

FINAL POLICY NUMBER 1
COLLECTIONS OF UNPAID ASSESSMENTS BY
FOUNTAIN GREENS HOMEOWNERS ASSOCIATION, INC.

SUBJECT: Policies and procedures to be followed in collecting assessments, dues, and other sums owed to the Fountain Greens Homeowners Association, Inc. (the “Association”) by its Members.

INTENT: This Policy is intended by the Board to comply with the requirements of Section 38-33.3-209.5 (1)(b) of the Colorado Revised Statutes, which is titled “*Responsible governance policies - due process for imposition of fines -procedure for collection of delinquent accounts – definition*”, and which provides:

“(1) To promote responsible governance, associations shall:

...

(b) Adopt policies, procedures, and rules and regulations concerning:

...

(I) Collections of Unpaid Assessments...”

AUTHORITY: The Declaration (as Amended), Articles of Incorporation, Bylaws (as Amended) of the Association, and the laws of the state of Colorado.

DATE APPROVED IN FINAL BY BOARD OF DIRECTORS: **MAY 16, 2018**

EFFECTIVE DATE: **JUNE 28, 2018** (which date shall not be earlier than the day which is thirty (30) days subsequent to the day this Policy was first published in final form as a “Final Policy” on the Association’s Website together with the required Policy Notice).

RESOLUTION: The Board hereby resolves that, from and after the Effective Date specified above, the Policy titled “RESOLUTION OF FOUNTAIN GREENS HOMEOWNERS ASSOCIATION, INC, REGARDING POLICY AND PROCEDURES FOR COLLECTION OF UNPAID ASSESSMENTS” dated January 1, 2014, shall be rescinded and wholly replaced with the following Policies and Procedures concerning the collection of assessments, which shall be effective as of the above specified Effective Date, to wit:

Overview

This Policy describes how the Association assesses and collects amounts due to the Association from its Members. In doing so, the Association is obligated to follow its Covenants

and Restrictions and the laws of Colorado. Because the Association is a “creditor” with respect to its Members, it is required to act with some formality and to observe somewhat complex procedures when collecting amounts due to it. Members of the Association who do not pay assessment amounts in a timely manner may find themselves paying late fees, interest, and being required to reimburse the Association for any and all costs it incurs in collecting what is due. If this seems harsh, please remember that it is unfair to those Members who do pay their assessments on time and in full to be forced to subsidize those few Members who ignore their obligations. The Association’s Board of Directors is required to enforce the Covenants consistently and fairly. It would violate the duties imposed on the Board for it to allow some Members to avoid paying what they owe.

This Policy is divided into three Parts. Part A describes certain legal principles that are applicable to the Association’s collection efforts, Part B describes the dates when assessments become due, and Part C describes how the Association will proceed in collecting delinquent accounts, including foreclosing the Association’s lien against a Member’s residence by forcing the sale of that residence in order to collect an unpaid assessment.

Part A--Background and Principles

1. Homeowners’ Agreement: Every person who owns a residence within the Fountain Greens Subdivision agreed to abide by certain covenants and restrictions when they bought their residence. The “Covenants” that govern the Fountain Greens Subdivision (the “Subdivision”) are titled “DECLARATION OF HOMEOWNERS ASSOCIATION COVENANTS AND RESTRICTIONS FOR FOUNTAIN GREENS, A SUBDIVISION LOCATED IN BOULDER COUNTY, COLORADO.” The Covenants are dated June 12, 1975, were amended by a document recorded November 7, 1977. As amended, the Covenants are the primary governing documents for homeowners whose residences are located in the Subdivision. Each homeowner became a member of the Association automatically when they purchased their residence. A homeowner is referred to in this Policy alternatively as a “homeowner” or “Member.” Most homeowners are subject not only to these Covenants, but to separate covenants and restrictions which are limited to only specific portions (“Blocks”) of the Fountain Greens Subdivision. Only homeowners who reside in Block 9 are not subject to either these additional covenants or to the condominium declarations for those residences within the Subdivision that are subject to the Colorado Condominium Act. Homeowners should review these various covenants from time to time. Copies thereof should have been given to each homeowner at the time they purchased their residence. An electronic copy of the Covenants governing the Association are posted on the Association’s Website (<https://www.fountaingreenshoa.com/regulations>). The Covenants create certain financial obligations on the part of each homeowner, and impose upon the Association’s Board of Directors (the “Board”) the duty of enforcing those obligations.

