

# **OWNERS ASSOCIATION OF ELK MEADOWS ESTATES, INC.**

## **Collection Policy**

The following policies and procedures for collection were adopted by the Board of Directors for Owners Association of Elk Meadows Estates, Inc. ("**Association**"), pursuant to C.R.S. § 38-33.3-209.5, at a regular meeting of the Board of Directors.

**EFFECTIVE DATE:**\_\_\_\_\_.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following policies, procedures, rules and regulations as the Association's Collection Policy.

### **I. Defined Terms**

Unless defined otherwise herein, capitalized terms shall have the meaning and definition as provided in the *Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Meadows Estates*, recorded on October 17, 2019, at Reference No. 223995 with the Clerk and Recorder's Office of the County of Ouray, Colorado, and as may be supplemented, amended, or restated (hereinafter referred to as "**Declaration**").

As used herein, the term "**Assessment**" includes fines assessed against an Owner or a Lot; charges assessed against a particular Owner and the Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Association's governing documents by the Owner or Guests; charges assessed against an Owner pursuant to Section 5.7 of the Declaration due to the Owner's negligence or misconduct; reasonable attorney fees and costs allowed to be recovered by the Association and assessed against an Owner or Lot; and any form of an assessment, including special assessments, fee, or charge allowed by the Declaration or the Act other than a Common Expense Assessment.

As used herein, the term "**Outstanding Balance**" includes all unpaid Installments, Assessments, Late Fees, and Interest owed to the Association by a current or prior Owner of a Lot within the Community.

### **II. Installments & Assessments - Due Date / Past Due / Delinquent**

An Owner's annual Common Expense Assessment for any given year shall be due on January 1<sup>st</sup> and payable in twelve (12) monthly installments of equal amounts that are due and payable on the first (1<sup>st</sup>) day of each month (hereinafter referred to as "**Installment**"). An Installment not paid on or before the first (1<sup>st</sup>) day of the month in which the Installment is due and payable shall be deemed past due and delinquent. From the date an Installment becomes due and payable it is part of the Association's statutory lien on a Lot and a personal obligation and liability, jointly and severally, of any Owner of the Lot at the time the Installment became due and payable.

Assessments are due and payable immediately, without notice, on the date the Assessment is assessed against an Owner or Lot. Assessments not paid in full on or before the first (1<sup>st</sup>) day of the month following the date the Assessment is due and payable shall be deemed past due and

delinquent. From the date an Assessment becomes due and payable it is part of the Association's statutory lien on a Lot and a personal obligation and liability, jointly and severally, of any Owner of the Lot at the time the Assessment became due and payable. Notwithstanding the foregoing, all reasonable attorney fees and costs incurred by the Association in its efforts to enforce the Declaration and the Association's governing documents shall be recoverable as part of the Association's statutory lien on the date the fee or cost is incurred regardless of whether or not the fee or charge has been assessed against the Owner or Lot.

### **III. Late Fee & Interest**

If an Installment is not paid in full on or before the twentieth (20<sup>th</sup>) day of the month in which it is due and payable, then a late fee of ten dollars (\$10.00) may be assessed against the delinquent Owner on or after the twenty-first (21<sup>st</sup>) day of the month in which the Installment is due and payable (hereinafter referred to as "**Late Fee**"). A Late Fee shall be due and payable immediately, without notice, on the date it is assessed.

In addition to the Late Fee, Installments and Assessments that are not paid by the last day of the month in which the Installment or Assessment becomes delinquent shall bear interest at the rate of eight percent (8%) per annum from the date the Installment or Assessment became due and payable (hereinafter referred to as "**Interest**"). Interest shall accrue, and shall be due and payable immediately, without notice, on the first day of the month following the last day of the month in which the Installment or Assessment became delinquent.

Late Fees and Interest are part of the Association's statutory lien on a Lot and a personal obligation and liability, jointly and severally, of any Owner of the Lot at the time the Late Fee or Interest became due and payable.

