. The Board of Directors has retained an attorney with experience in representing homeowner associations in collections and other matters. The Foundation hereby gives notice of its adoption of the following policies and procedures for the collection of assessments and other charges of the Foundation:

1. Due Dates. Delinquency Dates. Late Charges. and Interest.
  - (a) Annual Operation and Maintenance Assessment
    - (i) Annual Payment Option: The total annual Operation and Maintenance Assessment is due on January 1<sup>st</sup> of each year. The annual Operation and Maintenance Assessment shall be past due and delinquent if payment in full is not received in the Foundation's office by the close of business on February 1<sup>st</sup> of the year in which the assessment is due. The Foundation shall impose on a monthly basis a \$25.00 late charge for each Owner who fails to timely pay the Owner's annual Operation and Maintenance Assessment by February 1<sup>st</sup>. The Foundation shall impose interest from the date due at the rate of 18% per annum on the amount owed for each Owner who fails to timely pay their annual Operation and Maintenance Assessment by February 1<sup>st</sup>.
    - (ii) Quarterly ACH Payment Option: While the annual Operation and Maintenance Assessment is due on January 1st of each year, the Foundation's Board has decided to allow Owners to pay the Assessment on a quarterly basis. If an Owner opts to pay the Operation and Maintenance Assessment on a quarterly basis, the Owner shall complete a form authorizing quarterly payment via Automated Clearing House ("ACH").

One-fourth of the annual Operation and Maintenance Assessment shall be withdrawn from the Owner's ACH account after the 1<sup>st</sup> day and before the 10th day of January, April, July, and October of the year in which the assessment is due. An administrative fee of \$15.00 shall be charged to the Owner for each quarterly payment. Any quarterly payment not paid on or before the withdrawal date shall incur a late charge of \$75.00. Additionally, any quarterly ACH payment that remains unpaid for more than 30 days after the withdrawal date shall incur interest at the rate of 18% per annum. If a quarterly ACH payment is returned for non-sufficient funds, the Owner shall pay the Operation and Maintenance Assessment with a cashier's check or money order thereafter for the remainder of the year, and the Foundation shall charge late charges and interest as provided herein. Any quarterly payment remaining unpaid for more than 60 days after the due date shall cause the entire balance of the annual Operation and Maintenance Assessment to become due and payable.

(b) Emergency Assessment, Non-Compliance Assessment, Special Development Area Assessment, and Insurance Assessments: Assessments are due on the due date in accordance with Protective Covenants. If the full amount of any assessment due is not received by the Foundation within 30 days of the due date, the assessment shall be considered delinquent. At such time, the Foundation shall impose on a monthly basis a \$25.00 late charge, and interest from the date due at the rate of 18% per annum on the amount owed for each Owner who fails to timely pay the Assessment(s).

2. Receipt Date. The Foundation shall post payments on the day that the payment is received in the Foundation's office.

3. Return Check Charges. A return check charge, not to exceed the maximum allowed by law, shall be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. Such return check charge shall be due and payable immediately, upon demand. Notwithstanding this provision, the Foundation shall be entitled to all additional remedies as may be provided by applicable law. Returned check charges shall be the obligation of the Owner(s) of the unit or lot for which payment was tendered to the Foundation. Returned check charges shall become effective on any instrument tendered to the Foundation for payment of sums due under the Protective Covenants, Articles, Bylaws, Rules and Regulations, or this Resolution after the date adopted as shown above. This return check charge shall be in addition to any late fees or interest incurred by an Owner. If two or more of an Owner's checks are returned unpaid by the bank within any fiscal year, the Foundation shall require that all of the Owner's future payments, for a period of one (1) year thereafter, be made by certified check or money order.

4. Service Fees. In the event the Foundation incurs any type of service fee or collection costs, regardless of what they are called, for the handling and processing of delinquent accounts on a per account basis, such fees shall be the responsibility of the Owner as such

fee would not be incurred but for the delinquency of the Owner.

5. Payment Plan. This section sets forth the circumstances under which an Owner is entitled to enter into a payment plan with the Foundation, pursuant to C.R.S. § 38-33.3-316.3. The Foundation shall make a good-faith effort to coordinate with an Owner to set up a payment plan that meets the requirements of C.R.S. § 38-33.3-316.3, unless the Foundation is not obligated to negotiate or enter into a payment plan with an Owner.

(a) The Foundation is obligated to negotiate, coordinate, and enter into a payment plan with an Owner unless:

(i) The Owner has previously entered into a payment plan with the Foundation under this Policy; or

(ii) The Owner does not occupy the property and has acquired the property as a result of:

- a. A default of a security interest encumbering the property; or
- b. Foreclosure of the Foundation's lien.