2. “Assessments” Defined: The Covenants (Article V, as amended by the First Amendment thereto), specify that each homeowner is liable to pay to the Association various amounts which are collectively labeled “Assessments.” An “assessment” under the Covenants

might be one of several authorized types, viz.: annual assessments (which fall into two categories, i.e., “common” or “separate”) and special assessments for capital improvements (and which likewise are categorized as either “common” or “separate”). “Common” assessments are those of a general nature and are imposed in an equal amount upon all homeowners. “Separate” assessments are those which substantially benefit fewer than all homeowners (such as those for the maintenance of a cul-de-sac and roadway within only one Block), and are apportioned among only the benefitting homeowners. Annual assessments are based on the budgeting process, and cover anticipated annual and recurring expenses. “Special” assessments are for extraordinary capital expenditure for which no reserve or fund exists. Article V, Section 4 of the Covenants specifies that 75% of the membership must approve of any special assessment. However, Section 38-33.3-217 (1) C.R.S., applies to this provision and effectively reduces the required consent to 67% of the homeowners. When assessments are due and payable is discussed in greater detail later in Part B of this Policy. The Covenants specify that assessments not paid in a timely manner accrue interest at the rate of twelve percent (12%) per annum. Furthermore, Colorado law (Section 33.3-316 of the Revised Statutes of Colorado) authorizes the Association to treat each of the following collection costs as unpaid “assessments,” to wit: all interest accrued on unpaid assessments, all bad check fees, collection expense charges, late charges, attorney fees incurred by the Association in collecting an assessment from a homeowner, and fines against a homeowner. An unpaid assessment becomes a “lien” against a homeowner’s residential real estate. In addition, the Covenants prescribe that: “...(e)ach such assessment . . . shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.”

3. Liens and Foreclosures: A “lien” is granted to the Association against a homeowner’s residence for any and all unpaid assessments due to the Association. This lien is a powerful means of assuring the eventual collection of the debt a homeowner owes to the Association. That lien can be “foreclosed” in the same manner as if it were another mortgage on the homeowner’s house and lot [see Section 38-33.3-316 (11) (a)(I) C.R.S.]. In other words, if the Board is unsuccessful in collecting what is due from a homeowner by less onerous means, the Board, on behalf of the Association, can cause a homeowner’s residence to be sold at a Sheriff’s sale or on the Courthouse steps and use the resulting sales proceeds to satisfy that debt. In such an event, the economic loss to the homeowner might be quite large because the homeowner would lose title to and possession of his or her residence. Foreclosure sales rarely result in the foreclosed upon property being sold for what might have been the sales price if the residence had been sold pursuant to the normal process of listing and advertising it for sale through a real estate brokerage. A foreclosure sale promises only that the sale will occur on a specified date—not that such a sale will result in a sales price anywhere close to the price the seller might receive if the seller were not under any obligation to accept an offer the homeowner considers to be too small. A foreclosure sale is a forced sale, and there is no guarantee that the bidders at such a foreclosure sale will pay close to what otherwise might be the optimal price for the property. Thus, homeowners need to pay to the Association what is due from them, and the Association, pursuant to this Policy, must take reasonable steps to assure that homeowners know what amounts are due, and what payment alternatives might exist for the payment of assessments.

4. Necessary Uniformity: The Board believes that it must collect debts due to the Association in a consistent and uniform manner. Exceptions to this uniformity must be based on objectively verifiable and compelling circumstances. The members of the Board, regardless of their personal sympathies, have an obligation to all members of the Association to collect all debts due to the Association so that no member gets an unjustifiable “free ride” at the expense of the remainder of the members. Exceptions to this general rule will be decided on a case by case basis, rarely, and only for very good cause shown. However, the Board believes that it is within the spirit and intent of the Covenants to deviate from a strict collection policy when it is appropriate to do so.

5. Sub-Associations as Collection Agents for the Association: The organization of Fountain Greens is complex. The Association is a “master association.” There are six “sub-associations” which also govern separate portions of Fountain Greens, to wit: Buckingham Green, Buckingham Ridge, Country Club Greens, Fountain Greens I Condominiums, Fountain Greens II Condominiums, and Ironwood. In addition, there are homeowners who only are members of the Association but are not members of any sub-association. The six sub-associations previously named have their own organizations, systems of management, and dues structures which are at once in addition to and independent of the Association. Some Fountain Greens homeowners live in the areas which are separately governed for certain purposes by these sub-associations. But all residents of the Fountain Greens Subdivision are subject to the rules and regulations of the Association. In effect, most homeowners have “dual citizenship” because they are obligated to follow the rules of a sub-association as well as the rules of the Association. These “dual-citizen” homeowners also are obligated to pay certain amounts to their respective sub-association as well as to the Association. To simplify these payments, a custom and practice was developed which allows each sub-association to collect not only the dues and financial payments separately due to that sub-association, but also the assessments due from those homeowners to the Association. The payment each dual-citizen homeowner makes to the sub-association is aggregated by the pertinent sub-association with the other dual-citizens’ payments, and the portion of this total which is due to the Association is paid in a lump sum by the sub-association to the Association on a regular and recurring basis. In accomplishing this task for the benefit of the Association, a sub-association is acting as the Association’s collection agent. Accordingly, a timely payment to the sub-association by a homeowner of the combined sum then due to the sub-association plus the amount then due from the homeowner to the Association is the equivalent of a timely payment directly to the Association by that homeowner. Furthermore, in the event of a partial payment by a homeowner, that partial payment will be prorated between the sub-association and the Association in the same ratio as the total of the separate amounts due to the sub-association and the Association bear to each other. However, homeowners are not authorized to make partial payments except with the written consent of the Association.

