

**RESOLUTION
OF
ROARING FORK PRESERVE HOMEOWNERS ASSOCIATION
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 Association's adoption of a uniform and systematic procedure to collect assessments and other charges of the Association.

AUTHORITY: The Declaration, Articles of Incorporation and Bylaws of the Association and Colorado law.

EFFECTIVE DATE: 8/10/2022

RESOLUTION: The Association hereby adopts the following policy:

It is in the best interest of the Association to refer delinquent accounts promptly to an attorney for collection so as to minimize the Association'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 Association hereby gives notice of its adoption of the following policies and procedures for the collection of assessments and other charges of the Association:

1. Due Dates. Installments of the annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable on the 1st day of each January, April, July and October. Assessments or other charges not paid in full to the Association within 10 days of the due date shall be considered past due and delinquent. Assessments or other charges not paid in full to the Association within 10 days of the due date shall incur late fees and interest as provided below. In the event notice of acceleration is given to delinquent Owner(s), the Owner(s) of the lot or unit shall also be charged any costs incurred by the Association in giving notice of such acceleration.

2. Owner Contact Information. To facilitate collection efforts of the Association, each Owner must provide the Association, in writing, with the following information (collectively, "Owner Contact Information"):

- a. The Owner's preferred mailing address;
- b. The Owner's preferred email address;
- c. The Owner's preferred cell phone number;
- d. The Owner's preferred language for notice and other correspondence from the Association; and
- e. If desired, a designated contact person to be contacted on the Owner's behalf.

3. Association Records. The Association shall maintain records of the Owner Contact Information provided by a Owner, as well as a record of all contacts between the Association and the Owner in regard to a Owner's delinquent account, including the type of communication, the date of the communication, and the time of the communication.

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

5. Late Charges on Delinquent Installments. The Association shall impose on a monthly basis a five percent (5%) late charge for each Owner who fails to timely pay his/her quarterly installment of the annual assessment within 10 days of the due date. This late charge shall be a "common expense" for each delinquent Owner. The Association shall impose interest from the date due at the rate of 8% per annum on the amount owed for each Owner who fails to timely pay their quarterly installment of the annual assessment within 10 days of the due date.

6. Personal Obligation for Late Charges. The late charge shall be the personal obligation of the Owner(s) of the unit for which such assessment or installment is unpaid. All late charges shall be due and payable immediately, without notice, in the manner provided by the Declaration (and as set forth herein) for payment of assessments.

7. Returned Check Charges. In addition to any and all charges imposed under the Declaration, Articles of Incorporation and Bylaws, the Rules and Regulations of the Association or this Resolution, a returned check fee, not to exceed \$20.00, shall be assessed against a 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. This returned check charge shall be a "common expense" for each Owner who tenders payment by check or other instrument which is not honored by the bank upon which it is drawn. Such return check charge shall be due and payable immediately, upon demand. Notwithstanding this provision, the Association 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 for which payment was tendered to the Association. Returned check charges shall become effective on any instrument tendered to the Association for payment of sums due under the Declaration, Articles, Bylaws, Rules and Regulations or this Resolution after the date adopted as shown above. If two or more of a Owner's checks are returned unpaid by the bank within any fiscal year, the Association may require that all of the Owner's future payments, for a period of one (1) year, be made by certified check or money order. This return check charge shall be in addition to any late fees or interest incurred by a Owner. Any returned check shall cause an account to be past due if full payment of the quarterly installment of the annual assessment is not timely made within 10 days of the due date.

8. Service Fees. In the event the Association incurs any type of service fee, regardless of what it is called, for the handling and processing of delinquent accounts on a per account basis, such fees will be the responsibility of the Owner as such fee would not be incurred but for the delinquency of the Owner.

9. Payment Plan. If qualified to do so, a Owner who becomes delinquent in payment of assessments, fines, fees or other amounts due to the Association, may enter into a payment plan with the Association, over a period of eighteen (18) months. Under the payment plan, the Owner may choose the amount to be paid each month, so long as each payment is at least twenty-five dollars (\$25.00). The Owner may elect to pay the remaining balance due at any time during the payment plan. Such payment plan shall be offered to each Owner prior to the Association referring any account to an attorney or collection agency. The Owner will be deemed to default on the payment plan if the Owner fails (a) to pay three (3) or more of the agreed upon installments within fifteen (15) days after the monthly installments were due or (b) to remain current with regular assessments as they come due during the pendency of the payment plan. In the event that the Owner defaults on the payment plan, the Association may, without additional notice, refer the delinquent account to an attorney or collection agency for collection action. Each Owner is qualified to enter a payment plan, unless:

- a. The Owner does not occupy the property and acquired title to the property by foreclosure of a security interest encumbering the property or foreclosure of the Association's lien; or
- b. The Owner has previously entered into a payment plan with the Association.

