

**NEW OAK PARK TOWNHOUSES HOMEOWNERS ASSOCIATION, INC.
aka OAK PARK TOWNHOUSES ASSOCIATION**

**BOARD OF DIRECTORS RESOLUTION REGARDING
COLLECTION OF ASSESSMENTS AND ENFORCEMENT**

WHEREAS, ORS 94.630(1)(n) states:

“94.630 Powers of association. (1) Subject to subsection (2) of this section and except as otherwise provided in its declaration or bylaws, a homeowners association may: . . . (m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners . . . (n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments . . .”

WHEREAS, ORS 94.704(10)(a) and (b) states:

“94.704 Assessment and payment of common expenses . . . (10)(a) A lot owner may not claim exemption from liability for contribution toward the common expenses by waiving the use or enjoyment of any of the common property or by abandoning the owner’s lot. (b) An owner may not claim to offset an assessment for failure of the association to perform the association’s obligations.”

WHEREAS, ORS 94.709(1), (5) and (7) states:

“94.709 Liens against lots; priority; duration; record notice of claim of unpaid assessment; foreclosure procedure. (1) Whenever a homeowners association levies any assessment against a lot, the association shall have a lien upon the individual lot for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws or other recorded governing document. The lien is prior to a homestead exemption and all other liens or encumbrances upon the lot except: (a) Tax and assessment liens; and (b) A first mortgage or trust deed of record . . . (5) Unless the declaration or bylaws provide otherwise, fees, late charges, fines and interest imposed pursuant to ORS 94.630(1)(L), (n) and (o) are enforceable as assessments under this section . . . (7) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.”

WHEREAS, ORS, 94.712(1) and (2)(a) states:

“94.712 Lot owner personally liable for assessment; joint liability of grantor and grantee following conveyance; limitation. (1) Except as provided in subsection (4) of this section, an owner is personally liable for all assessments imposed on the owner or

assessed against the owner's lot by the homeowners association. (2)(a) Subject to paragraph (b) of this subsection, in a voluntary conveyance of a lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the lot to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor."

WHEREAS, Article V, Sections 1, 3, 6, and 9 of the Declaration of a Planned Community (ORS 94.580) Oak Park Townhouses ("Declaration") states:

"Section 1. The Declarant for each lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons or entity who becomes an owner of a lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association monthly maintenance and operating assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter provided. The monthly maintenance assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property and lot against which such assessment is made. Each assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person, group of persons or entity who was the owner of such property and lot at the time when the assessment fell due. The personal obligation for delinquency assessments shall not pass to his successors in title unless expressly assumed by them.

* * *

Section 3. All owners shall be obligated to pay the maintenance assessments assessed by the board of directors pursuant to the provisions of Section 1 of this Article V on a monthly basis and such expenses not paid by the 30th day of each month shall be in default. Any owner may be entitled to a statement from the board of directors setting forth the amount of the unpaid assessments against the owner. Provided, further, that if a mortgagee of a first mortgage of record obtains title to a lot as a result of foreclosure of a first mortgage, such purchaser, its successor and assigns, shall not be liable for, and such lot shall not be subject to a lien for the payment of common expenses assessed prior to the acquisition of title of such lot by such purchaser pursuant to the foreclosure sale. The board of directors has the responsibility and authority to reassess unpaid shares of common expenses against all lot owners but not including the purchaser at the foreclosure sale and that such reassessment against all other lot owners shall be equal.

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Section 6. The monthly maintenance assessment provided for herein shall commence as to each lot on the first day of the month following the conveyance of the common areas. The first monthly maintenance assessment shall become due and payable, and a lien, on the date aforesaid. Except as hereinafter provided, the assessment for any lot for any month after the first month, shall become due and payable and a lien on the first day of said year.

It shall be the duty of the board of directors of the Association to periodically fix the amount of the monthly maintenance assessment against each lot for each assessment period

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Section 8. The Association shall, upon demand, at any reasonable time, furnish to any owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the Association, setting forth the status of said assessment; i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge not to exceed ten dollars (\$10.00) may be levied in advance by the Association for each certificate so delivered.

Section 9. Any monthly assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. In addition thereto, any assessment not paid within thirty (30) days after due date shall cause a penalty of \$10.00 per month to accrue as an additional assessment, with penalties continuing to accrue at a rate of \$10.00 per month until the assessment, accrued interest, and penalty assessment are paid in full. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property and such action may include a claim for all legal expenses and attorney fees incurred by the Association. Except as otherwise provided herein, no owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of this or her lot.”

WHEREAS Article VI, Sections 1, 3, 6, 7, 9 and 10 of the Declaration states:

“Section 1. Prior to the date the first lot in the planned community is conveyed by Declarant, Declarant shall establish a reserve account for replacement of all items of common property which will normally require replacement, in whole, or in part, in more than three (3) and less than thirty (30) years.

