

Resolution of the  
Penn Plaza Owners Association, Inc.  
Regarding Policy and Procedures for the Collection  
of Unpaid Assessments

- SUBJECT: Adoption of a policy and procedure regarding the collection of unpaid assessments.
- PURPOSE: To provide notice of the Associations' adoption of uniform and systematic procedure to collect assessments and other charges of the Association.
- AUTHORITY: The Declaration, Articles of Incorporation and Bylaws of the Association and Colorado law.
- Effective Date: April 1st, 2015
- Resolution: The Association hereby adopts the following policy:

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

1. **Due Dates.**

- A. The monthly installments of the annual assessment as determined by the Association and as allowed for the Declaration shall be due and payable on the 1<sup>st</sup> day of every month.
- B. Special assessments shall be due and payable as established by the Board and may be payable on an installment basis as determined by the Board and as stated on the notice of special assessment.
- C. Fines and individual assessments shall be due and payable as established by the Board and as stated on the notice of fine or individual assessment.

Assessments, fines or other charges not paid in full to the Association within 30 days of the due date shall be considered past due and delinquent, and shall incur late fees and interest as provided below. In the event notice of acceleration is given to delinquent Owner(s), the

Owner(s) of the unit shall also be charged any costs incurred by the Association in giving notice of such acceleration.

2. **Receipt Date.** The Association shall post payments on the day that the payment is received by the Association.
3. **Late Charges on Delinquent Installments.** The Association shall impose on a monthly basis a \$10.00 late charge for each Owner who fails to timely pay his/her monthly assessment or other charge within 30 days of the due date. The Association shall impose interest from the date due at a rate of 15% per annum on the amount owed for each Owner who fails to timely pay his/her monthly installment of the annual assessment or other charge within 30 days of the due date.
4. **Personal Obligation.** Unless otherwise prohibited by law, assessments, late charges, fines, interest, attorneys' fees and other costs of enforcement, shall be a continuing lien upon the Unit against which each such assessment is levied. The Obligation for these payments shall be the personal obligation of the Owner(s) of the Unit with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Unit shall be jointly and severally, personally liable to the Association for the payment of all amounts assessed against or attributable to their Unit.
5. **Return Check Charges.** A reasonable fee, as determined by the Board, not to exceed \$50.00, shall be assessed against an Owner in the event any check, authorization for direct payment from an Owner's checking or savings account, or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. In addition to this fee, the Association shall be entitled to any and all additional remedies as may be available to it by applicable law. This return check charge shall be in addition to any late fees or interest incurred by an Owner. Any returned check shall cause an account to be past due if full payment of the monthly installment of the annual assessment or other charge is not timely made within 30 days of the original due date.
6. **Attorney Fees on Delinquent Accounts.** As an additional expense permitted under the Declaration and by Colorado law, the Association shall be entitled to recover its reasonable attorney fees and collections costs incurred in the collection of assessments or other charges due the Association from a delinquent Owner. The reasonable attorney fees incurred by the Association shall be due and payable immediately when incurred, upon demand.
7. **Application of Payments.** All payments received on account of any Owner or the Owner's property (hereinafter collectively "Owner"), shall be applied in the following manner: first to

the payment of any and all legal fees and costs (including attorney fees), then to expenses of enforcement and collection, late charges, returned checks charges, lien fees, and other costs owing or incurred with respect to such Owner pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or this Resolution, prior to application of the payment to any special or regular assessments due or to become due with respect to such Owner. After a delinquent account has been given over to the Association's attorney, all sums collected on that account shall be remitted to that attorney until the account is current. In the event of an outstanding Judgment, the Association may, but shall not be required to, first apply payments received following entry of a judgment towards post-judgment attorney's fees and costs and/ or Assessments and other charges coming due following the entry of the judgment.

