

Orchard Down Homeowners Association

Resolution of The Board of Directors

COLLECTION OF UNPAID HOA ASSESSMENTS

RECITALS

A. The Board of Directors of the Association is charged with the responsibility to establish, assess and collect homeowner assessments.

B. The Board deems it in the best interest of the Association and the owners to adopt a uniform and systematic procedure for the collection of unpaid assessments that assures that unpaid assessments are timely and efficiently collected to minimize the loss of assessment revenue.

C. To ensure that unpaid assessments are efficiently and effectively collected, the Board of Directors has entered into an agreement (“CFE Agreement”) with Vial Fotheringham LLP (“VF”) to undertake collection and enforcement of delinquent assessments on behalf of the Association.

NOW, THEREFORE, IT IS RESOLVED that:

I. The rules governing collection of delinquent assessments set forth below be adopted to provide for the uniform and systematic procedure for the collection of unpaid assessment.

II. A copy of this Resolution be sent to all owners at their address as shown in the records of the Association.

ARTICLE I

**AUTHORITY, DUTIES AND OBLIGATIONS
UNDER GOVERNING DOCUMENTS & ACT**

1.1 “**Declaration**” is Declaration Phase I recorded December 8, 1976 as Recording Number M-73651 and Declaration Phase II recorded June 9, 1977 as Recording Number M-80943, Records of Benton County, Oregon, including any amendments thereto.

1.2 “**Bylaws**” is Bylaws dated on February 22, 2006.

1.3 “**Act**” is the Oregon Planned Community Act, Oregon Revised Statutes 94.550 to 94.783.

1.4 **Specific Authority and Duties.**

(a) Article IV, Section 1(f) of the Declaration Phase I and II and ORS 94.630(a) allows the Association to adopt rules.

(b) Article V, Section 1 of the Declaration Phase I and II and Article XIII, Section 1 of the Bylaws authorizes the Board to enforce provisions of the Declaration, Bylaws and Rules and Regulations, including action to collect unpaid assessments.

(c) ORS 94.630(1)(n) authorizes the Board to establish late charges for delinquent assessments.

(d) Article V, Section 8 of the Declaration Phase I and II and ORS 94.709(4) authorizes the Board, on behalf of the Association, to bring suit to foreclose the lien against the lot.

(e) Under Article V, Section 1 and Article V, Section 8 of the Declaration and Article XIII, Section 1 and Section 9 of the Bylaws and ORS 94.709(4) authorizes the Board to bring an action to obtain a money judgment against an Owner for damages and for unpaid assessments.

(f) Article V, Section 1 of the Declaration Phase I and II and Article XIII, Section 1 of the Bylaws and ORS 94.709(5) provide that late charges, fines, interest, and attorney fees and costs of collection are enforceable as assessments.

1.5 Obligations.

(a) Under Article V, Section 1 of the Declaration Phase I and II and Article XIII, Section 1 of the Bylaws, owners are obligated to pay assessments.

(b) Article V, Section 1 of the Declaration Phase I and II and Article XIII, Section 1 of the Bylaws specifies that assessments are currently due and payable in advance on the 1st, annually.

(c) Article V, Section 8 of the Declaration Phase I and II specifies that an assessment is delinquent if not paid within 10 days after delinquency days of its due date.

(d) Under Article V, Section 1 of the Declaration Phase I and II and Article XIII, Section 1 and Section 9 of the Bylaws and ORS 94.709(1) all assessments, together with interest, attorney fees and costs of collection are a continuing lien on the lot against which the assessments are imposed.

(e) Under Article V, Section 1 and Section 8 of the Declaration Phase I and II and Article XIII, Section 1 and Section 9 of the Bylaws and ORS 94.630(1)(n) owners are obligated to pay reasonable fees and costs, including, but not limited to, attorney fees incurred in connection with efforts to collect delinquent and unpaid assessments, regardless of whether a suit or action is commenced.

ARTICLE II **INTEREST LATE FEES AND OTHER COSTS**

Pursuant to Section 1.4 above, the following apply to delinquent and unpaid assessments:

2.1 Interest. In accordance with Article V, Section 1 and Section 8 of the Declaration Phase I and II and Article XIII, Section 1 and 9 of the Bylaws, interest at a rate of ten percent per annum shall accrue on all delinquent assessments.