* * *

Section 3. The Declarant, for each lot owned by it (and as hereinafter limited by the provisions of the Declaration), and each person, group of persons or entity who becomes an owner of a lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association monthly capital assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The monthly capital assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the and shall be a continuing lien upon the property and lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person, group of persons or entity who was the owner of such property and lot at the time

when the assessment fell due. The personal obligation for delinquency assessments shall not pass to his successors in title unless expressly assumed by them.

* * *

Section 6. All owners shall be obligated to pay the capital assessments assessed by the board of directors pursuant to the provisions of Section 1 of this Article VI on a monthly basis and such expenses not paid by the 30th day of each month shall be in default. Any owner may be entitled to a statement from the board of directors setting forth the amount of the unpaid capital assessments against the owner. Provided, further, that if a mortgagee of a first mortgage of record obtains title to a lot as a result of foreclosure of a first mortgage, such purchaser, its successor and assigns, shall not be liable for, and such lot shall not be subject to a lien for the payment of common expenses assessed prior to the acquisition of title of such lot by such purchaser pursuant to the foreclosure sale. The board of directors has the responsibility and authority to reassess unpaid shares of capital expenses against all lot owners but not including the purchaser at the foreclosure sale and that such reassessment against all other lot owners shall be equal.

In the event any legal action is required to collect assessments hereunder, then and at the discretion of the board of directors, the entire balance of assessments due on account of said unit for the remainder of the fiscal year shall be due in full.

Section 7. The monthly capital assessment provided for herein shall commence as to each lot on the first day of the month following the conveyance of the common area. The first monthly capital assessment shall become due and payable, and a lien, on the date aforesaid. Except as hereinafter provided, the capital assessment for any lot for any month after the first month, shall become due and payable and a lien on the first day of said year.

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Section 9. Any monthly capital assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. In addition thereto any assessment not paid within thirty (30) days after due date shall cause a penalty of \$10.00 per month to accrue as an additional assessment, with penalties continuing to accrue at a rate of \$10.00 per month until the assessment, accrued interest and penalty assessment are paid in full. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, including attorney fees and legal costs. Except as otherwise provided herein, no owner may waive or otherwise escape liability for the capital assessments provided for herein by non-use of the common area or abandonment of his or her lot.

Section 10. The lien of the capital assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve

such lot from liability for any assessments thereafter becoming due or from the lien thereof. The lien of the assessments provided for herein shall also be subordinate to tax liens.”

WHEREAS Article XIII, Section 2 of the Declaration states:

“Section 2. Each owner shall be governed by, and shall comply with all the terms of the Declaration, the Bylaws, and the rules and regulations, and any amendments of the same. A default by an owner shall entitle the Association, acting through the board of directors or through the management agent (if any) to the following relief:

a. Failure to comply with any of the terms of the Declaration, the Bylaws, and the rules and regulations shall be grounds for relief which may include, without limiting the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in the Bylaws, or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the board of directors, the management agent, or, if appropriate, by an aggrieved owner.

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c. In any proceeding arising out of any alleged default by an owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorney fees, including at trial or any appeal therefrom.”

WHEREAS Article V, Section 3, of the Bylaws states:

“Section 3. Other Duties. In addition to duties imposed by these Bylaws or by resolutions of the association, the board of directors shall have authority to carry out and be responsible for the following matters:

* * *

f. Designation and collection of monthly assessments from the owners, in accordance with these Bylaws and the [D]eclaration; . . .”

WHEREAS Article VIII, Section 2, of the Bylaws states:

“Section 2. Collection Assessment. The board of directors shall take prompt action to collect any assessments for common expenses due from any owner which remain unpaid for more than thirty (30) days from the date due for payment thereof, as provided in Article V, Sections 8 and 9 and Article VI, Sections 9 and 10 of the Declaration.”

WHEREAS, from time to time owners become delinquent in their payments of these assessments and fail to respond to the demands from the Board to bring their accounts current; and

WHEREAS, the Board deems it to be in the best interest of the Association to adopt a uniform and systematic procedure for dealing with delinquent accounts in a timely manner, and further believes it to be in the best interest of the Association to refer these accounts promptly to an attorney for collection so as to minimize the Association's loss of assessment revenue; and

NOW, THEREFORE, BE IT RESOLVED that the Association (through its Board or Manager) is authorized to contact the Association's attorneys to pursue collection and request advice for the Board of Directors and the Association in other matters which may from time to time be requested by the Board; and it is further

RESOLVED that the Board delegates to the Association's Manager the authority to handle delinquent accounts; and it is further

RESOLVED that the Manager, acting on behalf of the Association, shall be authorized to pay the Association's attorneys their usual and customary charges for time incurred in connection with their representation of the Association, together with all costs incurred by the firm including not limited to, fees and charges for court filing fees, recording fees, service of process, document reproduction, postage, long-distance calls, facsimile transmissions, investigator's services, and title reports, promptly upon receipt of the monthly invoice; and it is further

RESOLVED that the due date for monthly assessments shall be the 1st day of each month ("due date"); and it is further

