

## HICKORY CLUSTER ASSOCIATION

Type: Administrative

ADOPTED: April 16, 2025

Resolution 20

### (Relating to the Collection of Assessments and Charges)

**WHEREAS**, The First Amendment to the Deed of Amendment to the Deeds of Dedication of Reston (the “Deed”) provides in Article VII that any portion of the Property subject to the Deed may also be subjected to a separate Cluster declaration, articles of incorporation, and bylaws (collectively, the “Cluster Documents”) and any obligations under such Cluster Documents shall be in addition to the obligations under the Deed;

**WHEREAS**, Hickory Cluster Association is deemed a “Cluster Association” under the Deed and all Owners of Lots within the Cluster Association are governed by the Deed and the Cluster Documents;

**WHEREAS**, Article VII, Section VII.1(b) of the Deed provides that a Cluster Association shall collect and disburse the Assessments and charges authorized by Article VII and the Cluster Documents;

**WHEREAS**, Article VII, Section VII.1(d)(2) of the Deed empowers Cluster Board to: (a) permit payment of the annual Assessment in installments and declare the entire balance immediately due and payable upon default in the payment of any such installment; (b) charge a late fee on a delinquent Assessment and charge interest on delinquent Assessments and charges; and (c) assess the costs, including attorney’s fees and court costs, of collecting delinquent Assessments and charges and of enforcing Cluster Association rules;

**WHEREAS**, the Cluster Board is empowered to establish reasonable charges for the use of parking, storage, and other facilities on Cluster Common Area pursuant to Article VII.2(b)(2) of the Deed;

**WHEREAS**, the Deed states in Article VII, Section VII.3 that each Owner covenants and agrees to pay, as their personal obligation, such Assessments; all Assessments and charges shall be a continuing lien upon the Lot against which each such Assessment is made; each Cluster Board shall annually fix the Assessment against each Lot and the date or dates such Assessment shall come due; and a Cluster Board may levy at any time a Special Assessment in accordance with the Deed;

**WHEREAS**, effective July 1, 2024, pursuant to Section 55.1-1805 of the Virginia Property Owners Association Act (“POA Act”), the Cluster Board will be entitled to (i) impose a charge against one or more but less than all Lot Owners when the charge relates to a fee for services provided or is related to the use of the Cluster Common Area; and (ii) levy fees and charges against the Lot Owners to pay the Cluster Association’s contractual or other legal obligations in the exercise of the Cluster Association’s duties and responsibilities; and

**WHEREAS**, the Cluster Board deems it to be in the best interest of the Cluster Association to adopt a uniform and systematic procedure for the manner in which the Cluster Association, the managing agent, and the Cluster Association's legal counsel address delinquent accounts, and further, believes it to be in the best interest of the Cluster Association to refer these accounts promptly to legal counsel for collection so as to minimize loss of revenue.

**NOW, THEREFORE, BE IT RESOLVED** that the Cluster Board adopts the following policies and procedures for the collection of delinquent Assessments and charges.

**I. ASSESSMENTS AND CHARGES**

- A. Annual Assessments. The fiscal year of the Cluster Association shall be a calendar year. The annual Assessment shall be established by the Cluster Board through the adopted annual budget. The annual Assessment is due the first day of January of every year, but for the convenience of the Owners, shall be payable in twelve (12) equal and consecutive monthly installments due on or before the 1<sup>st</sup> day of each month in each fiscal year. Failure or delay of the Cluster Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay their Assessments. In the absence of any annual budget or adjusted budget, each Owner shall continue to pay Assessments at the rate established for the previous fiscal year until notified of the new payment amount. There is no discount for pre-payment of any Assessment or installment amount.
- B. Other Assessments and Charges. Special assessments, charges, and other fees shall be due and payable upon such terms as outlined in the notice of such assessment or charge.
- C. Correspondence. All documents, correspondence and notices relating to Assessments and charges shall be sent to the address which appears on the books of the Cluster Association or to such other address as is designated in writing by the Owner to the managing agent. It is the sole responsibility of the Owner to ensure the books of the Cluster Association reflect the proper address for receiving correspondence. Non-receipt of an invoice, coupon or correspondence shall in no way relieve the Owner of the obligation to pay any amount due by the applicable due date.

**II. REMEDIES FOR NON-PAYMENT**

- A. Default. A late fee of up to \$25.00 will be assessed against the Owner's account for any Assessment, installment, or charge which is not paid within 10 days after it is due.
- B. Acceleration. Any assessment or installment that is not paid within 10 days after it is due empowers the Cluster Board to declare the installments which would otherwise be due during the remaining fiscal year immediately due and payable. The Cluster Board may, in its discretion, decide to decelerate the account.
- C. Payments; Returned Payment Charge. The Cluster Association reserves the right to reject any check or payment that contains restrictive language, rises to the level of an accord

and satisfaction, is less than the amount owed, or otherwise dictates how the funds are to be applied to the Owner's account. When an Owner's payment is returned or denied by a financial institution for insufficient funds, or for any other reason, and an Assessment or charge due an owning by the Owner is not otherwise received by the Cluster Association in the applicable time period, the Owner's account shall be deemed past due, and in addition to late fees, a returned payment charge may be assessed.