6. Annual Assessments: Article V of the Covenants (as amended by the First Amendment thereto) specifies that the Association is supposed to establish the annual assessment amount more than 30 days prior to March 1 in each year, and to give notice to all homeowners as

to the amount of same. That annual assessment then becomes due and payable on or before March 1 in each calendar year, and is delinquent if not paid in full by March 1. If that assessment is not paid in full by March 31, then the unpaid/delinquent assessment accrues interest (which also must be paid to the Association) at the rate of 12% per annum, and the beginning date of that interest accrual is retroactive to March 1. In addition, a "late payment penalty" of \$25.00 is assessed. However, a homeowner may elect to pay that annual assessment amount in equal monthly installment payments, each of which is due on or before the first day of each calendar month commencing on March 1 in each year, all as prescribed below in paragraph 11 of this policy. If a homeowner elects to pay his or her annual assessment in equal monthly installments, no interest accrues on the annual amount and the homeowner is not considered as delinquent unless the homeowner does not adhere to the requirements of paragraph 11, below.

7. Special Assessments: Special Assessments, as described in the Covenants, are intended to pay for capital improvements for which the regular budget process did not anticipate or provide funding. The Board has no record of any special assessment (whether common or separate) ever having been imposed. Nor does the Board anticipate seeking to impose a special assessment at any time in the foreseeable future. If a future Board would seek to impose a special assessment, the Covenants require that "...a resolution establishing any such assessment shall have the written assent of seventy-five percent (75%) of the votes of . . . (the) Members." [See Article V, Section 4, of the First Amendment to the Covenants]. However, Section 38-33.3-217 (1)(a)(I) of the Colorado Statutes changes the percentage of required approval specified in the Covenants (as amended) to 67% ("Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy..."). Thus, a Special Assessment would require the approval of 67% of the Members. That would mean that at least 312 of the total of 465 homeowners would have to consent to the Special Assessment.

8. Costs of Collection: The Association is entitled to collect from a homeowner any unpaid assessment together with all costs incurred by the Association in accomplishing that collection. If a homeowner refuses to pay an assessment, the Association has certain right granted to it under the Covenants and by Colorado law to enforce the payment of that obligation. The Association is entitled to collect not only the full amount of any delinquent (unpaid) assessment, but also interest at 12% per annum on the delinquent amount plus additional amounts sufficient to reimburse the association for its expenditures incurred in enforcing the Association's rights. Some of these costs of collection become due because the Association's manager charges the Association for the extra efforts it is required to expend on the Association's behalf to collect a delinquent assessment. Whatever costs of collection are incurred by the Association, it is entitled to treat said costs as additional assessments due from the homeowner. These costs of enforcement can, in certain situations, equal or exceed the amount of the delinquent assessment. Court costs and attorneys' fees can add substantial amounts to a homeowner's obligation. Because of the duty owed by the Board of Directors to the members, it cannot waive a homeowner's financial obligation to the Association; it can only enter into an arrangement which, hopefully, allows the homeowner to have more time in which to satisfy the debt in full. A homeowner who ignores his

or her obligation to the Association is, in effect, borrowing money from the Association. The costs of that “borrowing” greatly exceed what the typical lender would charge for a loan secured by residential real estate. Accordingly, homeowners should consider all other options and discuss with the Board of Directors the homeowner’s need to delay the payment in full of any obligation to the Association before the homeowner becomes delinquent.

9. Fines: As of the date of the adoption of this Policy, the Association does not have a policy on fines which may be imposed on Members for violating the Covenants. However, should the Association adopt such a policy, then any unpaid fines will become another obligation owed which, pursuant to Section 38-33.3-316 (1) C.R.S., will be enforceable in the same manner and be entitled to be secured by the same lien as other assessments.

Part B—Due Dates for Payment of Assessments; Installment Option

10. Due Dates—Annual Assessments: Unless a Member elects to make monthly payments in the manner and pursuant to paragraph 11, below, annual assessments (both “common” and “separate”) are due and payable in full on or before the 1st day of March in each calendar year. The non-paying homeowner becomes “delinquent” on March 2 if the full amount of the assessment is not paid on or before March 1. However, even though a homeowner is “delinquent” with respect to the payment of an annual assessment after March 1, there is no interest penalty which accrues on this delinquency unless the payment date is later than March 31. The Covenants prescribe that interest on the unpaid obligation does not begin to accrue unless the payment date is after March 31. If there is no payment by March 31, however, interest on any unpaid portion of the delinquent assessment accrues from and after March 1 at 12% interest per annum until paid.

11. Monthly Installments Option: All Members who faithfully observe the requirements of this Policy shall have the option to pay their annual assessments in equal monthly installments (instead of paying their annual assessments in one lump sum). While not strictly in accord with the Covenants, this installment procedure has been created by the Board of Directors to accommodate those Members who wish to take advantage of this method of payment. Homeowners may pay their entire annual assessment on or before March 1 in each year; or they may elect to enter into an agreement with the Association to pay that assessment in equal monthly installment payments over the fiscal year or period to which the assessment relates. Those Members electing this option shall be deemed to have agreed to each of the following terms and conditions:

- a. Due Dates for Monthly Payments: Each monthly installment is due on the 1st day of each calendar month commencing on March 1 in each year, and each calendar month thereafter.
- b. Delinquency Date: A monthly installment is delinquent if not made on or before midnight on the 1st day of the calendar month to which it relates.
- c. Grace Period of Only Thirty Days: Each delinquent monthly installment must be received by the Association no later than thirty (30) days subsequent to the day on

which the monthly installment payment was due. If not paid by that 30th day, then the Delinquent Member must thereafter (and immediately) pay the full amount of the delinquent payment together with: (i) a \$25.00 late charge; and (ii) interest from the original due date until fully paid at the rate of twelve percent (12%) per annum. Each monthly installment payment which is delinquent will be subject to being increased by said late charge and 12% interest until paid. [Accordingly, and for example, a Member who fails to pay twelve consecutive installment payments will incur a separate \$25.00 late charge for each installment payment not made plus interest at 1% per month on each delinquent installment payment until fully paid.]

- d. Personal Liability of Member to Pay Assessments, Costs, and Fees: Each Member electing this installment method will be deemed to have acknowledged that all assessments due to the Association, together with all late fees, costs of collection, interest, and other amounts attributable to enforcing the Association's rights (including its right to a lien and the enforcement of that lien) are the individual and personal responsibility of that Member.
- e. Payments to Sub-associations: Payments of monthly installments due to the Association which are paid to a sub-association will be deemed to have been paid to the Association on the date the sub-association receives the payment from the Member.
- f. Annual Permission to Pay Assessments on Installment Basis Required: Each Member's permission to make monthly installment payments of assessments will be deemed to have been granted by the Association on an annual basis to each Member so electing the installment method, but the Association shall have the discretion and right to deny such permission to any Member who has been repeatedly delinquent in making said payments. The Association need not grant such permission to any Member who has been delinquent with respect to three or more such monthly installment payments in any consecutive twelve-month period. A Member who has been denied such permission must pay that Member's entire annual assessment in one lump sum on or before March 1 in each year. Members who faithfully perform their obligations in a timely manner will be permitted to continue making monthly installment payments in each subsequent year and from year to year and will not be charged interest on their installment payments if paid in a timely manner.
- g. For Members Who Pay Assessments Directly to the Association (and not through a sub-association): In addition to whatever monthly amount is due from the Member to the Association as a monthly installment payment, the Member shall pay whatever administrative costs or special fees are charged by the Association's manager for processing any monthly payment made by that Member in cash or by personal check or any other means other than by Automated Clearing House ("ACH") withdrawals from that Member's personal checking account, i.e., if the effect of paying a monthly installment payment is not by an ACH withdrawal but instead is in a manner which entitles the Association's manager to assess an

- additional fee or charge for processing the Member's payment, the Member must pay that separate charge in addition to the amount of the monthly installment payment. A Member who pays assessments directly to the Association by authorizing the Association's manager to make ACH withdrawals from that Member's checking account each month of that Member's installment payment due shall not be charged any service or administrative fee.
- h. Bad Check Charges: In addition to whatever other amounts are due from a Member to the Association, in the event a Member attempts to pay a monthly installment payment by means of a check which is returned to the Association (or its manager) for insufficient funds (a "NSF check") or which is not honored by the Member's bank for any reason, then, for each such check, the Member shall be liable to pay to the Association a "Bad Check Charge" for each such check submitted to the Association in an amount equal to whatever charge is levied by the Association's bank for processing that NSF or disallowed check.
 - i. Current Contact Information Required: Each Member who elects to pay annual assessments by means of monthly installment payments shall be obligated to keep the Association updated with that Member's current telephone numbers and e-mail address(-es).

12. Due Dates—Special Assessments: Article V, Section 7 of the Covenants specifies that: *"The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment."* The Board, as of the date of this Policy, does not anticipate submitting any special assessments to the members for approval. The annual budget and reserve accounts maintained by the Association should be adequate, barring unforeseen circumstances, for the future needs of the Association. Prior to being allowed to make a special assessment, the Board would be required to seek the input of the membership many months in advance of the date the special assessment would become effective. Furthermore, should a special assessment be authorized, it would include a monthly installment option similar to that described above in paragraph 11. However, if the special assessment amount per homeowner was larger than \$480.00, a longer period than one year during which installment payments towards satisfying that special assessment would be made available to electing homeowners.

Part C—Collection of Delinquent Accounts

13. Intent to Comply with Section 38-33.3-209.5 (5)(a) C.R.S.: This Policy is intended to comply with Section 38-33.3-209.5 (5)(a) of the Colorado Revised Statutes, and which, in pertinent part, provides as follows:

"... [T]he association or a holder or assignee of the association's debt, whether the holder or assignee of the association's debt is an entity or a natural person, may not use a collection agency or take legal action to collect unpaid assessments unless the association or a

holder or assignee of the association's debt has adopted, and follows, a written policy governing the collection of unpaid assessments. The policy must, at a minimum, specify:

- (I) The date on which assessments must be paid to the entity and when an assessment is considered past due and delinquent;*
- (II) Any late fees and interest the entity is entitled to impose on a delinquent unit owner's account;*
- (III) Any returned-check charges the entity is entitled to impose;*
- (IV) The circumstances under which a unit owner is entitled to enter into a payment plan with the entity pursuant to section 38-33.3-316.3 and the minimum terms of the payment plan mandated by that section;*
- (V) That, before the entity turns over a delinquent account of a unit owner to a collection agency or refers it to an attorney for legal action, the entity must send the unit owner a notice of delinquency specifying:*
 - (A) The total amount due, with an accounting of how the total was determined;*
 - (B) Whether the opportunity to enter into a payment plan exists pursuant to section 38-33.3- 316.3 and instructions for contacting the entity to enter into such a payment plan;*
 - (C) The name and contact information for the individual the unit owner may contact to request a copy of the unit owner's ledger in order to verify the amount of the debt; and*
 - (D) That action is required to cure the delinquency and that failure to do so within thirty days may result in the unit owner's delinquent account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, or other remedies available under Colorado law;*
- (VI) The method by which payments may be applied on the delinquent account of a unit owner; and*
- (VII) The legal remedies available to the entity to collect on a unit owner's delinquent Colorado account pursuant to the governing documents of the entity and Colorado law.”*

This policy shall be interpreted in a manner which is consistent with the above statute, including any substitute or successor laws, regulations, or statutes duly adopted by the State of Colorado. This Policy shall be applied in an impartial and reasonable manner when the Association attempts to collect past due assessments from a Member (a “Delinquent Member”) through informal means, by means of a Payment Plan (as defined in paragraph 15), or through judicial proceedings. In so enforcing the Association’s rights against a Delinquent Member, the Association shall have available to it all of the lawful remedies allowed to neighborhood associations under the laws of

Colorado.

14. Informal Efforts to Collect Delinquent Amounts Owed to the Association: The Association may, but shall not be required to, negotiate with a Delinquent Member in an effort to collect the sums due to the Association. A member of the Board or an employee of the Manager may contact the Delinquent Member by phone, e-mail, in person, or by U.S. Mail seeking information from the Member as to why the Member's account is delinquent and when and how the delinquent account will be paid. Furthermore;

a. The Association, acting through the Board or the Association's manager, may engage in as many or as few negotiation sessions with the Delinquent Member as to the Board seems reasonable under the circumstances.

b. The following schedule may be utilized by the Association in proceeding informally to collect an unpaid assessment from a Delinquent Member:

Due Date (date payment is due)	First (1 st) day of the month or March 1, as applicable
Past Due Date (date payment is late if not received on or before that date)	One day after due date
Date late fees and interest may be charged to account	If account is not paid in full within 30 days after due date
First Notice (written notice to Delinquent Member that late charges and interest have accrued).	Any time after account remains unpaid more than 30 days after due date
Second Notice (written notice that late charges and interest have accrued, the name and address of a contact person who can provide detailed information concerning the Delinquent Member's account, and that the Board of Directors will commence formal collection procedures if the Delinquent Member does not pay all sums past due).	Any time after account remains unpaid more than 60 days after due date

c. Subject to the requirements of Paragraph 16, below, and after a Delinquent Member's account is more than ninety (90) days delinquent, he or she shall be notified in writing that:

(1) The Association considers the Delinquent Member to be delinquent, the amount of that delinquency, the late fees, returned check charges, unpaid assessments, and interest accruing on the total debt until paid, and that the Association intends to collect the full amount of that indebtedness;

(2) The Delinquent Member may elect to pay their delinquent account pursuant to a "Payment Plan" as described in Section 38-33.3-316.3 C.R.S. and paragraph 15, below;

(3) Any such Payment plan must be negotiated under and contain, at a minimum, the terms and conditions set forth in paragraph 15, below;

(4) The name and contact information of the person who may be contacted by the Delinquent Member to request a copy of the Delinquent Member's account ledger in order to verify the amount of his or her indebtedness to the Association and how it was determined;

(5) A failure of the Delinquent Member to cure the delinquency or to seek the negotiation of a Payment Plan within thirty days of the date of said written notice may result in the Delinquent Member's account being turned over to a collection agency or attorney, a lawsuit being filed against the Delinquent Member, the filing and foreclosure of a lien against the Delinquent Member's property, or the pursuit of other lawful remedies available to the Association under Colorado law; and

(6) The name and contact information of the person(s) with whom the Delinquent Member would negotiate a Payment Plan if the Delinquent Member desires to do so.

15. Payment Plans: The Board shall offer a "Payment Plan" to a Delinquent Member who wishes to act in good faith to pay that Member's delinquent account in installment payments. Any such Payment Plan must comply with the requirements of Section 38-33.3-316.3 (2) C.R.S., to wit:

a. The Payment Plan must be memorialized in a written agreement signed by the Delinquent Member and, after approval by the Board, by the Board's President or Vice President and Secretary or Assistant Secretary.

b. The delinquent amount shall be payable in substantially equal installment payments over a period of no less than six (6) months. An installment period of longer than six months may be agreed upon by the Board, in its discretion.

c. In the context of the Payment Plan, the Board may require that interest on the