### **IV. Returned Payment Charges**

If any check, draft, instrument or other order for payment of money that is payable to or for the benefit of the Association is made upon any form of a financial institution, person, firm, or corporation (collectively herein "**Institution**") and is not paid upon its presentment for any reason, including but not limited to insufficient funds, then the Owner is liable to the Association for an amount equal to the face amount of the check, draft, or order, plus a returned payment charge of \$20.00 and any fee or charge of the Institution (hereinafter referred to as "**Returned Payment Charges**").

A returned payment shall immediately cause the Installment or Assessment on the account for which it was paid to be past due and delinquent if at the time the payment is returned the Installment or Assessment on the account would otherwise be delinquent pursuant to this Collection Policy.

Returned Payment Charges are included within the term Assessments in this policy.

**V. Collection Process – Itemized List / Courtesy Notice and Notice of Delinquency**

1. **Record of Contacts** – The Association shall maintain a record of any contacts with an Owner and, if applicable, the designated contact of an Owner regarding a delinquency. These records shall include the following information:
  - a. *Type and Method of Sending Correspondence*: The type of notice or communication between the Association and the Owner (e.g., letter, e-mail, phone call, text), and if by mail, the mailing address(es) used and whether sent postage prepaid, certified, registered, or first-class, and if by e-mail, the e-mail address(es) used, and if by phone, the phone number used.
  - b. *Date and Time*: The date and time the contact was made.
  - c. *Pertinent Information*: Include information that makes it clear if the correspondence was actual or attempted, such as distinguishing between leaving a voicemail vs. speaking to the Owner on the phone, and whether any mail was returned and the basis for the returned mail.
2. **Itemized List** – The Association shall send an itemized list of an Owner's Outstanding Balance to an Owner and, if applicable, an Owner's designated contact. The Association shall send the itemized list as follows:
  - a. *Period*: On a monthly basis, until the Outstanding Balance is paid in full.
  - b. *Means of Sending*: To the Owner at the Owner's Address for Notice (*defined below in Section XII - General Provisions*) on file with the Association and, if applicable, to the Owner's designated contact by (i) first-class mail; and (ii) if the Association has the relevant e-mail address, by e-mail.
  - c. *Language Preference*: The itemized list shall be sent in English unless the Owner has indicated a preference for receiving correspondence and notices from the Association in another language, per Section VI herein below. If the Owner indicates a language preference other than English, then the itemized list shall be sent in the language indicated.
  - d. *Designated Contact*: If the Owner has identified another person to serve as a designated contact for the Owner, per Section VII herein below, then the Association shall also send a copy of the itemized list in English to the designated contact for the Owner.
  - e. *Courtesy Notices*: The itemized list may be included in one or more courtesy notices sent to the Owner prior to sending a Notice of Delinquency.
3. **Courtesy Notice** – The Association may send a Courtesy Notice to an Owner and, if applicable, to the designated contact of an Owner if the Owner has an Outstanding Balance on the tenth (10<sup>th</sup>) day of a month. If a Courtesy Notice is sent, then it should notify the Owner of the amount of the Outstanding Balance owed by the Owner, that the Owner's

account is delinquent, and provide notice that Late Fees and Interest may be charged to the Owner's account on an ongoing monthly basis if payment in full of the Outstanding Balance is not received by the Association by a date provided in the Courtesy Notice.