(b) An Owner may pay off the deficiency in equal installments over a period of at least six months. Said period shall begin at the Foundation's sole discretion.

(c) An Owner fails to comply with the terms of his or her payment plan if:

(i) An Owner fails to timely remit payment of an agreed-upon installment; or

(ii) An Owner fails to remain current with regular assessments as they come due during the agreed-upon payment period.

(d) If an Owner fails to comply with the terms of his or her payment plan, the Foundation may pursue legal action against an Owner without further notice to the Owner.

6. Attorney Fees on Delinquent Accounts. As an additional expense permitted under the Protective Covenants and by Colorado law, the Foundation shall be entitled to recover its reasonable attorney fees and collection costs incurred in the collection of assessments or other charges due the Foundation from a delinquent Owner. The reasonable attorney fees incurred by the Foundation shall be due and payable immediately when incurred, upon demand.

7. Application of Payments. All sums collected on a delinquent account shall be remitted to the Foundation's attorney until the account is brought current. All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner") shall be applied in the following manner: first to the payment of any and all legal fees and costs (including attorney fees), then to expenses of enforcement and costs of collection, late charges, returned check charges, lien fees, and other costs owing or incurred

with respect to such Owner pursuant to the Protective Covenants, Articles, Bylaws, Rules and Regulations, or this Resolution, prior to application of the payment to any assessments due or to become due with respect to such Owner.

8. Collection Process.

*Prior to Referral to Legal Counsel or Collection Agency – Notice(s) of Delinquency*

(a) In the event of a delinquent assessment, the Foundation shall mail to the Owner a reminder letter of non-payment, amount past due, notice that interest and late fees have accrued and request for immediate payment, the format and other contents of which shall be determined by the Board and may be amended by the Board from time to time. Upon the written request of the Owner delivered to the Foundation personally, by certified mail, return receipt, postage prepaid, or any other form of delivery allowed by the Foundation, the Foundation shall mail the notice of delinquency to another address as set forth in the Owner's written request.

- (i) The total amount due to the Foundation along with an accounting of how the total amount was determined.
- (ii) Whether the Owner may enter into a payment plan and instructions for contacting the Foundation to arrange for and enter into a plan.
- (iii) A name and contact information for an individual the owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt
- (iv) A statement indicating that action is required to cure the delinquency and that failure to do so within thirty days may result in the Owner's delinquency account being turned over to an attorney, a collection agency, the filing of a lawsuit against the Owner, appointment of a receiver, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado Law including revoking the owners right to vote if permitted in the Bylaws or Protective Covenants.

(b) If the delinquent assessment is not paid within the time frame set forth in the reminder letter, the Foundation shall send additional reminder letters of non-payment, amount past due, notice that interest and late fees have accrued and request for immediate payment.

(c) Before the Foundation turns over a delinquent account of an Owner to a collection agency or refers it to an attorney for legal action, the reminder letter, additional reminder letters (if applicable), or some other notice of delinquency to the Owner shall state:

- (i) The total amount due, with an accounting of how the total was determined;

- (ii) Whether the opportunity to enter into a payment plan exists and instructions for contacting the Foundation to enter into such a payment plan;
- (iii) The name and contact information of the individual that the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt; and
- (iv) The following or similar statement: "Action is required to cure the delinquency. Failure to do so within 30 days may result in your account being turned over to a collection agency, a lawsuit being filed against you, the filing and foreclosure of a lien against your property, or other remedies available under Colorado law."

(d) If the delinquency is not paid in full by the date set forth in the notice(s) providing the above information, the Board may send an additional letter to the Owner or exercise its legal remedies, including but not limited to referring the Owner's delinquent account to the Foundation's legal counsel for collection and turning over a delinquent account of an Owner to a collection agency.

*After Referral to Legal Counsel*

(e) After the delinquent account has been referred to the Foundation's legal counsel (hereinafter, the "Foundation Attorneys"), the delinquent Owner shall direct all communications regarding the delinquent account to the Foundation Attorneys.

(f) The Foundation Attorneys shall mail a demand letter to the address of the property within the Foundation's community owned by the delinquent Owner, if any. If the Owner has delivered written request to the Foundation, the Foundation or its managing agent will provide this information to the Foundation Attorneys who will in turn mail the notice of delinquency to another address as set forth in the Owner's written request.

(g) If the amount set forth in the initial demand letter is received by the Foundation Attorneys on or before the date set forth in the letter, the Foundation Attorneys shall take no further action and shall refer the account back to the Foundation.