10. Attorney Fees and Collection Costs on Delinquent Accounts. As an additional expense permitted under the Declaration and by Colorado law, the Association shall be entitled to recover its reasonable attorney fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent Owner; provided, however, that such fees shall only be recoverable after the Association has provided a Notice of Delinquency in accordance with this Policy. The reasonable attorney fees and collections costs incurred by the Association shall be due and payable immediately when incurred, upon demand.

11. Application of Payments. All sums collected on a delinquent account shall be remitted to the Association's treasurer, manager, equivalent, or attorney (as directed to Owner) until the account is brought current. All payments received on account of any Owner or the Owner's property, shall be applied first to the assessments owed and any remaining amount to the fines, fees or other charges owed.

12. Collection Process. Upon delinquency, the Association shall proceed as follows:

- a. Notice of Delinquency. After a monthly installment of the annual assessment, fines fees or other amounts due to the Association becomes 30 days delinquent, the Association shall provide a notice of delinquency ("Notice of Delinquency") to the Owner to be (1) sent by certified mail, return receipt requested; (2) physically posted at the Owner's address; and (3) either sent by first-class mail, text message to the Owner's cell phone number of record, or emailed to the Owner's email address of record. The Notice of Delinquency must be made by the Association, or any community association manager or property management company designated by the Association. The notice must be sent in English, and the language that the Owner has previously indicated a preference for correspondence and notices. The notice must include:
 - i. A statement specifying whether the delinquency concerns unpaid assessments, unpaid fines, fees, charges, or a combination of the foregoing and, if

the notice concerns unpaid assessments, the notice must notify the Owner unpaid assessments may lead to foreclosure;

- ii. The total amount due to the Association along with an accounting of how the total amount was determined;
 - iii. Advise the Owner whether he/she/it is qualified to enter into a payment plan, the details of the payment plan outlined in Section 9 of this Policy, and provide instructions for contacting the Association to enter into the payment plan;
 - iv. The 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 owed to the Association;
 - v. A statement indicating that action is required to cure the delinquency and that failure to do so within thirty (30) days may result in the Owner's delinquent account being turned over to an attorney, a collection agency, the filing of a lawsuit against the Owner, the filing and foreclosure of a lien against the Owner's property (if the unpaid amounts include assessments) or other remedies available under Colorado law, including revoking the owners right to vote, right to use common amenities, and the termination of services;
 - vi. Notice of the late fees and interest that may accrue;
 - vii. A description of the steps the Association will take before legal action may be taken against the Owner, including, for unpaid fines, any cure processes that applies under the Association's Enforcement Policy; and
 - viii. A description of what legal action the Association may take against the Owner, including the types of matters that may be taken to small claims court, including injunctive matters for which the Association seeks an order requiring the unit Owner to comply with the Association's governing documents.
- b. Second Notice of Delinquency. If (a) thirty (30) days have elapsed since the Association delivered the initial Notice of Delinquency to a Owner in compliance with Section 12(a); (b) the Owner has not entered into a payment plan with the Association for amounts owed; and (c) the Owner's account remains delinquent, the Association may send a

second notice of delinquency (“Second Notice”), which must be provided to the Owner using the same method required by Section 12(a) and include all of the information required by Section 12(a).

- c. Filing of Lien. If (a) thirty (30) days has elapsed since the Association delivered the Second Notice of Delinquency to a Owner in compliance with Section 12(b); (b) the Owner has not entered into a payment plan with the Association for amounts owed; and (c) the Owner’s account remains delinquent, the Association may file a lien on the Owner’s Lot or Unit. The Association shall provide a Owner with notice within a reasonable time after lien has been filed.
- d. Referral to Collection Agency or Attorney. If (a) thirty (30) days has elapsed since the Association delivered the Second Notice of Delinquency to a Owner in compliance with Section 5(b); (b) the Owner has not entered into a payment plan with the Association for amounts owed; and (c) the Owner’s account remains delinquent, the Board of Directors may refer the Owner’s delinquent account to an attorney and/or collection agency. In addition, if a Owner has defaulted on an agreed upon payment plan, the Association may refer the matter to an attorney and/or collection agency. However, the Association may only refer a delinquent account or payment plan in default to an attorney and/or collection agency if a majority of the Board votes to refer the matter in a recorded vote at an executive or open meeting. Upon referral to the Association’s attorney and/or collection agency, the attorney and/or collection agency shall consult with the Association to determine what collection procedures are appropriate. After an account has been referred to an attorney and/or collection agency, the account shall remain with the attorney and/or collection agency until the account is settled, has a zero balance, or is written off.
- e. In addition to the steps outlined above, the Association may elect to suspend the voting rights of any Owner, after notice and an opportunity for a hearing, whose account is past due at the time of such voting.