Delinquent Member's account accrue and be paid together with installment payments of the principal sum at a rate equal to or less than twelve percent (12%) per annum. If a rate of interest of less than twelve percent (12%) per annum is agreed upon by the Board, such reduction in the interest rate otherwise required by the Covenants (12%) shall occur only if: (i) the Delinquent Member makes all installment payments required by the Payment Plan in a timely manner; and (ii) the Delinquent Member otherwise complies with the terms of the Payment Plan, i.e., in addition to timely payments of the installment payments required by the Payment Plan, the Delinquent Member also must make timely payments (in a lump sum or pursuant to the installment option described in paragraph 11, above) of current assessments as they come due; and (iii) the Delinquent Member agrees that the abated interest will become part of the assessment due from the Delinquent Member and become immediately due and payable if the Delinquent Member defaults with respect to his or her obligations under the Payment Plan.

d. Similarly, the Board, in its discretion, may agree to waive other "collection costs" (i.e., bad check charges, late payment fees, administrative costs, attorneys' fees, and other collection expenses) which otherwise the Association could collect from the Delinquent Member upon the condition that: (i) the Delinquent Member makes all installment payments required by the Payment Plan in a timely manner; and (ii) the Delinquent Member otherwise complies with the terms of the Payment Plan, i.e., in addition to timely payments of the installment payments required by the Payment Plan, the Delinquent Member also must make timely payments (in a lump sum or pursuant to the installment option described in paragraph 11, above) of current assessments as they come due; and (iii) the Delinquent Member agrees that the abated collection costs will be reinstated as part of the assessment due from the Delinquent Member and become immediately due and payable if the Delinquent Member defaults with respect to his or her obligations under the Payment Plan.

e. Either (1) the failure by a Delinquent Member to pay any installment payment required by that Member's Payment Plan in a timely manner; or (2) the failure by a Delinquent Member to remain current with regular assessments as they come due during the pendency of the Payment Plan shall constitute a failure to comply with the terms of the Payment Plan and therefore a "default." Such default by the Delinquent Member shall permit the Association to pursue collection of all sums due to the Association from the Delinquent Member by whatever lawful means are then available to the Association. Such default also shall permit the Association to recover any interest or collection costs tentatively abated or waived under the Payment Plan, which shall be computed instead from the original due date at the rate of twelve percent (12%) per annum computed and as though the Payment Plan had not been negotiated (but with appropriate credit for the payments actually made by the Delinquent Member during and pursuant to the Payment Plan).

f. The Delinquent Member shall keep the Association informed as to the Delinquent Member's current mobile and home telephone numbers, e-mail address(es), and whether (and when) the Delinquent Member intends to sell his or her residence. If a Delinquent Member subject to a Payment Plan resolves to sell his or her residence, then the Delinquent Member shall

communicate to the Association the name and address of the title insurance company or escrow agent handling the closing of such sale so that the Association's lien rights are protected and the Association's claim against the Delinquent Member is paid at the closing of the sale of said residence.

g. If a Delinquent Member faithfully performs all obligations under a Payment Plan, then any agreed upon interest abatement or waiver of other collection costs shall be deemed to have been permanently waived by the Association and shall not thereafter be collected by the Association from the formerly Delinquent Member.

h. If a Delinquent Member defaults under a Payment Plan, but during the pendency of the Payment Plan the Delinquent Member makes installment payments under that plan, then those installment payments shall be applied in the following order or priority:

- (1) First, to the payment of any returned check charges, until paid in full;
- (2) Second, to the payment of any late payment fees, until paid in full;
- (3) Third, to the payment of any other collection costs (including attorneys' fees) incurred by the Association, until paid in full;
- (4) Fourth, to the payment of accrued interest on the total indebtedness, until paid in full;
- (5) Fifth, to the payment of any unpaid special assessment, until paid in full; and
- (6) Sixth, to the payment of any unpaid annual assessment.

i. If a Delinquent Member defaults under a Payment Plan, or if a Delinquent Member does not request the right to pay his or her indebtedness pursuant to a Payment Plan, then a written notice of that default (hereafter referred to as the "Required Notice") shall be given to the Delinquent Member by the Association, and such Required Notice shall inform the Delinquent Member of each of the following:

- (1) the act or omission constituting a default;
- (2) the total amount then due from the Delinquent Member, which shall include an accounting of how that total was determined and the portions of the total indebtedness represented by unpaid annual assessments, unpaid special assessments, unpaid returned check charges, unpaid late fees, unpaid attorneys' fees, other collection costs, and unpaid interest;
- (3) the fact that the Delinquent Member, having failed to comply with the terms of a Payment Plan (or having refused to avail himself or herself of the opportunity to

enter into a Payment Plan), will not have any right to enter into another Payment Plan;

(4) The name and contact information of the individual the Delinquent Member may contact to request a copy of the Delinquent Member's ledger or account record in order to verify the amount of the debt;

(5) That payment in full of the delinquency is required to cure the delinquency;

(6) That failure to cure such default within thirty days subsequent to the date of such written notice may result in the Delinquent Member's delinquent account being turned over to a collection agency or attorney, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the unit owner's property, or other remedies available to the Association under Colorado law;

(7) That partial payments made prior to turning the Delinquent Member's account over to an attorney or collection agency for collection will be applied in the order specified above in paragraph 15, h;

