

**MCVITTY FOREST CONDOMINIUM
UNIT OWNERS ASSOCIATION**

POLICY RESOLUTION NO. 2018-2

ASSESSMENT COLLECTION PROCEDURES

WHEREAS, the McVitty Forest Condominium Unit Owners Association (the "Association") is a unit owners' condominium association organized and operating pursuant to the Virginia Condominium Act ("Act"), the Declaration of McVitty Forest Condominium Unit Owners Association (the "Declaration"), as amended and the Association's Bylaws, as amended (the "Bylaws");

WHEREAS, Article IV, Section 2 of the Association's Bylaws grants the Association's Board of Directors (the "Board") the powers "necessary for the administration of the affairs of the Unit Owners Association and may do all such acts and things as are not by the Condominium Act, the Declaration or by these Bylaws, required to be exercised and done by the Unit Owners Association";

WHEREAS, Article IX, Section 1 of the Association's Declaration states that all unit owners and their tenants, guests, and invitees, shall comply with all of the provision of the Declaration, the By-Laws, and the rules and regulations, decisions and resolutions of the Association, as each may be amended from time to time (collectively, the "Governing Documents");

WHEREAS, Article XII, Section B of the Association's Declaration creates an assessment obligation on behalf of the Owner(s) of any Unit which is subject to the Declaration; and

WHEREAS, Article XII, Section B of the Association's Declaration provides that the total annual assessment of each unit owner for common expenses or any other sum duly levied (including without limitation charges, interest, late charges, etc.) made pursuant to the Condominium Instruments shall be a lien against the condominium unit; and

WHEREAS, Article XII, Section 1 of the Association's Declaration provides that the Board of Directors shall establish and collect from the unit owners monthly assessments to provide for maintenance of Common Elements and payment of other common expenses; and

WHEREAS, Article XII, Section A of the Association's Declaration establishes the authority of the Association to impose a late charge of 5% of the total amount of the assessment or fee then due if such assessment or fee is not paid by the date set by the Association; and

WHEREAS, Article XII, Section A of the Association's Declaration states that the Association may impose a penalty or other charge, which may include all costs of collection (including legal fees) upon any assessment not paid when due; and

WHEREAS, § 8.01-27.1 of the Virginia Code provides that the Association may impose a processing charge of up to \$50 and the protest or bad check return fee, if any, charged to the

Association by its bank if an owner's check is returned or rejected for insufficient funds or stop payment; and

WHEREAS, Article II, Section 3 of the Association's Bylaws provides that during any period exceeding sixty days (60) in which a unit owner shall be in default in the payment of the regular or special assessment levied by the Association, the voting rights of such unit owner and the right to use of the recreational facilities, including utility services, provided directly through the Association, if any, may be suspended by the Board of Directors until such assessment has been paid; and

WHEREAS, the Board has determined that there is a need to establish policies and procedures for the collection of assessments.

NOW, THEREFORE, BE IT RESOLVED THAT the Board hereby adopts the following assessment collection policies and procedures as part of the Association's Rules and Regulations, which hereby supersede and replace any and all previous rules and regulations pertaining to the collection of assessments:

I. Routine Collections

A. **Due Dates**. Each fiscal year's annual assessment shall be due and payable, in advance, in monthly installments, on or before the first (1st) day of each month. Unless otherwise determined by the Board, all special assessments shall be due and payable on the first day of the next month after the Unit Owner is mailed notice of the special assessment. Unless otherwise specified by written notice from the Association, all other amounts assessed against an Owner are due and payable immediately upon assessment.

B. **Owners' Mailing Addresses**. All documents, correspondence and notices from the Association or the Association's management agent ("Managing Agent") relating to assessments or charges shall be mailed or delivered to the Unit Owner's address of record that appears on the books of the Association, which is the Unit address unless the Association is otherwise notified in writing by the Unit Owner to change his/her address of record to a different mailing address. Unit Owners have the responsibility of promptly informing the Managing Agent, in writing, of changes to their address of record.