(h) If the Owner fails to timely pay the full amount set forth in the initial demand letter, the Foundation Attorneys may file a lawsuit against all Owners subject to an assessment obligation for the property in question. In the alternative or in addition thereto, the Foundation Attorneys may also pursue the remedies set forth in the section Legal Remedies, below. The lawsuit(s) shall set forth the alleged delinquent assessment, the amount of late fees due, the costs of collection, attorneys' fees, court costs, and any other expenses due as of the date of the approximate date of the lawsuit.

(i) The lawsuit(s) shall be prosecuted as the Foundation Attorneys deem

appropriate. All costs and expenses, including reasonable attorneys' fees, shall be applied to the delinquent Owner(s) account and shall be collectible as and treated as assessments.

- (j) The Foundation may only foreclose on its lien if:
  - (i) The balance of the assessments and charges secured by the Foundation's lien equals or exceeds six months of common expense assessments; and
  - (ii) The Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. Any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the Foundation or a holder or assignee of the Foundation's lien in connection with an action that is dismissed for this reason may be assessed against the Owner.

9. Legal Remedies Available to the Foundation: The legal remedies available to the Foundation to collect on an Owner's delinquent account include:

- (a) Recording a notice of assessment lien against a delinquent Owner's property, in addition to the Foundation's statutory lien;
- (b) Bringing an action at law for entry of a money judgment in favor of the Foundation and against a delinquent Owner;
- (c) Bringing an action for appointment of receiver;
- (d) Bringing an action for foreclosure of the Foundation's lien against the property of the delinquent Owner;
- (e) During any period in which an Owner shall be in default in the payment of any Assessment, including interest, fines, late fees, attorney fees and costs, levied by the Foundation, the voting rights of the Owner shall be deemed suspended, without notice or hearing, until the Assessment has been paid;
- (f) Filing necessary claims, documents, and motions in bankruptcy court in order to protect the Foundation's interest; and
- (g) Turning over a delinquent account of an Owner to a collection agency.

10. Certificate of Status of Assessment. The Foundation shall furnish to an Owner or such Owner's designee upon written request, first class postage prepaid, return receipt, to the Foundation's agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's property for a reasonable fee. However, if the account has been turned over to the Foundation's attorney, such request may be handled through the attorney.

11. Bankruptcies and Foreclosures. Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any unit or lot within the Foundation, the Roxborough Park Foundation, its attorney or its Management Company shall notify the Foundation's attorney of the same and turn the account over to the Foundation's attorney, if appropriate.
12. Use of Certified Mail/Regular Mail. In the event the Foundation shall cause a collection or demand letter or notices to be sent to a delinquent Owner by regular mail, the Foundation may also cause, but shall not be required to send, an additional copy of that letter or notice by certified mail.
13. Waivers. The Foundation is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Foundation shall determine appropriate under the circumstances.
14. Communication with Owners. All communication with a delinquent Owner shall be handled through the Foundation's attorney once a matter has been referred to the attorney. Neither the Manager nor any member of the Board of Directors shall discuss the collection of the account directly with an Owner after it has been turned over to the Foundation's attorney unless the attorney is present or has consented to the contact.
15. Communication by Owners. Owners may communicate with the Foundation in any manner they choose including email, text, fax, phone, or in writing, when available. However, in doing so, the Owner acknowledges that the Foundation and/or its agents may communicate via the same method unless otherwise advised.
16. Ongoing Evaluation. Nothing in this Resolution shall require the Foundation to take specific actions other than to notify Owners of the adoption of these policies and procedures. Once an Owner's account is turned over to the Foundation's attorney, all communication must be made through the attorney. However, the Foundation has the option and right to continue to evaluate each delinquency on a case-by-case basis.
17. Defenses. Failure of the Foundation to comply with any provision in this Policy shall not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by this Policy.
18. Credit Report. In the event an Owner becomes delinquent in the payment of assessments pursuant to the Protective Covenants and Colorado law, the Foundation may cause a credit report to be pulled via an agent, in order to facilitate the collection of unpaid assessments.
19. Definitions. Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Protective Covenants shall have the samemeaning herein.
20. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Protective Covenants and the law of the State


of Colorado governing the Project.

21. Deviations. The Board may deviate from the procedures set forth in this Resolution, as and if allowed by the governing documents, if in its sole discretion such deviation is reasonable, warranted and documented under the circumstances.

22. Amendment. This Policy may be amended from time to time by the Board of Directors.

IN WITNESS, the undersigned certifies that this Resolution was adopted by the Board of Directors of the Foundation on JANUARY 21, \_\_\_\_\_, 2019.

ROXBOROUGH PARK FOUNDATION,  
a Colorado nonprofit corporation,

By:   
Its: President