- a. *Means of Sending:* To the Owner at the Owner's Address for Notice (*defined below in Section No. XII - General Provisions*) on file with the Association and, if applicable, to the Owner's designated contact by (i) first-class mail; and (ii) if the Association has the relevant e-mail address, by e-mail.
  - b. *Language Preference:* The Courtesy Notice shall be sent in English unless the Owner has indicated a preference for receiving correspondence and notices from the Association in another language, per Section VI herein below. If the Owner indicates a language preference other than English, then the Courtesy Notice shall be sent in the language indicated.
  - c. *Designated Contact:* If the Owner has identified another person to serve as a designated contact for the Owner, per Section VII herein below, then the Association shall also send a copy of the Courtesy Notice in English to the designated contact for the Owner.
  - d. *Itemized Lists:* The Courtesy Notice may include the Itemized List that must be sent to the Owner on a monthly basis.
4. **Notice of Delinquency** – Notwithstanding the Association exercising its option of mailing a Courtesy Notice, prior to the Association turning a delinquent account over for legal action or collection, the Association shall provide the Owner a Notice of Delinquency, which must:
- a. Specify the total amount due, with an accounting of how the total was determined;
  - b. Specify whether the opportunity to enter a payment plan exists and instructions for contacting the Association to enter into such a payment plan;
  - c. Specify 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;
  - d. Be written in English and in any language that the Owner has indicated a preference for correspondences and notices per Section VI herein below;
  - e. Specify whether the delinquency concerns unpaid Installments; unpaid fines, fees, or other charges; or both unpaid Installments and unpaid fines, fees, or other charges;
  - f. If the Notice of Delinquency concerns unpaid Installments, the Notice of Delinquency must notify the Owner that unpaid Installments may lead to foreclosure;

- g. Include:
    - i. A description of the steps the Association must take before the Association may take legal action against the Owner, including a description of the Association's cure process for violations of the Association's governing documents established in accordance with C.R.S. § 38-33.3-209.5(1.7)(b); and
    - ii. A description of what legal action the Association may take against the Owner, including a description of the types of matters that the Association or Owner may take to small claims court, including injunctive matters for which the Association seeks an order requiring the Owner to comply with the declaration, bylaws, covenants, or other governing documents of the Association;
  - h. State the following or similar statement, depending on whether more than one Notice of Delinquency will be sent: "Action is required to cure the delinquency. Failure to do so within thirty (30) days may result in your account being turned over to a collection agency, a lawsuit being filed against you, the filing of a lien against your property and foreclosure of a lien against your property if the delinquency is for unpaid assessments, or other remedies available under Colorado law. The Association may but is not required to exercise these remedies, except for foreclosure of a lien against your property, in small claims court if the amount at issue does not exceed \$7,500, exclusive of interest and costs;" and
  - i. Notify the Owner that the Association may send more than one Notice of Delinquency.
5. **Means of Providing Notice of Delinquency** – The Association shall provide an Owner and, if applicable, the designated contact of an Owner with a Notice of Delinquency as follows:
- a. By certified mail, return receipt requested, mailed to the Owner's Address for Notice and to the address of the Owner's designated contact, if applicable;
  - b. By physically posting a copy of the Notice of Delinquency at the Owner's Lot within the Community at least one (1) time if more than one Notice of Delinquency is provided; and
  - c. By one of the following means:
    - i. First-class mail, mailed to the Owner's Address for Notice and to the address of the Owner's designated contact, if applicable;
    - ii. Text message to a cellular number that the Association has on file because the Owner has provided the cellular number to the Association; OR
    - iii. E-mail to an e-mail address that the Association has on file because the Owner has provided the e-mail address to the Association.
6. **Board Vote in Executive Session re: Action** – Subject to the Owner's right to enter a Payment Plan, as defined herein below, if the Owner has not paid the Outstanding Balance

within the time frame set forth in the last Notice of Delinquency sent to the Owner, then the Association may take any or all of the following actions:

- a. Refer a delinquent account to a collection agency or attorney only if a majority of the Board votes to refer the matter in a recorded vote at a meeting conducted pursuant to C.R.S. § 38-33.3-308(4)(e);
- b. Send an additional Notice of Delinquency;
- c. File a claim in Small Claims Court, pursuant to C.R.S. § 38-33.3-209.5(9); or
- d. Take no current action to collect the delinquency, except that the Association's statutory lien may continue to encumber the Owner's Lot within the Community, subject to the six-year statute of limitations, pursuant to C.R.S. § 38-33.3-316(5).