(8) That after the Delinquent Member's account is turned over to an attorney or collection agency for collection, the Delinquent Member will be required to pay all court costs, sheriff's fees, attorneys' fees, collection agency fees, and other costs and expenses required or incurred by the Association in collecting the Delinquent Member's indebtedness, and that the total amount of such fees and costs may exceed the total amount of the indebtedness as of the date of said notice;

(9) That among the remedies possessed by the Association is the right to perfect a lien against the Delinquent Member's residence and to force the sale of said residence at a foreclosure sale or sheriff's sale in accordance with the laws of Colorado, which might result in the loss by the Delinquent Member of title, possession, and any economic benefits attributable to the ownership of that residence; and

(10) That because the indebtedness to the Association is also the personal obligation of the Delinquent Member, the Association is entitled to seek a judgment against the Delinquent Member as an individual and to enforce that judgment by levying upon or garnishing or otherwise executing against other property rights or assets of the Delinquent Member under the laws of Colorado.

The Required Notice shall be sent to the Delinquent Member by U.S. Mail, postage prepaid in the proper amount, addressed to the Delinquent Member's last known address. In addition, a copy of the Required Notice shall be E-Mailed to the Delinquent Member at the last known E-Mail address of the Delinquent Member. However, if the Delinquent Member did not furnish the Association (or the Association's Manager) with a currently effective E-Mail address, then the

Association need not send such E-Mail notice.

16. Procedures for Referral of Delinquent Member's Account to Attorney or Collection Agency: No Delinquent Member's account may be referred to a collection agency or attorney for collection or any legal action which, if pursued, might result in the foreclosure of a lien against the Delinquent Member's residence unless the requirements of this paragraph are satisfied. In this regard:

a. This paragraph is intended to comply with Section 38-33.3-316 (11) (a) (I) and (II) C.R.S, and shall be interpreted in a manner which is consistent with that intent.

b. The decision of whether to refer a Delinquent Member's account to a collection agency or attorney for enforcement and collection may not be delegated to the Association's manager or attorney or to any insurer or other person. Instead, such decision must be specifically authorized by a duly passed resolution of the Board adopted in accordance with the Bylaws of the Association. The minutes of the meeting at which such resolution is adopted shall reflect the names of each Board member who votes either for or against such resolution, and such resolution shall otherwise comply with this Policy.

c. The Board of the Association shall not take up for consideration any resolution to refer a Delinquent Member's account to a collection agency or attorney for collection or enforcement unless and until the balance of the Delinquent Member's unpaid assessments and charges secured by the Association's lien equals or exceeds either: (i) six (6) months' of the Delinquent Member's annual common assessment payments (if the Delinquent Member was required to pay same on a monthly installment basis); or (ii) 50% of the Delinquent Member's annual common assessment (if the Delinquent Member was required to pay same on an annual basis in one lump sum) as determined by the Association's most recently duly approved annual budget. Nor shall such resolution to refer a Delinquent Member's account to a collection agency or attorney for collection until the latest of: (iii) six months subsequent to the date the Delinquent Member first became delinquent with respect to that Member's indebtedness to the Association; or (iv) thirty (30) days subsequent to the act or event of default committed by the Delinquent Member with respect to a Payment Plan negotiated between the Delinquent Member and the Association; or (v) thirty (30) days subsequent to the date the "Required Notice" (as said term is defined in subparagraph i of paragraph 15, above) is sent to the Delinquent Member.

e. The resolution adopted by the Board shall state that following such referral, the collection agency or attorney is authorized to:

(1) Take such lawful steps and file such legal proceedings as may be required to perfect the Association's lien against the Delinquent Member's residence and property located within the Subdivision;

(2) File such lawsuits and institute such collection efforts as may appear to the

Association's attorney to be reasonable under the circumstances in order to collect all sums due to the Association from the Delinquent Member, together with all costs of collection, including garnishment of the Delinquent Member's wages or sources of income, attachment and levy against assets owned by the Delinquent Member, and executing against any property or property rights as may be possessed by the Delinquent Member so long as lawful and available to the Association as a creditor under the laws of the state of Colorado;

(3) Engage in such discovery procedures as may be necessary in the opinion of the Association's attorney to ascertain the pertinent facts surrounding the Delinquent Member's default and the true amount of his or her indebtedness, the location of assets owned by the Delinquent Member that might be seized and sold in order to satisfy the Delinquent Member's indebtedness to the Association, and the whereabouts of the Delinquent Member;

(4) Seek, obtain, schedule, and otherwise arrange for a foreclosure sale of any assets owned by the Delinquent Member in order to collect the debt owed to the Association, whether sale be a judicial, extra-judicial, Sheriff's, or execution sale; to publish notice of such sales, and otherwise to pursue whatever legal remedies are available to the Association (or to the Association's "Foreclosure Subsidiary" as said term is defined in paragraph 17, below) under the laws of the state of Colorado; and

(5) Represent the Association (as well as any Foreclosure Subsidiary) in connection with the foreclosure sale of any asset to which the Association's lien has attached (such as the Delinquent Member's residence) or the execution sale of any other asset owned by the Delinquent Member to which any judgment lien in favor of the Association has attached, including entering a bid on behalf of said Foreclosure Subsidiary in such amount as the attorney for the Association deems appropriate under the circumstances at such foreclosure, Sheriff's, or execution sale.

