

MOUNTAIN GATE OWNERS ASSOCIATION
Resolution of the Board of Directors

ENFORCEMENT RESOLUTION

RECITALS

- A. **"Association"** is the Mountain Gate Owners Association, Inc., an Oregon nonprofit corporation.
- B. The Association is governed by the following documents recorded in Washington County, Oregon:
 - 1. *Amended Declaration of Covenants, Conditions and Restrictions for Mountain Gate*, recorded on April 16, 1993 as document number 93029022 in the records of Multnomah County, Oregon, including any amendments thereto ("**Declaration**");
 - 2. *Bylaws of Mountain Gate Owners Association, An Oregon Nonprofit Corporation*, recorded on May 12, 2009 as document number 2009-041810, including any amendments thereto ("**Bylaws**");

These documents shall collectively be referred to herein as "**Governing Documents**."

The Association is also governed by the Oregon Planned Community Act ("**PCA**"), ORS Chapter 94.550-94.783.

- C. ORS 94.630 and Article IV, Section 1 of the Bylaws vest the Board of Directors ("**Board**") with all of the powers and duties necessary for the administration of the affairs of the Association.
- D. ORS 94.630(1)(a), Section 3.3.7 of the Declaration empower the Board to adopt Rules and Regulations.
- F. ORS 94.630(1)(n) and Section 7 of the Declaration provide that the Board may levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association after notice and an opportunity to be heard, if the fine is based on a *Schedule of Fines* adopted by a resolution of the Board. Section 7 provides that the first fine for any violation shall not exceed \$25, the second fine for the violation of the same provision shall not exceed \$50, and the third and subsequent fines shall not exceed \$100.
- G. ORS 94.709 and Section 7 of the Bylaws provide that fees, late charges, fines, and interest imposed, pursuant to ORS 94.630(1)(n), are enforceable as assessments.
- I. For the benefit and protection of the Association and of the individual owners, the Board deems it necessary and desirable to establish a formal procedure for the handling of complaints and the enforcement of the Declaration, Bylaws, and Rules and Regulations to

ensure that owners receive notice and an opportunity to be heard in cases involving alleged violations of the Declaration, Bylaws, or Rules and Regulations.

- J. The Board deems it necessary and desirable to adopt a *Schedule of Fines*, attached as Exhibit A to this Resolution, to be used by the Board in imposing sanctions for violations of the Declaration, Bylaws, or Rules and Regulations of the Association.

RESOLUTION

NOW, THEREFORE, IT IS RESOLVED that the procedure set forth below shall be the process for handling complaints and enforcement of violations of the Declaration, Bylaws, and Rules and Regulations. This Resolution replaces in its entirety the *Financial Penalties Resolution*, dated November 18, 2011.

ARTICLE 1 **OVERVIEW OF PROCESS**

- 1.1. **Complaint.** An owner may file a written complaint with the Board of Directors regarding a violation of the Declaration, Bylaws, or Rules and Regulations by another owner, tenant, or guest. The Board of Directors may also initiate a complaint (Article 2).
- 1.2. **Investigation.** The Board of Directors has the discretion to investigate the complaint and decide if it is valid (Article 3).
- 1.3. **Violation and Notice.** If the Board of Directors finds there is a violation, the Board or its representatives must provide notice to the Alleged Offending Owner. The Board will first provide a First Notice to the Alleged Offending Owner. If the violation is not remedied or ceased within the time specified in the notice, then the Board will provide a second notice to the Alleged Offending Owner. This second notice must contain certain provisions, including giving the Alleged Offending Owner an opportunity for a hearing (Article 4).
- 1.4. **Hearing.** If requested, the Alleged Offending Owner may present testimony or evidence regarding the violation at the next board meeting, (Article 5).
- 1.5. **Fines.** The Board may impose fines pursuant to the *Schedule of Fines* if the violation is not remedied or ceased within the time specified in the notice, provided the owner has the opportunity for a hearing (Articles 3, 6, and 7).

ARTICLE 2 **ORIGINATION / INITIATION OF COMPLAINT**

- 2.1. **Board of Directors.** A complaint may be initiated by the Board of Directors based on information from a management agent, owner, or other information the Board deems reliable.

2.2 **Owners.** An owner ("Complaining Owner") who desires the Board of Directors to take corrective action against another owner or tenant ("Alleged Offending Owner") must submit a complaint to the Board of Directors. The complaint must be in writing and must include:

- (a) The name, if known, and address of the Alleged Offending Owner;
- (b) A description of the offending behavior or activity, including the date(s) and approximate time(s); and
- (c) Whether or not the Complaining Owner attempted contact with the Alleged Offending Owner regarding the alleged violation.

ARTICLE 3 **INVESTIGATION OF COMPLAINT**

3.1 **Investigation.** Upon receipt of a written complaint, the Board, or a person authorized by the Board, has the discretion to conduct an investigation to confirm the nature and existence of the allegations contained in the complaint.