## **VI. Language Preference**

An Owner may notify the Association if the Owner prefers that correspondences and notices sent to the Owner by the Association regarding the Owner's delinquent account be in a language other than English. If the Owner does not notify the Association of a language preference, then the Association shall send all correspondences and notices to the Owner in English. If the Owner does notify the Association of a language preference, then the Association shall send all correspondences and notices related to the Owner's delinquent account to the Owner in English and in the language identified by the Owner as the Owner's preferred language. NOTICE: The Association's obligation to provide notice and correspondence in a language other than English is expressly limited to notices and correspondences about an Owner's delinquent account and/or alleged violations that are sent to the Owner. The Association is not obligated to provide notices and correspondences to the Owner related to any other subject matter in a language other than English. To identify a preference that correspondence and notices from the Association be made in a language other than English, an Owner must deliver a written language preference request to the Association by certified mail, return receipt requested.

## **VII. Designated Contact**

An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to delinquency. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices any time communications are sent out. To identify a designated contact, an Owner must complete the attached Designated Contact Form, a blank copy of which is attached to this Policy, and return it to the Association by certified mail, return receipt requested.

## **VIII. Payment Plan**

1. **Legal Authority and Standard** - This section sets forth the circumstances under which an Owner is entitled to enter into a payment plan with the Association, pursuant to C.R.S. § 38-33.3-316.3 and C.R.S. § 38-33.3-209.5(1.7)(a)(II). The Association shall make a good faith effort to coordinate with an Owner to set up a payment plan that meets the requirements of

Colorado law, unless the Association is not obligated to negotiate or enter into a payment plan with an Owner.

2. **Owner's Right to a Payment Plan** - The Association is not required to attempt to negotiate a payment plan prior to the Association exercising its legal remedies if an Owner is not entitled to enter a payment plan. The Association is obligated to negotiate, coordinate, and enter into a payment plan with an Owner unless:
  - a. The Owner has previously entered into a payment plan with the Association for the payment of the Owner's current or prior delinquent account; or
  - b. The Owner does not occupy the Lot and acquired the Lot as a result of:
    - i. A default of a security interest encumbering the Lot or Residence thereon; or
    - ii. Foreclosure of the association's lien.
3. **Equal Installment Payment Plan** - If an Owner is entitled to enter a payment plan under this Collection Policy, then the payment plan negotiated under this section must, at a minimum, comply with C.R.S. § 38-33.3-316.3 and allow the Owner to pay the Outstanding Balance owed in equal installments over a period of eighteen (18) months. Said repayment period shall begin on a date chosen by the Board. Notwithstanding the foregoing, the Association may not commence a foreclosure action to foreclose its statutory lien against the Owner's Lot within the Community until the Association provides the Owner with a written offer to enter a payment plan that meets the requirements of Section XI below. NOTE: The Owner must remain current on all Installments and Assessments as they come due during the payment plan in addition to any payments made toward the Outstanding Balance.
4. **Failure to Comply with Payment Plan** - If an Owner fails to comply with the repayment terms of the payment plan, then the Association may pursue its legal remedies without providing further notice to the Owner. An Owner fails to comply with the terms of a payment plan if:
  - a. The Owner fails to timely remit payment of three (3) or more of the payment plan's monthly installments within fifteen (15) days after the payment plan's monthly installments were due; or
  - b. The Owner fails to timely pay an Installment or Assessment legally assessed against the Owner's account as they come due during the duration of the payment plan.

#### **IX. Payments: Application / Restrictive Endorsements**

1. **Application** - Partial payments, including payments made as part of a payment plan, received by the Association to be applied towards the outstanding balance of a delinquent account shall be applied to the sums of the charges that comprise the delinquent account's balance as it existed at the time the payment was received, in the following order:

- First: Outstanding Installments, applied first to the most delinquent Installment before being applied to a more current Installment.
- Second: To any special assessments levied and owed.
- Third: Reasonable attorneys' fees, costs, and expenses incurred by the Association in connection with enforcing the Owner's compliance with the Association's governing documents, including this Collections Policy.
- Fourth: Non-legal collection costs incurred by the Association, including but not limited to, management and administration fees incurred by the Association for monitoring delinquent accounts, fees charged to the Association for preparing and mailing notice and demand letters, and costs of mailing.
- Fifth: Returned Payment Charges, Fines, and Late Fees.
- Sixth: Interest accrued.

