

WINDSWEPT WATERS HOMEOWNERS ASSOCIATION

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

WHEREAS, the RECITALS of the Declaration of Restated Covenants, Conditions and Restrictions for Windswept Waters ("Declaration") state:

"NOW, THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, or as noted herein, which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the Association and of each Lot Owner."

WHEREAS, ARTICLE 4, Section 4.7 of the Bylaws of Windswept Waters Homeowners Association ("Bylaws") states:

"4.7 **Powers.** The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law, or by the Declaration, or by these Bylaws may not be delegated to the Board of Directors by the Owners. The Board of Directors may delegate responsibilities to committees or a managing agent, but shall retain ultimate control and supervision. The powers and duties to be exercised by the Board of Directors shall include any provisions in the Declaration, the Oregon Planned Community Act, the Oregon Non-Profit Corporation Act, and the following:

* * *

(m) Enforce by legal means the provisions of the Declaration, these Bylaws, Oregon statutes, and any rules and regulations adopted hereunder."

WHEREAS, ARTICLE 10, Section 10.8 of the Declaration states:

"10.8 **Default in Payment of Assessments, Enforcement of Liens.**

(a) **Personal Obligation.** All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (that is, one other than through foreclosure or a deed in lieu of foreclosure) the grantees shall be jointly and severally liable with the grantor(s) for all Association assessments imposed through the recording date of the instrument affecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

(b) **Association Lien.** At any time any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any management agent, may file a notice of lien in the deed records of Clackamas County, Oregon against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees,

penalties, fines, attorneys' fees (whether or not suitor [sic] action is instituted) and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 94.704 to 94.716, as the same may be amended, shall apply to the Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded previously to the Association's notice of lien and any mortgage or deed of trust granted to an institutional lender which is recorded previously to the Association's notice of lien.

(c) **Interest; Fines; Late Fees; Penalties.** The Board in its reasonable discretion may from time to time adopt resolutions to set the rate of interest, and to impose late fees, fines and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, any Rules and Regulations, and any rules and regulations adopted by the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the assessment billing addresses of such Owners. Such impositions shall be considered assessments which are lienable and collectible in the same manner as any other assessments. Provided, however, no fine or penalty for violation of this Declaration, the Bylaws or any Rules and Regulations (other than late fees, fines or interest arising from an Owner's failure to pay regular or special assessments) may be imposed against an Owner or his Lot until such Owner is given an opportunity for a hearing as provided in Article 4.24.

(d) **Acceleration of Assessments.** In the event an Owner is delinquent in payment of any assessments or installment on any assessment, the Association, upon not less than ten (10) days written notice to the Owner, any [sic] accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

(e) **Association's Right to Rents/Receiver.** In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of his Lot or shall be entitled to the appointment of a Receiver. Any default by the Owner in any provisions of the Declaration or Bylaws shall be deemed to be a default by the Owner of any mortgage to which the Owner is party or to which the Lot is subject."

WHEREAS, ARTICLE 11, Section 11.3 of the Declaration states:

"11.3 **Enforcement; Attorneys' Fees.** The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens and charges now or hereinafter imposed by any of the provisions of this Declaration as may pertain specifically to such parties or owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter."

WHEREAS, from time to time homeowners 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

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

"Subject to subsection (2) of this section and except as otherwise provided in its declaration or bylaws, a homeowners association may: * * *

(n) Impose charges for late payment of assessments and attorney's fees related to the collection of assessments...."

NOW, THEREFORE, BE IT RESOLVED the Association's manager is authorized to contact the Association's attorney 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

BE IT FURTHER RESOLVED the Board delegates to the Association's manager the authority to handle delinquent accounts; and

BE IT FURTHER RESOLVED 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

BE IT FURTHER RESOLVED, that the monthly assessment is due on the 1st day of each month and the quarterly assessment is due on the 1st day of each quarter (collectively, the "due date"); and

BE IT FURTHER RESOLVED, that there may be levied against any account for which the assessment or any installment thereof is not paid within thirty (30) days of its due date a late fee in the amount of twenty-five dollars (\$25.00), which the Association's Manager is authorized and directed to charge to and collect from any delinquent homeowner; and

BE IT FURTHER RESOLVED the Manager and/or attorney may charge interest on such delinquent accounts at the rate of twelve percent (12%) per annum; and

BE IT FURTHER RESOLVED the Association may, but shall not be required to, apply any and all payments received on an account to payment of any and all attorney's 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

BE IT FURTHER RESOLVED the lien preparation fee shall be that fee the attorney's office charges the Association to prepare the lien; and

BE IT 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 twenty five dollar (\$25.00) per check charge, plus any fees charged by the bank; and

BE IT FURTHER RESOLVED the Manager is directed to send to any homeowner who is more than thirty (30) days past due in the payment of regular or 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 a demand for payment, and the Manager may be authorized to charge a ten dollar (\$10.00) fee for such letter, which shall be assessed against the lot owner; and

BE IT FURTHER RESOLVED the Manager may be directed to forward any account which is ninety (90) days or more past the due date to the Association's attorney for appropriate collection action. The Manager is authorized to charge a thirty seven dollar and fifty cents (\$37.50) fee for transmitting the delinquent file to the Association's attorney, which shall be assessed against the lot owner. The Association's attorney will be requested to send out appropriate collection letters demanding payment from the owner and stating the Association's intent to file a lien against the delinquent owner's lot. Thereafter, if payment is not received, the attorney may file suit for collection and/or foreclosure of the lien. The Manager shall assess all collection expenses, including attorneys' fees and costs, to the delinquent owner's account; and

BE IT FURTHER RESOLVED the Manager may be directed to consult with the Association's attorney 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 lot; and

BE IT FURTHER RESOLVED the following policies shall apply to all accounts forwarded to the Association's attorney for collection:

1. All contracts and contacts with a delinquent homeowner shall be handled through the Association's attorneys. Neither the Manager nor any Association officer or director shall discuss the collection of the account directly with a homeowner 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 an account shall be remitted to the Association in care of the Association's attorneys until the account has been brought current.

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

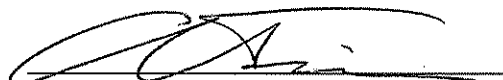
4. To the extent the Association's attorney, in his/her discretion, considers it to be appropriate in the circumstance, they are authorized to enter into an installment payment plan with the owner. Provided, however, any payment plan provides for a down payment of less than the greater of one third (1/3) of the balance or twice the current assessment, or a duration in excess of twelve (12) months shall require the approval of the Manager.

5. If, at the expiration of the period specified in the Association's attorneys' demand letter, an account remains past due 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 such further action as they believe to be in the best interest of the Association, including but not limited to:

- a. Filing a lien against the owner's lot and/or filing suit for money due from the owner(s);
- b. File a proof of claim and handle all matters in bankruptcy including hiring bankruptcy counsel to assist;
- c. Ordering a Foreclosure Guarantee and instituting a judicial action for foreclosure of the Association's lien;
- d. After judgment is obtained, garnish rent, bank accounts or paychecks; or
- e. Hire investigator to locate any individual or assets.

BE IT FURTHER RESOLVED a copy of this resolution shall be sent to all homeowners at their last known addresses.

This resolution was adopted by the Board of Directors on September 26, 2011 and shall be effective on September 27, 2011. This resolution replaces and supersedes any previously established collections resolution(s) of the Board of Directors.


Officer of the Board of Directors