2.2 Late Charge. In accordance with ORS 94.630 (1)(n), any assessment that is delinquent as set forth in Section 1.5(c) above will be charged a late charge in the amount of Twenty Five Dollars (\$25.00).

2.3 Other Costs. All costs of collection as set forth in Subsections (a), (b) and (c) of this section are imposed against the owner and are due when incurred in the amounts incurred, regardless of whether suit or action is commenced. Collection costs include, without limitation, the following:

(a) **Management Company Charges.** Collection charges imposed by the management company, if included in the contract between the Association and the management company, including reasonable mailing costs, recording fees, time spent for account maintenance, and other similar expenses.

(b) **Attorney Fees.** Any attorney fees for work performed with respect to the assessment account such as file intake; preparing calculations; consultations and telephone calls with the Association, owners, court, witnesses and other individuals involved in the process; legal research; drafting and preparing legal documents; drafting and preparing letters; depositions; trial preparations; travel time; investigations; court appearances; analyzing the account to determine the appropriate action; and preparing and attending post judgment proceedings.

(c) **Other Costs.** All expenses such as recording fees, postage costs, copy costs, service costs, court costs, filing fees, paralegal fees, private investigator fees, garnishment fees and other similar expenses.

ARTICLE III **PROCEDURE**

3.1 Association Lien. When an assessment is levied against a lot and owner, the Association or an agent of the Association may cause a lien to be recorded in the Records of Benton County, Oregon.

3.2 Association Invoice. The Association shall use best efforts to send an invoice for assessments to the most current address provided by the Owner, or to the lot itself, at least 30 days in advance of the due date. A failure to provide thirty (30) days advanced notice of the assessment or the failure of any owner to receive the notice does not affect either the validity of the assessment or the due date.

3.3 Association Payment Demand Letter. When an assessment is delinquent, the Association or its agent shall send the owner a written payment demand letter (“Association Payment Demand Letter”) in substantially the form set forth in attached Exhibit A that includes a:

- (a) Statement of the amount due under the assessment account.
- (b) Demand for immediate payment.
- (c) Notice if the stated amount due is not paid by the turnover date, the assessment account may be turned over to VF for collection in accordance with the Collection Resolution.
- (d) Statement that the owner is responsible for the payment of all costs for collection incurred, as specified in the Collection Resolution, and the costs constitute assessments against the owner and the lot.

3.4 Turnover of Assessment Account to VF.

(a) Subject to Subsection (b) of this section, when an assessment remains unpaid after the turnover date specified in the Association Payment Demand Letter given under Section 3.3 above, Association or its agent may turn over the assessment account to VF in accordance with the CFE Agreement. VF shall proceed as provided in the VF Agreement and this Resolution.

(b) After the assessment account is turned over to VF, all contact and communications with the owner regarding the assessment account must be with VF, unless VF gives written consent otherwise.

3.5 Initial VF Payment Demand; Recording of Lien. When an assessment account is turned over to VF, VF shall:

(a) Initial VF Payment Demand. Send a written demand for payment (“Initial VF Payment Demand”) to the owner. The Initial VF Payment Demand must include a demand that all moneys due under the assessment account be paid within thirty (30) days.

(b) Association Lien. If an Association lien has not been recorded in the Records of Benton County, Oregon, prepare an Association lien against the lot and cause the lien to be recorded in the Records of Benton County, Oregon.

3.6 Final VF Payment Demand. If the total amount due is not paid by the date stated in the Initial VF Demand Payment under Section 3.5 above, or arrangement for payment made in accordance with Section 3.9 below, VF shall send a final demand letter (“Final VF Payment Demand”) that demands payment of all moneys due under the assessment account within ten (10) days.

3.7 Legal Action. If the assessment, including all costs specified in Section 2.3 above, are not paid by the date specified in the VF Final Payment Demand given under Section 3.6 above, or arrangement for payment made in accordance with Section 3.9 below, VF, on behalf of the Association, shall initiate a lawsuit for a personal money judgment against the owner or foreclose the Association lien against the lot.

3.8 Execution/Enforcement of Judgment. After VF obtains a judgment, VF shall begin collection of the judgment by any one or combination of the following:

- (a) Garnishing the owner's bank account.
- (b) Garnishing the owner's wages.
- (c) Executing a writ against the owner's real or personal property.
- (d) Any additional methods authorized by law.