2. **Restrictive Endorsements** - If an Owner intends to satisfy the entire Outstanding Balance owed by the Owner to the Association by restrictive endorsement on a check or money order for an amount less than the full balance then due on the Owner's delinquent account, that check or money order must be delivered to the Association Attorneys by prepaid certified mail, return receipt requested. Any payment of less than the outstanding balance that contains a writing that the Association's representatives, including but not limited to the Association Attorneys, believe could be a restrictive endorsement or any other restriction, including an accord and satisfaction, on the receipt of the funds, or that is accompanied by any letter, note or other communication that could be considered a restrictive endorsement or accord and satisfaction may, at the discretion of the Association Attorneys or the Association, be returned and not accepted.

## **X. Legal Remedies**

The Association's legal remedy options are independent of each other and the Association's right to elect to pursue any one legal remedy is in addition to and not in lieu of the Association's right to pursue another legal remedy, which may be pursued concurrently. The legal remedies available to the Association to enforce its governing documents and collect the amounts owed to the Association by an Owner, and as part of the Association's lien against a Lot, include, but are not limited to:

1. **Record a Notice of Lien** – The Association may record a Notice of Lien against the Lot in the real property records of the county in which the Lot is located. The recording of the Notice of Lien is in addition to the Association's statutory lien automatically granted to the Association by the Act.
2. **Acceleration of Installments** – The Board has the right to accelerate and call due and payable the entire unpaid amount of the annual Common Expense Assessment levied on any



Lot that is owned by an Owner who is delinquent because of the Owner's failure to timely pay any Installment or Assessment owed to the Association by the Owner. Such acceleration shall result in the entire unpaid annual Common Expense Assessment being due to the Association immediately. Upon acceleration, an Owner loses the privilege of paying any remaining amount of the annual Common Expense Assessment in installments for the remainder of the year, unless such privilege is otherwise reinstated by the Board at its sole discretion.

3. **Suspension of Rights: Voting Privileges, Use of Facilities, Utilities** – The Association, by action of the Board, may exercise self-help in its efforts to collect on a delinquent account. The Board may suspend the voting privileges of any Owner whose account is delinquent. The Board may suspend the right of any delinquent Owner to use any and all common facilities, recreational or otherwise, that are owned and/or maintained by the Association. The Board may suspend the right of any delinquent Owner to use, access, tap, and utilize any and all common utilities owned, maintained, serviced and/or provided by the Association. Notwithstanding the foregoing, the Board shall not suspend any of the foregoing rights without first following the procedure required in the Association's Covenant Enforcement Policy.
4. **Require Payment by Certified Funds** – If two (2) or more payments made by an Owner, or on behalf of an Owner, on a delinquent account are returned unpaid by the bank or other financial institution within any period of 12 months, then the Association may require all future payments made by the delinquent Owner, or on behalf of the delinquent Owner, for a period of one (1) year, be made by certified funds, such as certified check or money order.
5. **Money Judgment / Transcript of Judgment (Judgment Lien) / Garnishment of Assets** - The Association may commence a lawsuit against the delinquent Owner for an award of a money judgment in favor of the Association and against all Owners of the Lot personally, jointly and severally, for the Outstanding Balance owed to the Association by an Owner. The Association may record a transcript of judgment in any county in Colorado, in which the Owner may have property, real or personal, and seek to enforce the judgment as a judgment lien recorded against the Owner's property, both real and personal, including an action to foreclose the Association's judgment lien.

Further, the Association may seek to garnish the assets of the Owner in the full amount of the judgment plus all additional costs of collection. This includes garnishing wages, bank accounts, rents, automobiles, and other property.

6. **Appointment of Receiver** – The Association may commence a lawsuit and ask the Court to appoint a receiver to collect rents and disburse the rents according to an Order of the Court for the payment of amounts owed to the Association for delinquent Installments, Assessments, Late Fees, and Interest; current Installments; the receiver's fees and costs; to prevent waste of the Lot; and for any other purpose legally allowed to be awarded to the Association.