**8. Collection Process.**

- A. After an installment of the annual assessment or other charges due to the Association becomes more than 60 days delinquent, the Manager shall send a written notice ("First Notice") of the non-payment, amount past due, notice that interest and late fees have accrued, notice of the intent to file a lien and request for immediate payment. The Association's notice, at a minimum shall include the following:
- i. The total amount due to the Association along with an accounting of how the total amount was determined.
  - ii. Whether the Owner may enter into a payment plan and instructions for contacting the Association to arrange for and enter into a plan.
  - iii. A name and contact information for an individual the Owner may contact to request a copy of the Owner's ledger in order to verify the amount of the debt.
  - iv. A statement indicating that action is required to cure the delinquency and that failure to do so within thirty days may result in the Owner's delinquent account being turned over to an attorney or a collection agency, the filing of a lawsuit against the Owner, appointment of a receiver, the filing and foreclosure of a lien against the Owner's property, or other remedies available under Colorado Law including revoking the Owner's right to vote if permitted by the Declaration, Articles, Bylaws, Rules and Regulations, or Colorado law.
- B. After an installment of the annual assessment or other charges due to the Association becomes more than 75 days delinquent, the Association or authorized agent of the Association may record a lien against the property of the delinquent Owner. Whether or not a lien is recorded pursuant to this Paragraph 8(b), and except as prohibited by law, the

Association may, at any time and without limitation, exercise any lien or other rights it may have against the property of delinquent Owner pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or Colorado law.

- C. After an installment of the annual assessment or other charges due to the Association becomes more than 90 days delinquent, the Manager shall send a written notice ("Second Notice") of non-payment, amount past due, notice that interest and late fees have accrued and request for immediate payment.
- D. After an installment of the annual assessment or other charges due to the Association becomes more than 120 days delinquent, the Association, or authorized agent of the Association, shall refer the account to the Association's attorney for collection. Upon receiving the delinquent account, the Association's attorney shall send a letter to the delinquent Owner demanding immediate payment for past due assessments or other charges due. Upon further review, the Association's attorney may file a lawsuit. If a judgment or decree is obtained, including without limitation a foreclosure action, such judgment or decree shall include reasonable attorney's fees together with the cost of the action and any applicable interest and late fees.

9. **Acceleration and Deceleration of Assessments.** The Board reserves the right to accelerate and call due the entire unpaid annual assessment on any delinquent account. Such acceleration shall result in the entire unpaid annual assessment being due to the Association immediately. The Board also reserves the right to decelerate any accelerated assessment.

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

Due Date	1st Day of every month for annual assessment, invoice date or other specified date for any other charge or amount due
First Notice	60 days after due date
Lien Filed	75 days after due date
Second Notice	90 days after due date
Delinquent account referred to Association's attorney	120 days after due date

11. **Certificate of Status of Assessment.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid

assessments currently levied against such Owner's property. The statement shall be furnished within fourteen (14) calendar days after receipt of the request. If the account is referred to the Association's attorney, such request may be handled through the attorney.

- 12. Bankruptcies and Foreclosures.** Upon receipt of any notice of a bankruptcy filing by an Owner, or upon receipt of a notice of a foreclosure by any holder of an encumbrance against any Unit within the Association, the manager shall notify the Association's attorney of the same and turn the account over to the Association's attorney, if appropriate.
- 13. Use of Certified Mail/Regular Mail.** In the event the Association shall cause a collection or demand letter or notices to be sent to a delinquent Owner by regular mail, the Association may also cause, but shall not be required, unless otherwise required by law, to send an additional copy of that letter or notice by certified mail.
- 14. Referral of Delinquent Accounts to Attorneys.** Once a past due and delinquent account has been turned over to the Association's attorney, the attorney, in consultation with the Board, may pursue any or all legal remedies available to the Association, including but not limited to:
  - A. recording a notice of lien against the Owner's property for any Assessment levied by the Board and for Costs of Enforcement levied against such Unit;
  - B. filing an action at law in any court of competent jurisdiction against any Owner personally obligated to pay the same and obtain a judgment for the amounts due;
  - C. foreclosing on the Association's Lien against the Owner's property;
  - D. seeking the appointment of a receiver to collect all sums alleged to be due from the Owner prior to or during the pending of any action;
  - E. exercising its lien rights to rents and profits by delivery a notice of exercise of such right to the occupant or any payer of rents and profits and thereafter collect all such rents and profits to the extent of any delinquency;
  - F. in the event of judgment, the pursuit of all enforcement/ collection procedures available to the Association under Colorado law, including but not limited to wage and asset garnishments and liens; and,
  - G. in the event of bankruptcy, the pursuit of all claims, actions and other remedies which may be available to the Association through the bankruptcy court or proceeding.