13. Collection Procedures/Time Frames. The following time frames shall be followed for use in the collection of quarterly installments of the annual assessment and other charges.

Due Date (date payment due)	1st day of January, April, July and October
Past Due Date (date payment is late if not received on or before that date)	10 days after due date
First Notice (notice that late charges and interest have accrued, required disclosures of the Association and the availability of a payment plan if applicable)	Any time after 30 days after due date
Second Notice (notice that late charges and interest have accrued, notice of intent to file lien)	Any time after 60 days after due date
Delinquent account turned over to Association's attorney; Lien filed; Demand letter sent to Owner.	Any time after 90 days after due date

14. Certificate of Status of Assessment. The Association shall furnish to a Owner or such Owner's designee upon written request, first class postage prepaid, return receipt, to the Association'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 Association's attorney, such request may be handled through the attorney.

15. Legal Remedies. The Association may pursue any and all legal remedies available to the Association by Colorado law or the Association's governing documents for collection on any delinquent account, including, without limitation: (a) recording a lien against the delinquent Owner's property; (b) filing a suit against the delinquent Owner for a money judgment; (c) instituting a judicial foreclosure action of the Association's lien, upon approval by the Association's Board of Directors; (d) filing the necessary claims, documents, and

motions in bankruptcy court in order to protect the Association's interests; (e) filing a court action seeking appointment of a receiver; and (f) garnishment and attachment. Until a Owner has paid delinquent accounts in full, the Association may suspend the Owner's right to vote and right to use the Association's recreation facilities. Any party seeking to enforce its rights under the Declaration, Bylaws, Covenants, or governing documents of the Association pursuant to this Collections Policy for disputes regarding assessments, fines or fees owed to the Association for seven thousand five hundred dollars (\$7,500.00) or less, exclusive of interest and costs, may file a claim in small claims court.

16. Judicial Foreclosure. The Association may choose to foreclose on its lien in lieu of or in addition to suing a Owner for a money judgment, except where the debt securing the lien consists only of fines or fees the Association has imposed on the Owner and/or collection costs or attorney fees incurred by the Association that are only associated with assessed fines. The purpose of foreclosing is to obtain payment of all assessments owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action. The Association shall consider individually each recommendation for a foreclosure and may only approve a foreclosure action after the delinquency equals or exceeds six months of common expenses assessments based on a periodic budget adopted by the Association. Such foreclosure shall be approved by a vote by the Board of Directors. Notwithstanding Section 5.5 of the Declaration, upon foreclosure, any Board member, employee of the Association's management company, or employee of a law firm representing the Association, or any immediate family member of the foregoing, shall not be permitted to purchase the foreclosed unit. The Association shall not commence a foreclosure proceeding for delinquent assessments unless:

- a. The Association has followed all notice requirements provided in this policy;
- b. The Association has made a good faith effort, by written offer, to coordinate with the Owner for a payment plan; and
- c. Within thirty (30) days after providing offer of payment plan, the Owner has either (a) declined the plan; (b) accepted the plan and failed to pay at least three (3) monthly installments within fifteen (15) days of the due date.

17. Waivers. The Association is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances.

18. Communication with Owners. All communication with a

delinquent Owner shall be handled through the Association'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 a Owner after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact.

19. Communication by Owners. Owners may communicate with the Association in any manner they choose including email, text, fax, phone, or in writing, when available. However, in doing so, the Owner acknowledges that the Association and/or its agents may communicate via the same method unless otherwise advised.

20. Defenses. Failure of the Association 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.

21. Definitions. Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.

22. Supplement to Law. The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the Project.

23. Deviations. The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.

24. 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 Association on this ____ day of _____, 2022.

**ROARING FORK PRESERVE HOMEOWNERS
ASSOCIATION,**
A Colorado nonprofit corporation,

By: _____
Its: President