7. **Foreclosure of Lien on Lot** – The Association may foreclose its statutory and/or judgment lien against a Lot in lieu of or in addition to its right to seek and obtain a personal money judgment against the delinquent Owner. If the proceeds from the foreclosure sale of a Lot are not sufficient to satisfy the entire amount of the Association’s lien against the Lot, then the Association may also seek and is entitled to a deficiency judgment against the delinquent Owner. The Association may only foreclose on its statutory lien if the conditions of Section XI below are met.
8. **Referral of Delinquent Account to Collection Agency** – The Association may turn the delinquent account over to a collection agency.
9. **Referral of Delinquent Account to Legal Counsel** – The Association may refer a delinquent account to the Association’s legal counsel (hereinafter referred to as “**Association Attorneys**”) for collection and enforcement of the Association’s governing documents.
  - a. Post-Referral Communication: After the delinquent account has been referred to the Association Attorneys, the delinquent Owner shall direct all communications regarding the delinquent account to the Association Attorneys. Further, the Association, its agent, and the Board shall refer all communications and correspondence from a delinquent Owner regarding the turned over delinquent account to the Association Attorneys.
  - b. Demand Letter: The Association Attorneys shall mail a demand letter to the Owner’s Address for Mailing with the Association.
  - c. Action After Demand Letter – Delinquency Cured: If the amount set forth in the Association Attorney demand letter is received by the Association Attorney by the date set forth in such demand letter, the Association Attorney shall take no further action and shall return the account back to the Association.
  - d. Action After Demand Letter – Delinquency Not Cured – Lawsuits: If the Owner fails to timely pay the full amount set forth in the initial demand letter, the Association Attorney may file a lawsuit in County Court or District Court against the Owner. In the alternative, or in addition thereto, the Association Attorneys may also pursue the other remedies set forth in this Section X. Lawsuits shall set forth the sum of alleged Outstanding Balance owed, and any other expenses due as of the approximate date of the lawsuit. Lawsuits shall be prosecuted as the Association Attorney deems appropriate.
  - e. Attorney Fees & Costs: The Association is entitled to recover its reasonable attorneys’ fees, costs, and expenses incurred in its efforts to enforce the Association’s governing documents and the collection of an Outstanding Balance owed to the Association from a delinquent Owner. The reasonable attorney fees, costs, and expenses incurred by the Association in its efforts to collect on a delinquent account shall be due and payable immediately when incurred as part of the Association’s statutory lien against the Lot and as a personal obligation and liability of the delinquent Owner.

10. **Action Without Notice to Protect Interest of Association** – Notwithstanding any other provision within this Collection Policy, the Association may take any action necessary to protect the Association’s interest in and to any Lot within the Community, including the recovery of the Outstanding Balance owed, without first sending notice to an Owner if the Association receives any notice of a bankruptcy filing that makes a Lot subject to the bankruptcy estate or any notice of a foreclosure by any holder of an encumbrance against a Lot within the Community. Upon receipt of said type of notice, the Association may immediately refer the matter to the Association Attorneys to take any action necessary to protect the Association’s interests. The Association is entitled to recover its reasonable attorneys’ fees, costs, and expenses incurred in its efforts to protect its interests as provided in this section from an Owner of the Lot personally and as part of the Association’s statutory lien against the Lot. The reasonable attorney fees, costs, and expenses incurred by the Association in its efforts to protect its interests shall be due and payable immediately when incurred as part of the Association’s statutory lien against the Lot and as a personal obligation and liability of the delinquent Owner.