C. **Invoices and Other Notices**. Non-receipt of an invoice, payment coupon or other notice shall in no way relieve the Unit Owner of the obligation to pay the amount due by the due date. If a Unit Owner does not receive a notice within the expected or required time period, it is that Owner's responsibility to contact the Managing Agent immediately to obtain a copy of the notice and to confirm the Owner's correct mailing address.

II. Remedies For Nonpayment Of Assessment

A. **Late Fees**. If payment of the assessment (or assessment installment) is not received by the Association within fifteen (15) days after the applicable due date (e.g., by January 15th for the January 1st monthly installment), then a late fee of 5% of the total amount of the assessment shall automatically

be added to the amount due and shall be a part of the lien for unpaid assessments against the Owner's Unit and shall be the Unit Owner's personal obligation to pay.

B. **Interest.** If a Unit Owner fails to pay an assessment or other charge in a timely manner, which continues for a period more than 15 days from the due date, then the unpaid assessment will be subject to interest at the rate of 12% per annum, accruing from the due date until paid. The failure of the Association to post interest charges on a Unit Owner's account does not waive the Association's right to later charge, demand and collect interest from the applicable due date if the account is forwarded to legal counsel for collection, and the Association's legal counsel is hereby authorized to demand and collect interest on the overdue amounts accruing from the applicable due dates.

C. **Returned Checks.** If a check (or electronic debit, if applicable) is returned or rejected for insufficient funds or stop payment, the Unit Owner's account shall be assessed a returned check/debit processing charge of not more than Fifty Dollars (\$50.00), plus the bad check/debit return fee, if any, charged to the Association by the bank. If the Association receives from any Owner, in any fiscal year, two or more returned checks or rejected electronic debits, the Association may require all future payments for the remainder of that fiscal year to be made by certified check, cashier's check, or money order.

D. **Late Notice.** A "Late Notice" or other delinquency notice may be sent by the Managing Agent to Unit Owners who have not paid assessments or charges in full within 15 days after the applicable due date. Non-receipt of such notice does not relieve the Unit Owner of his or her obligation to pay the assessment or the resulting late fees, costs, attorneys' fees or other applicable charges. Additional late notices or reminder notices may be sent to a delinquent Unit Owner, at the Board or Managing Agent's discretion, prior to referral of an account to legal counsel. However, once an account is referred to legal counsel for collection, no further late notices or other delinquency notices will be sent by the Managing Agent until the account is closed with legal counsel's office.

E. **Collection Costs and Attorneys Fees.** In accordance with Article XII, Section A of the Declaration, all costs of collection incurred by the Association as a result of the failure of a Unit Owner to timely pay assessments or other charges shall be assessed against that Unit Owner as they are incurred or as collection action is taken, without the need for a case-by-case vote by the Board. These expenses may include, for example, management administrative fees and mailing costs for delinquency notices, attorney's fees, the cost of filing a lien and/or civil suit and other court costs, and any other collection-related costs. These collection costs shall be added to the Unit Owner's assessment account and become part of the lien against the Owner's Unit and the personal obligation of the Unit Owner.

G. **Referral of Account for Collection.** If a Unit Owner's account remains delinquent for more than 30 days, then the Managing Agent is authorized to forward the Unit Owner's delinquent account to the Association's legal counsel for collection, subject to any Board guidance regarding the minimum account balance to forward.

H. **Lien.** As provided under the Bylaws and the Act, when an annual or special assessment or other charge is levied (or assessed) against a Unit, that assessment or other charge is deemed to be lien against the Owner's Unit, and the Association may at any time thereafter record a Memorandum of

Lien in the county's land records, with or without further warning or notice to the Unit Owner. In order to meet any statutory deadlines, the Association's legal counsel may proceed directly with filing a Memorandum of Lien against the Owner's Unit prior to sending a demand letter to the delinquent Unit Owner. Accelerated installments, late fees, attorney's fees, other charges (as applicable), and the costs associated with filing and releasing the Memorandum of Lien shall be included as part of the lien and added to the Unit Owner's assessment account.