RESOLVED that there may be levied against any account where the assessment is not paid in full within thirty (30) days of its due date, a late fee of \$10.00, which the Manager is authorized and directed to charge to and collect from any delinquent owner. The Manager is also authorized to charge a \$10.00 administrative fee for handling any late assessments; and it is further

RESOLVED that the Association shall charge interest on delinquent accounts at the rate of 10.0% per annum; and it is further

RESOLVED that the Association is authorized to charge a fee upon the transfer of ownership of the property, a fee for an escrow request and any other fees for services as incurred by the owner or the Association on an account. These amounts due are subject to change and these amounts can be provided by the Manager upon request by an owner. These fees shall be considered an assessment against the property and owner(s) thereof. The Board of Directors shall be notified about any changes to the fee structure prior to changes being made; and it is further

RESOLVED that the Association may, but shall not be required to, apply any and all payments received on an account to payment of any and all attorneys' fees and costs, expenses of enforcement and collection, late fees, return check charges, lien fees, and

interest, in that order, prior to application to any annual or special assessment installment due or to become due by the owner; and it is further

RESOLVED that any and all payments made on an account that has a judgment and that do not bring the account current as of the date of the payment, will be applied first to the unsecured debt unless otherwise designated by the debtor. Partial payments may be applied to pay the most current amount owed prior to the secured debt through the judgment; and it is further

RESOLVED that there is hereby levied against any account on which a check is returned by the bank for non-sufficient funds or for any other reasons a \$35.00 per check charge, plus any fees charged by the bank. In addition, a \$10.00 fee is charged to cover the Manager's administrative fees for handling any such return; and it is further

RESOLVED that the Manager is directed to send to any owner who is more than 30 days past the due date in the payment of regular assessments, reserve assessments, capital assessments, special assessments, or other charges authorized by the Association's governing documents (hereinafter referred to as "Assessments"), a written statement of the delinquent balance; and it is further

RESOLVED that the Manager is directed to forward any account that is 60 days or more past the due date to the Association's attorneys for appropriate collection action. The Association's attorneys will be requested to send out appropriate collection letters demanding payment from the owner and stating the Association's intent to record a notice of claim of lien against the delinquent owner's lot. If payment is not received after the attorneys' demand letter, the attorneys may record a notice of claim of lien against the delinquent owner's lot and thereafter file suit for collection and/or foreclosure of the lien, and/or after giving notice and an opportunity to be heard, terminate utility or other services to the lot paid for out of the Association's assessments and access to recreational facilities. The Manager shall assess all collection expenses, including attorneys' fees, to the delinquent owner's account; and be it further

RESOLVED that the Manager is directed to consult with the Association's attorneys and forward for collection any account where the owner files or is the subject of a petition for relief in bankruptcy or a lender has commenced any action for foreclosure of its lien against the lots; and be it further

RESOLVED that the following policies shall apply to all delinquent accounts forwarded to the Association's attorneys for collection:

1. Following turnover of the account to the Association's attorneys, all contracts and contacts with a delinquent owner shall be handled through the Association's attorneys following the date the account has been forwarded to the attorneys for collection. Neither the Manager nor any other Association officer, director or bookkeeper shall discuss the collection of the account directly with an owner after it has been forwarded to the

Association's attorneys unless one of the Association's attorneys is present or has consented to the contract or contact.

2. All sums collected on a delinquent account shall be remitted to the Association in care of the Association's attorneys until the account has been brought current. If the Manager, Treasurer, or any other Association officer, director, or bookkeeper receives payment directly, he or she shall immediately make a copy of the payment and forward a copy to the Association's attorneys by e-mail or facsimile.

3. All legal fees and costs incurred in the collection of a delinquent account shall be assessed against the delinquent lot owner and shall be collectable as an Assessment.

4. To the extent the Association's attorneys in their discretion considers it to be appropriate in the circumstance, and with approval of the Manager, they are authorized to enter into an installment payment plan with the owner.

5. If, at the expiration of the period specified in the Association's attorneys' demand letter, an account remains delinquent and without a written payment plan, or in the event of a default under terms of the payment plan, the Association's attorneys are authorized to take further action as they believe to be in the best interest of the Association, including but not limited to:

- a. Recording a notice of claim of lien against the delinquent owner's lot and/or filing suit for money due from the owner(s);
- b. Filing a proof of claim in bankruptcy including associating bankruptcy counsel to assist;
- c. After judgment is obtained, garnishing rent, bank accounts or paychecks;
- d. Hiring an investigator to locate any individual or assets;
- e. Ordering a Foreclosure Guarantee from a title company; and
- f. After consulting with the Manager, instituting a judicial action for foreclosure of the Association's lien; and be it further

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RESOLVED that a copy of this Resolution shall be delivered to all owners at their last known addresses.

This Resolution was adopted by the Board of Directors on Sept 10, 2018, 2018, and shall be effective the day of mailing this Resolution to the owners at their addresses on file with the Association. This Resolution replaces and supersedes any previously established collection resolution(s) of the Board of Directors.

Donna Landis
President

ATTEST:

Ann Drake
Secretary