## **XI. Foreclosure**

1. **Conditional Right to Foreclose Statutory Lien** - The Association shall not commence a foreclosure action under the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, et seq.) to initiate a foreclosure of the Association’s lien based on an Owner's delinquency in paying Installments unless:
- a. The Outstanding Balance equals or exceeds six (6) months of Common Expense Assessments based on a periodic budget adopted by the Association;
  - b. The Board has formally resolved, by a recorded vote, to authorize the filing of a legal action to foreclose the Association’s lien against the specific Lot and on an individual basis;
  - c. The Association has complied with each of the requirements in C.R.S. § 38-33.3-209.5 and 316.3;
  - d. The Association has provided the Owner with a written offer to enter a repayment plan pursuant to C.R.S. § 38-33.3-209.5(7) that authorizes the Owner to repay the debt in monthly installments over eighteen (18) months, and allowed the Owner to choose the amount to be paid each month toward the Outstanding Balance, so long as each payment must be in an amount of at least twenty-five dollars (\$25.00), until the balance of the amount owed is less than twenty-five dollars (\$25.00), and the entire Outstanding Balance is paid within the eighteen month payment plan period (hereinafter called a “**209.5 Payment Plan**”); and
  - e. Within thirty (30) days after the Association has provided the Owner with a written offer to enter a 209.5 Payment Plan, the Owner has either:

- i. Declined the 209.5 Payment Plan by failing to deliver to the Association, within thirty (30) days from the date of the Association's written offer, the Owner's written acceptance of the Association's written offer for the Owner to enter a 209.5 Payment Plan; or
- ii. After accepting the 209.5 Payment Plan, the Owner fails, on at least three (3) separate occurrences, to pay a monthly installment of the 209.5 Payment Plan within fifteen (15) days after the monthly installment was due, or fails to timely pay an Installment or Assessment that comes due during the duration of the 209.5 Payment Plan.

**2. Conditions Under Which Foreclosure is Prohibited** - The Association shall not:

- a. Foreclose on an assessment lien if the debt securing the assessment lien consists only of one or both of the following:
  - i. Fines that the Association has assessed against the Owner; or
  - ii. Collection costs or attorney fees that the Association has incurred and that are only associated with assessed fines; or
- b. Commence a foreclosure action under the Colorado Common Interest Ownership Act based only on outstanding fees, charges, late charges, attorney fees up to the maximum amount authorized, fines, and/or interest.
- c. Notwithstanding the foregoing, the Association does not waive its legal right to foreclose any other form of lien held by the Association and as allowed by any other Colorado law and common law including, but not limited to, foreclosure of a judgment lien or tax lien.

**XII. General Provisions**

- 1. **Collection Costs** – Except as limited by law, the Association is entitled to recover any and all fees, costs, and expenses that it incurs and pays, or that it has incurred and is contractually required to pay, in its efforts to recover an Outstanding Balance owed by an Owner or to protect the Association's interests in a Lot. Said fees, costs, and expenses may include, but are not limited to, preparation of notices and demand letters, lien recordings and releases, payment plan monitoring fees, management fees, litigation, reasonable attorneys' fees, court costs, filing fees, and recording fees. The collection costs shall be the personal liability of the delinquent Owner as well as part of the Association's statutory lien against the Lot.
- 2. **Certificate of Status Letter** – The Association shall furnish to an Owner, or to such Owner's designee, or to a holder of a security interest secured by a Lot, or its designee, upon receipt of a written request delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the Outstanding Balance owed by an Owner and levied against the Owner's Lot. The Association or its agent may charge a reasonable fee for preparing the requested payoff statement.

