

THE CAPES HOMEOWNERS' ASSOCIATION, INC.

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

WHEREAS, ORS 94.630(1) states in part:

“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 and, * * *.”

WHEREAS, ORS 94.704 (5), (8) and 10(a) states:

“94.704 Assessment and payment of common expenses.

(5)(a) Except for assessments under subsections (6), (7) and (8) of this section, the board of directors shall assess all common expenses against all the lots that are subject to assessment according to the allocations stated in the declaration. (b) Any assessment or any installment of the assessment past due shall bear interest at the rate established by resolution of the board of directors.

(8) If the board of directors determines that any loss or cost incurred by the homeowners association is the fault of one or more owners, the homeowners association may assess the loss or cost exclusively against the lot of the responsible owners.

(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 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 states:

“94.712 Lot owner personally liable for assessment; joint liability of grantor and grantee following conveyance; limitation.

(1) An owner shall be 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 the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Capes Homeowners’ Association (hereinafter “The Capes HOA”) states in part:

“10.6 Creation of Lien and Personal Obligation of Assessments. Each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such assessments and charges, together with any interest, expenses or attorneys’ fees imposed pursuant to Section 11.6, shall be a charge on a Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article XI below.

11.3 Default in Payment of Assessments; Enforcement of Lien. If an assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

11.3.1 The Association may suspend such Owner’s voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment immediately due

and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot.

11.3.2 The Association shall have a lien against each Lot for any assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 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 Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

11.3.3 The Association may bring an action to recover a money judgment for unpaid assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in Section 11.3.2 above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

11.3.4 The Association shall have any other remedy available to it by law or in equity.

11.6 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the prevailing prime rate declared by the bank in Portland, Oregon with the largest number of deposits, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof."

WHEREAS, from time to time an Owner of any lot at The Capes HOA (hereinafter "Owner") becomes past due in his/her or their payment of assessments to The Capes HOA and fail to respond to the demands from the Board of Directors of The Capes HOA (hereinafter "Board") to bring the Owner's account current; and

WHEREAS, the Board deems it to be in the best interest of The Capes HOA to adopt a uniform and systematic procedure for dealing with past due accounts in a timely manner, and further believes it to be in the best interest of the The Capes HOA to refer these accounts

promptly to The Capes HOA's attorneys for collection so as to minimize The Capes HOA's loss of assessment revenue; and

NOW, THEREFORE, BE IT RESOLVED The Capes HOA's Treasurer and/or The Capes HOA's Manager is authorized to contact The Capes HOA's attorneys to pursue collection and request advice from the Board in other matters which may from time to time be requested by the Board; and it is further

RESOLVED the Board delegates to The Capes HOA's Treasurer and/or The Capes HOA's Manager the authority to handle past due accounts; and it is further

RESOLVED The Capes HOA's Treasurer and/or The Capes HOA's Manager, acting on behalf of The Capes HOA, shall be authorized to pay The Capes HOA's attorneys their usual and customary charges for time incurred in connection with their representation of The Capes HOA, together with all costs incurred by said The Capes HOA's attorneys, 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 an account of an Owner shall be considered past due if it is not paid the day it is levied which for purposes of this Resolution is the levy's due date; and it is further

RESOLVED that there is hereby levied against any account of an Owner where the assessment is not paid in full within thirty (30) days of its due date, a late fee of twenty dollars (\$20.00), which The Capes HOA's Treasurer and/or The Capes HOA's Manager is authorized and directed to charge to and collect from any Owner, and it is further

RESOLVED The Capes HOA's Treasurer and/or The Capes HOA's Manager shall charge interest on such past due account of an Owner at the rate of twelve percent (12%) per annum; and it is further

RESOLVED that the lien preparation fee shall be the amount charged by The Capes HOA's attorneys for preparation of the lien for recording, plus costs.

RESOLVED The Capes HOA may, but shall not be required to, apply any and all payments received on an Owner's account to payment of any and all The Capes HOA's 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 there is hereby levied against any account of an Owner on which a check is returned by the bank for non-sufficient funds or for any other reasons a thirty-five dollars (\$35.00) per check charge, plus any fees charged by the bank; and it is further

RESOLVED The Capes HOA is directed to send to any Owner who is more than forty-five (45) days past due in the payment of an assessment, or other charges authorized by The

Capes HOA's governing documents (hereinafter referred to as "Assessments"), a written statement of the balance; and it is further

RESOLVED that The Capes HOA's Treasurer and/or The Capes HOA's Manager is directed to forward any account of an Owner which is sixty (60) days or more past the due to The Capes HOA's attorneys for appropriate collection action. The Capes HOA's attorneys may be requested to send out appropriate collection letters demanding payment from the Owner and stating The Capes HOA's intent to file a lien against the Owner's lot. If payment is not received after The Capes HOA's attorneys' demand letter, The Capes HOA's attorneys may file a lien against such Owner's lot and thereafter may file suit for collection and/or foreclosure of said lien. The Capes HOA shall assess all collection expenses, including The Capes HOA's attorneys' fees, to the delinquent Owner's account; and be it further

RESOLVED The Capes HOA's Treasurer and/or The Capes HOA's Manager is directed to consult with The Capes HOA'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 an Owner's lot; and be it further

RESOLVED the following policies shall apply to all Owners' accounts forwarded to The Capes HOA's attorneys for collection:

1. Following turnover of the account to The Capes HOA's attorneys, all contacts with an Owner shall be handled through The Capes HOA's attorneys following the date the account has been forwarded to The Capes HOA's attorneys for collection. Neither The Capes HOA's Treasurer nor any other member of The Capes HOA Board or The Capes HOA's Manager shall discuss the collection of the account directly with an Owner after it has been forwarded to The Capes HOA's attorneys for collection unless one of The Capes HOA's attorneys are present or has consented to the contact.

2. All sums collected on an Owner's account shall be remitted to The Capes HOA in care of The Capes HOA's attorneys until an Owner's account has been brought current. If The Capes HOA's Treasurer, or any other member of The Capes HOA Board or The Capes HOA's Manager, receives payment of an Owner's account directly, he or she shall immediately notify The Capes HOA's attorneys of said payment by e-mail or facsimile.

3. All of The Capes HOA's attorneys' fees and costs incurred in the collection of an Owner's account shall be assessed against the Owner and shall be collectable as an Assessment.

4. To the extent The Capes HOA's attorneys considers it to be appropriate under the circumstance of the payment of an Owner's account, with the consent of The Capes HOA's Treasurer and/or The Capes HOA's Manager, The Capes HOA's attorneys are authorized to enter into an installment payment plan with the Owner.

5. If, at the expiration of the period setout in The Capes HOA's attorneys' demand letter to an Owner, an Owner's account remains past due and without a written payment plan, or in the event of a default under terms of the payment plan, The Capes HOA's attorneys, with the