- D. Collections. The Cluster Association may refer any account that is delinquent thirty (30) days or more to the Cluster Association's legal counsel for collection and in such cases, counsel may do one or more of the following: (i) file a Memorandum of Lien against the title of the Lot for accelerated assessments; (ii) bring an action at law against the person personally obligated to pay the Assessment or charge; (iii) foreclose upon its lien; or (iv) take such other action as permitted by the POA Act, Deed, Cluster Documents, the Cluster's rules and regulations, or otherwise available at law or in equity.
- E. Other Actions. The Cluster Association may take any other legal or administrative actions against the Owner to collect the sums due authorized by the POA Act, Deed, Cluster Documents, or rules and regulations. An account may be immediately referred to the Cluster Association's legal counsel for collection where the Owner files or is the subject of a petition for relief in bankruptcy, where a deed of trust beneficiary or any other party has commenced foreclosure proceedings against the Lot, the Lot is subject to a transfer or conveyance, a short sale is pending, or other good cause.
- F. Other Costs. All costs incurred by the Cluster Association to collect delinquent Assessments and charges shall be chargeable against the person responsible for such costs. Costs of collection include, without limitation, return payment fees, printing, postage, delivery fees, administrative or processing fees, certified mail fees, collection activity expenses, recording fees, letter preparation fees, research fees, and other fees incurred by the Cluster Association as a result of the non-payment of any Assessment or charge. In the event of any proceeding to collect unpaid Assessments or charges, the Cluster Association will seek to recover its incurred costs and legal fees and interest on the judgment at the legal rate.

### III. PROCEDURES FOR COLLECTION

- A. Late Notice. The managing agent shall send written notification to any Owner whose has not paid Assessments or charges, in full, by the day such Assessments or charges are due ("Late Notice"). Failure to notify an Owner of an unpaid amount or non-receipt of the Late Notice does not relieve the Owner of responsibility for payment of that amount.
- B. Contact with Delinquent Owner. Upon expiration of any due date contained in the Late Notice, the managing agent may refer the account to legal counsel for legal action. Once an account is referred for legal action, all contact with a delinquent Owner regarding their Assessment liability shall be handled through the Cluster Association's legal counsel. If the Owner contacts any Cluster Association officer or any management personnel about

the Owner's delinquent account, such person may direct the Owner to communicate with the Cluster Association's legal counsel.

- C. Authority to Receive Payments. The Cluster Association's legal counsel is authorized to receive, on behalf of the Cluster Association, payments on delinquent accounts until the account is brought current. Any payments made to the Cluster Association through legal counsel will be made directly payable to the Cluster Association or endorsed to the Cluster Association.
- D. Payments Received. Payments received from an Owner will be credited in the following order of priority:
- 1) Charges for attorneys' fees, court costs, and administrative expenses.
  - 2) Interest accrued and denied payment charges.
  - 3) Late fees and other charges assessed against the Owner's account.
  - 4) Assessments, applied first to the oldest amount due.
- E. Power to Accelerate. The Cluster Board hereby authorizes the Cluster Association's legal counsel to accelerate the Owner's account through the end of the fiscal year so that the remaining assessments are immediately due and payable.
- F. Payment Plans and Waiver. The Cluster Board may approve payment plans and/or grant a waivers upon petition in writing by an Owner alleging a personal hardship. Such relief granted an Owner shall be appropriately documented in the files with the name of the person(s) representing the Cluster Board granting relief and the conditions of the relief. Waiver requests shall be reviewed on a case-by-case basis. Any approval in one instance is not deemed to constitute approval in any other instances.

#### IV. MISCELLANEOUS

- A. Failure of the Cluster Board, managing agent or any of their agents or the Cluster Association's legal counsel to comply with any of the provisions or timeframes contained in this Resolution shall not affect the validity of any of the remedies set forth herein or any remedies available under the POA Act, Deed, Cluster Documents, rules and regulations, or those available at law or in equity.
- B. Any capitalized terms used herein, but not defined herein shall have the same meaning ascribed to them in the Deed.
- C. Once effective, this Resolution supersedes all prior policies and resolutions governing the collection of Assessments and charges, including, without limitation, Resolution #12, Delinquent Assessment Collection Policy, and Resolution #7, Annual Dues Assessment Collections Policy.

**V. EFFECTIVE DATE**

Duly adopted at a meeting of the Board of Directors held April 16, 2025. The Effective Date of this Administrative Resolution shall be April 16, 2025.

Yes	No	Abstain	Absent	Name/Role	Signature
				Silvia Merrill President	
				Lauri Swift Vice President	
				Jennifer Rekas Secretary	
				Fred Swartzendruber Member-At-Large	
				Kathryn Fay Member-At-Large	
				Daniel Cassidy Member-At-Large	