17. Formation of and Purpose of Foreclosure Subsidiary: The Association declares that it is not in the best interests of the Association for it to acquire title to any Delinquent Member's residence or any other asset owned by the Delinquent Member as the result of the sale of such asset at a foreclosure sale, Sheriff's sale, or other equivalent forced sale of that asset as a means of collecting the indebtedness due to the Association from said Delinquent Member. Accordingly, if: (i) a Delinquent Member's account has been turned over to an attorney or collection agency for collection; and (ii) a foreclosure sale, Sheriff's sale, or execution sale of any asset owned by the Delinquent Member has been scheduled in an effort to collect said account; and (iii) there exists a substantial possibility that if the Association were to submit a bid at such sale of an amount sufficient to pay in full the Delinquent Member's account as well as all costs of collection (including the costs of such sale), that bid would be the "winning bid" and result in the acquisition

by the Association of legal title to the asset sold at such sale, then, to prevent that acquisition of title by the Association, the Association shall form a limited liability company under the laws of the state of Colorado pursuant to the following terms and conditions:

- a. The limited liability company described in this paragraph is hereafter referred to (alternatively) as the “Foreclosure Subsidiary” or the “LLC.”
- b. The only member of the LLC shall be the Association. However, the LLC shall be “manager managed.”
- c. The Board of Directors of the Association shall specify the name or names of the manager(s) who shall be authorized to act on behalf of the LLC.
- d. The Association shall contribute to the capital of the LLC such sums as may be necessary for the LLC to accomplish its purposes and objectives. The manager(s) of the LLC shall open such checking accounts in such financial institutions as they may elect so that the LLC will have available to it at any foreclosure sale the necessary funds to accomplish the purchase of the assets offered for sale through such foreclosure process.
- e. The LLC shall enter such bids at any such foreclosure sales as the manager(s) of the LLC deem appropriate after consultation with the attorney for the Association.
- f. In the event the LLC is the successful (highest) bidder at such foreclosure sale, then the LLC shall acquire legal title to the assets sold at such foreclosure sale, subject to whatever rights of redemption may exist in the Delinquent Member, if any.
- g. Following acquisition of title to the foreclosed upon assets, the LLC shall use its best efforts to re-sell said assets for a sales price which is sufficient to pay in full the Association’s claim against the Delinquent Member, all costs of collection, all costs of acquiring title to the foreclosed upon assets, all costs of the subsequent sale thereof, and all other costs and expenses reasonably related to accomplishing the repayment of the debt owed to the Association.
- h. The LLC shall remit to the Association all sums realized by it in selling the foreclosed upon assets, reduced by whatever expenses have been incurred by the LLC in connection with such sale(s).
- i. Neither the manager(s) of the LLC nor any Director of the Association shall derive any financial benefit whatsoever, directly or indirectly, as the result the above referenced foreclosure sale or any subsequent sale of assets acquired at said foreclosure sale, or any operation or action taken by the LLC on behalf of the Association. Instead, all such benefit shall accrue to the Association, and the LLC in all respects shall be considered as acting for the benefit of the Association.

18. Settlement Subsequent to Reference of Account to Collection Agency or Attorney:
Regardless of the fact that the Delinquent Member's account has been turned over to a collection agency or attorney for collection, the Association shall have the option and power to consider and either accept or reject any settlement offer made by the Delinquent Member during the pendency of such collection procedures.

19. Bankruptcy by Delinquent Member: If the Delinquent Member seeks the protection offered to that Member under state or federal bankruptcy or debtor protection laws, the Association may immediately respond to any such court application and may immediately turn over the collection of the Delinquent Member's account to an attorney, notwithstanding and regardless of any time period or provision of this Policy otherwise stated above. In such event, the Association shall be entitled to protect the Association's rights under said bankruptcy laws as a secured creditor to the fullest extent lawfully permissible.

20. Waivers and Omissions: Inadvertent or intentional failures by the Association to follow this Policy shall not have the effect of extinguishing or preventing the collection of any debt owed to the Association except and unless such collection efforts are enjoined pursuant to a decree by a court of competent jurisdiction. The Association may waive failures and omissions by a Delinquent Member, but the Association shall not deviate from the requirements of this Policy if doing so would prejudice or adversely affect any Member of the Association.

21. Policy Number 7: This Policy is subject to amendment pursuant to the Association's Policy Number 7 (PROCEDURES FOR ADOPTION OF POLICIES, PROCEDURES, RULES, AND REGULATIONS).

PRESIDENT'S CERTIFICATION:

The undersigned, being the President of Fountain Greens Homeowners Association, Inc., certifies that the foregoing Policy was approved and adopted by the Board of Directors of the Association, to be effective on the Effective Date specified above, at a duly called and held meeting of the Board of Directors of the Association on MAY 16, 2018, and in witness thereof, the undersigned has subscribed her name.

Fountain Greens Homeowners Association, Inc., a Colorado nonprofit corporation

By: _____

Jennie Kopf, President