3.9 Payment Plans.

(a) Subject to Subsection (b) of this section, a payment plan proposed after the assessment account is turned over to VF must be:

(1) Approved by VF and the Board of Directors of the Association;
and

(2) Secured by a Confession of Judgment or Stipulated Judgment.

(b) A payment plan approved under Subsection (a) of this section is not effective until a confidential statement of assets form provided by VF is completed and executed by the owner and submitted to VF.

3.10 Payments. After the assessment account has been turned over to VF, all payments must be made to VF.

3.11 Disbursal of Funds. Funds shall be disbursed to the Association in accordance with the VF Agreement that provides as follows:

(a) When payments are received, they are split 50/50 between two expense categories: fifty percent (50%) of the payment is applied to past due assessments and non-attorney related collection charges and fees and fifty percent (50%) is applied to attorney related charges and fees.

(b) Each payment shall be split as provided under Subsection (a) of this section until one of the expense categories is paid in full. After one of the expense categories is paid in full, the all of the remaining payments shall be applied to the remaining balance in the other expense category.

3.12 Owner Responsibility; Other Remedies.

(a) Owner Responsibility For Payment of Assessments. Regardless of any procedure prescribed under this Resolution, it is the responsibility of the owner to ensure that assessments are paid when due.

(b) Owner Responsibility To Update Address. It is the sole responsibility of the owner to notify the Association in writing of any change of owner mailing address.

(c) Other Association Remedies. Nothing in this Resolution prevents the Association from taking any other actions against an owner, including termination of utilities and preventing the owner from access to recreational or service facilities, if provided under the Declaration, Bylaws, Rules and Regulations, or the Act.

CERTIFICATION OF ADOPTION

The undersigned, Secretary of the Association, hereby certifies that the foregoing resolution is a true record of a resolution adopted by the Board of Directors at a meeting of the Board of Directors held in accordance with the Bylaws of the Association on 1-20-14.

Dated this 20 day of January.

JAW BOTJER (JAW BOTJER) 1-20-2014
Secretary

Board of Directors
Orchard Down Homeowners Association,
An Oregon nonprofit corporation

EXHIBIT A
ASSOCIATION
PAYMENT DEMAND LETTER

January 8, 2014

John Doe
111 S.W. 11th Avenue
Portland, OR 97208

RE: NOTICE OF UNPAID ASSESSMENTS
DEMAND FOR PAYMENT

Dear Mr. Doe:

The records of Orchard Down Homeowners Association show that your assessment account is now past due. Our records reflect the following:

Principal Assessments Due:	\$ _____
Accrued Late Charges:	\$ _____
Accrued Interest:	\$ _____
Total Due:	\$ _____

Demand is hereby made for immediate payment in full of the above Total Due. If payment in full is not made within thirty (30) days of the date of this letter, your assessment account will be turned over to Vial Fotheringham LLP for collection in accordance with the Orchard Down Homeowners Association Collection Resolution. A lien will be recorded against your property in the Records of Benton County, Oregon.

All charges, including attorney fees, associated with collection of your assessment account are imposed against you and your lot as provided in the Collection Resolution.

NOTICES

I. BEFORE THE END OF THE 30-DAY PERIOD:

You may request a hearing if you disagree with the calculation of the above Total Due. To request a hearing, you may contact the undersigned in writing to voice your challenge. The Board must receive any written challenge of the calculation of these charges no later than the expiration of the 30th day after the date of this letter. If a hearing is not requested by the end of the 30 day period, your right to a hearing is forfeited.

If you would like to set up a payment plan, arrangements must be made with the contact below before the 30 days expires.

II. LENDER FORECLOSURE:

If a first trust deed or mortgage on your lot is being foreclosed, DO NOT EXPECT that delinquent assessments (including cost and fees) will be paid from the proceeds of

the foreclosure sale. Assessments (including costs and fees) that are not paid from the proceeds of the foreclosure sale remain the personal responsibility of the owner. The Association will proceed to collect all moneys owed to the Association by seeking a personal judgment against the owner.

Your prompt payment of the balance due is appreciated.

Sincerely,

Jane Smith
President, Board of Directors
(Phone number) (Email) (Physical Address)