The Association may pursue any actions or remedies to collect amounts owed in any order or contemporaneously and cumulatively.

15. **Appointment of a Receiver.** The Association may seek the appointment of a receiver if an Owner becomes delinquent in the payment of assessments pursuant to the the Declaration, Articles, Bylaws, Rules and Regulations, or Colorado law. A receiver is a disinterested person, appointed by the court, who manages the rental of the property, collects the rent and disburses the rents according to the court's order. The purpose of a receivership for the Association is to obtain payment of current assessments, reduce past due assessments and prevent the waste and deterioration of the property.
16. **Judicial Foreclosure.** The Association may choose to foreclose on lien as provided by law in lieu of or in addition to suing an Owner for a money judgment. The purpose of foreclosing is to obtain payment of assessments, fines and other past due amounts owing in situations where either a money judgment lawsuit has been or is likely to be unsuccessful or other circumstances favor such action.
17. **No prohibition against immediate action when necessary and/ or advisable.** In the event of bankruptcy, foreclosure by any other lienholder or any other situation warranting immediate action, the Association and/ or the Association's attorney may take any and all steps necessary and/ or advisable to protect the Association's interests, without regard to the collection process, policy or procedure set forth herein.
18. **Reservation of Rights.** Nothing in this policy shall require the Association to take specific actions. Except as prohibited by law, the Association has and reserves the right to evaluate each delinquency on a case-by-case basis and to deviate from or modify the procedures set forth herein as may be necessary or advisable under individual circumstances. The Association furthers reserves to right to settle any past due and/ or delinquent account for less than the full amount due or as may otherwise be advisable under the individual circumstances.
19. **Communication with Owner.** All communication with a delinquent Owner shall be handled through the Association's attorney once a matter has been referred to the attorney. Neither the Manager nor any member of the Board of Directors shall discuss the collection of the account directly with an Owner after it has been turned over to the Association's attorney unless the attorney is present or has consented to the contact.
20. **Defenses.** Failure of the Association to comply with any provision in this Policy shall not be deemed a defense to payment of assessment fees or other charges, late charges, return check charges, attorney fees and/or costs as described and imposed by this Policy.
21. **Definitions.** Unless otherwise defined in this Resolution, capitalized or terms defined in the Declaration shall have the same meaning herein.

22. **Conflict.** In the event that there is a conflict between the provisions in this Resolution and Colorado statute or law, the provisions of the statute or the law shall apply and this Resolution shall be deemed to be amended as necessary to comply with the provisions of any applicable statute or law and any late charges, interest, fines, etc. provided for herein shall automatically be reduced as required by applicable law. Notwithstanding the forgoing provisions of this Paragraph 22, and unless otherwise prohibited by law, payment of any amount claimed due pursuant to the Declaration, Articles, Bylaws, Rules and Regulations, or this Resolution shall be deemed a waiver of any defense that the Owner may have had in regard to the payment thereof including any claim for reduction which may have otherwise been available under the law or pursuant to the provisions of this Paragraph 22.
23. **Deviations.** The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.
24. **Amendment.** This Policy may be amended from time to time by the Board of Directors.

In Witness, the undersigned certifies that this Resolution was adopted by the Board of Directors of the Association on February 24th, 2015.

Penn Plaza Owner's Association, Inc. a Colorado nonprofit corporation.

By:   
Title: President