I. **Further Legal Action.** If an account remains delinquent after the initiation of legal action (for example, after filing of a lien or civil suit), the Association's legal counsel is authorized to take other appropriate legal action to collect the amounts due, except as provided in Paragraph J below or unless directed otherwise by the Board. Once a judgment is entered against a Unit Owner, further legal actions may include, without limitation, garnishment of wages, rent and/or bank accounts, and the attachment of vehicles or other assets.

J. **Foreclosure.** If a lien remains unpaid, the Board may authorize foreclosure proceedings against the Owner's Unit within thirty-six (36) months of the date the lien was recorded (or within such other time period as may be authorized by the Act from time to time).

K. **Waivers.** The Board may, in its sole discretion, grant a waiver of any provision herein (except filing of Memoranda of Lien beyond the statutory deadline) upon written request by a Unit Owner alleging a significant personal hardship or as otherwise determined to be in the best interests of the Association. Any such relief granted to a Unit Owner shall be appropriately documented in the Association's files with the conditions of the relief, if any. The Board may designate the Managing Agent, the President or other officer or the Association's legal counsel as having the authority to grant waivers or payment plans on behalf of the Association between Board meetings, subject to any Board-established guidelines. If a payment plan request is granted for delinquent amounts, a condition of the payment plan may require, among other things, that the delinquent amounts be secured by a recorded Memorandum of Lien and/or by a Promissory Note.

L. **Management Waiver.** The Association's Managing Agent is authorized to waive the imposition of late fees if the delinquent Unit Owner had owned the Unit for three or fewer months at the time of the delinquency and, in the judgment of the Managing Agent, the delinquency was the result of a misunderstanding of the correct procedures for paying the assessment. This type of waiver may be granted only once to any Unit Owner.

M. **Application of payments.** Payments received from a Unit Owner shall be credited in the following order:

1. Collection costs for delinquent accounts, including, for example, certified mailing costs, lien filing/releasing costs, returned check charges, court costs and attorney's fees;
2. Late fees;
3. Interest; and
4. Other assessments against the Unit Owner's account (e.g., annual assessments), applied to the oldest outstanding amount first.

N. **Suspension of Rights.**

1. **Use of Facilities and Services.** For assessment accounts that are more than 60 days delinquent, and after first giving notice and an opportunity for a hearing pursuant to the requirements of Section 55-79.80:2 of the Virginia Condominium Act and any other related procedures that may be adopted by the Board from time to time, the Board may suspend the right of the Unit Owner to use Association-provided facilities and services (including but not limited to the use of parking spaces).

2. **Voting Rights and Election to Board.** In accordance with Article II, Section 3 of the Bylaws, a Unit Owner's eligibility to vote as a member of the Association (and to be elected to or serve on the Board) is automatically suspended if the Unit Owner is delinquent more than sixty (60) days in the payment of any amount due the Association.

The remedies stated herein shall not constitute an election of remedies and all remedies shall be deemed cumulative.

Resolution effective: Sept. 25, 2018.

**MCVITTY FOREST CONDOMINIUM
UNIT OWNERS ASSOCIATION**

RESOLUTION ACTION RECORD

Resolution Type: Policy No.

Pertaining to: Assessment Collection Procedures

Duly adopted by the Board of Directors of McVitty Forest Condominium Unit Owners Association on September 20, 2018, by [check applicable]:

☒ majority vote at a Board meeting, or

☐ by unanimous written consent through an action without a meeting.

Motion by: Don Poe Seconded by: Jim Arend

VOTE:

	YES	NO	ABSTAIN	ABSENT
<u>Candy Springer</u> , Director	☒	☐	☐	☐
<u>Don Poe</u> , Director	☒	☐	☐	☐
<u>Pauline Piotrowski</u> , Director	☒	☐	☐	☐
<u>Thelma Helm</u> , Director	☒	☐	☐	☐
<u>Jim Arend</u> , Director	☒	☐	☐	☐

ATTEST:

Thelma J. Helm
Secretary

9/20/2018
Date

Book of Minutes - 2018

Book Resolutions:

Resolution effective: Sept. 25, 2018.

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of Sept., 2018, a copy of this Resolution was mailed (by first-class U.S. mail) to all Unit Owners as reflected in the Association's books and records.

Christina Greene
Managing Agent