3. **Owner's Address for Notice** – Notwithstanding the prior use of any form of communication by or between an Owner and the Association or its agent, all required notices regarding a delinquent account, including but not limited to, the Courtesy Notice and the Notice of Delinquency, shall be mailed to an Owner at the address of the Owner's Residence within the Community. However, the Owner may provide the Association a written request that all notices be sent to the Owner at a different mailing address. The Owner's request must be in writing and delivered to the Association personally, by personal courier, or by certified mail, return receipt requested. Required notices shall be sent to the Owner's mailing address only after the Owner's written request is properly received by the Association.
4. **Date Duty of Notice is Fulfilled** - The Association's duty to provide an Owner and, if applicable, a designated agent of an Owner any written notice or correspondence required by this Collection Policy is deemed fulfilled upon placing the notice or correspondence in the outgoing mail.
5. **Enforcement Discretion / Extended Deadlines** – The Board has the authority to evaluate delinquent accounts on a case-by-case basis. The remedies set forth in this Collection Policy and otherwise provided for in the governing documents shall be cumulative and not to be deemed exclusive. As the Board may determine to be appropriate under specific circumstances, the Board is authorized to modify the provisions within this Collection Policy to the extent such a modification shall not be more restrictive or limiting of an Owner's rights herein or under Colorado law. Further, any such modification shall be appropriately documented in the meeting minutes of the Board and contain the name of the Board members who grant the modification and the conditions of the modification.
6. **Settlement Authority** - The Board has the authority to act on behalf of the Association in negotiating, presenting, declining, and accepting an offer of settlement for payment of a delinquent account. The Board may delegate its authority to negotiate, present, decline, and accept offers of settlement to an agent or the Association Attorneys based pre-authorized parameters.
7. **Authorized Agent of the Association** – Any and all rights, powers, duties, and authority of the Association provided for herein may be delegated by the Board to and exercised by an authorized agent of the Association, including the Association Attorneys, to the extent such delegation is legally allowed by the governing documents and the Act.
8. **No Waiver by Implication, Offsets, or Defenses** – All Installments, Assessments, Late Fees, and Interest shall be payable in the amounts specified in the statement thereof, and no offsets or reduction shall be permitted for any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under the governing documents. Failure of the Board, the Association, or its agent to comply with any provision in this Collection Policy shall not be deemed a defense to payment of Installments, Assessments, Late Fees, Interest, or any other charges. This section does not limit the Board's authority to negotiate in good faith with an Owner regarding settlement of a delinquent account.

9. **Future Amendment of Collection Policy** – This Collection Policy may be amended from time to time by the Board.
10. **Survival of Severed Provisions and/or Sections** – In the event a court of competent jurisdiction finds a provision and/or section of this Collection Policy void or otherwise unenforceable, the other provisions and sections shall remain in full force and effect.
11. **Controlling Policy** – This policy shall control the actions of the Association and Owners from the effective date of this policy and going forward. This policy shall replace all previous policies, rules, and regulations regarding the subject matter of this policy from the effective date of this policy and forward, subject to the right of the Association’s Board of Directors to amend this policy. Any transactions or conduct that occurred prior to the effective date of this policy, but which were related to the subject matter of this policy, shall be controlled by the policy, rule or regulation that was in effect at the time the conduct or transaction occurred or was supposed to occur.
12. **Headings** – The headings contained in this policy are for reference purposes only and shall not affect in any way the meaning or interpretation of this policy.

**CERTIFICATION:** The undersigned hereby certifies that the foregoing Collection Policy was adopted and made part of the minutes of the meeting of the Board of Directors of the Association conducted on \_\_\_\_\_, 2022.

Owners Association of Elk Meadows Estates, Inc.

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name & Title)

**Owners Association of Elk Meadows Estates, Inc.**  
**Addendum to Collection Policy**  
**Designated Contact for Delinquent Account Form**

An Owner may identify another person to serve as a designated contact for the Owner to be contacted on the Owner's behalf for purposes of contact related to delinquency. If an Owner has identified a designated contact, the Owner and the Owner's designated contact must receive the same correspondence and notices anytime communications are sent out. To identify a designated contact, an Owner must complete this Designated Contact Form and return it to the Association by certified mail, return receipt requested. Such notice is required due to the increased cost a designated contact imposes upon the Association.

Category	Information
Owner Name	
Owner Property Address	
Owner Mailing Address (if different from Property Address)	
Owner Telephone Number	
Owner E-mail Address	
Designated Contact Name	
Designated Contact Mailing Address	
Designated Contact Telephone Number	
Designated Contact E-mail Address	

By and through this Designated Contact Form, the Owner identifies the Designated Contact set forth above to be contacted by the Association, its agents, and representatives, on the Owner's behalf for purposes of contact related to delinquency.

Date:\_\_\_\_\_

Signature:\_\_\_\_\_