3.2 **Determination of Violation.** If, after review of a complaint, the Board of Directors determines that there is a violation of the Declaration, Bylaws, Rules and Regulations, or other Governing Documents and the Board determines that it is in the best interest of the Association and owners to address the violation with the Alleged Offending Owner, the Board shall proceed to give notice to the Alleged Offending Owner as described below.

ARTICLE 4 **NOTICE PROCEDURE**

4.1 **Notice of Violation.** If the Board determines that there is a violation of the Declaration, Bylaws, Rules and Regulations, or other Governing Documents, the Board shall give the Alleged Offending Owner the following Notices of Violation:

- (a) **First Notice.** After making the determination that the Alleged Offending Owner is in violation of the Declaration, Bylaws, Rules and Regulations, or other Governing Documents, the Board shall give the Alleged Offending Owner a "First Notice." The First Notice shall either be sent to the owner by regular mail or posted on the owner's door. The notice required under this subsection must:
 - (1) State the violation; and
 - (2) State a specific period of time to correct or abate the violation, which time period shall be at least seven (7) days.
- (b) **Second Notice and Right to a Hearing.** If, after the Board has provided a First Notice, the violation stated in the First Notice has not been brought into

compliance by the Alleged Offending Owner, and the compliance deadline prescribed in the First Notice has expired, then the Board shall give the Alleged Offending Owner a Second Notice and Right to a Hearing.

- (1) Required Notice Provisions. The notice required under this subsection must:
 - (i) Describe the violation;
 - (ii) Contain a statement that the Alleged Offending Owner has the opportunity to request a hearing, and the manner by which to request a hearing; and
 - (iii) Contain a statement advising the Alleged Offending Owner that if no hearing is requested within fifteen (15) days, and if the alleged violation is not remedied or ceased by a specified compliance deadline, fines will be assessed, beginning on the day following the specified compliance deadline, pursuant to the *Schedule of Fines* adopted by the Board as "Exhibit A" to this resolution.
- (2) Optional Notice Provisions. The notice may also provide or specify any or all of the following:
 - (i) Specific action the Board is requiring to remedy the violation;
 - (ii) The particular language or section from the Declaration, Bylaws, or Rules and Regulations which have been violated; and
 - (iii) Any other information as directed by the Board.
- (3) Delivery of Notice. The notice may be hand-delivered to the unit. In the event no individual is at the unit to receive the hand-delivery, the notice shall be affixed to the door of the unit.
- (4) Mailing of Notice. The notice may be mailed to the addresses on record with the Association. In the case of non-owner residents, the notice may be mailed to both the address on record with the Association for the owner and to the lot address. The mailing shall be by: (i) Certified mail, return receipt requested and (ii) First-class mail with delivery confirmation.

4.2 Repeat Violations. Owners who repeat any violation within a 12 month period of receiving a Second Notice are not entitled to an additional notice or hearing, regardless of whether or not the owner participated in a hearing as a result of the first violation. For such repeat violations, the Board may automatically begin fines as outlined in the attached *Schedule of Fines*.

- 4.3 **Informal Action.** Nothing in this article precludes the President, a designated Board member, or other person authorized by the Board from first attempting to resolve the matter either by an informal meeting, telephone call, or a warning letter to the Alleged Offending Owner.

ARTICLE 5

HEARING PROCEDURE

- 5.1 **Hearings Procedure.** In the event that an owner requests a hearing, the Board shall utilize the following procedure for violation hearings to be held during a regular open Board Meeting:

- (a) **Appearances at the Hearing.** If the Alleged Offending Owner fails to appear within *fifteen (15) minutes* of the time set for the hearing, the Board may, at its sole discretion:
 - (1) Conduct the hearing without the presence of the Alleged Offending Owner;
 - (2) Allow the Alleged Offending Owner additional time that day to appear;
 - (3) Reset the hearing to another date and time; or
 - (4) Dismiss the complaint.
- (b) **Dismissal.** In the case of dismissal, the Board shall notify the Alleged Offending Owner, in writing, that the Complaint has been dismissed.
- (c) **Conduct of Hearing.**
 - (1) **Testimony from Parties.** If the Complaining Owner chooses to appear and the Alleged Offending Owner appears, the Board shall proceed to hear from the Complaining Owner and then from the Alleged Offending Owner.
 - (2) **Evidence and Witnesses.** The Complaining Owner and the Alleged Offending Owner may present evidence and witnesses at the hearing. The Board may limit testimony and evidence as it determines is reasonable and necessary. An owner's testimony shall not exceed 15 minutes.
- (d) **Board Determination.** Following the testimony and any evidence presented by the parties, the Board has the discretion to re-evaluate its prior determination of violation under Section 3.1 and 3.2 above. The Board also has the discretion to reevaluate the fine, any required or appropriate resolution for the violation, and any other matter which may result in the resolution of the violation.

- (1) The discussions must be in open session as directed by ORS 94.640.
- (2) The Board shall either give its decision at the conclusion of the hearing or take the matter under advisement and give the decision at a later date not to exceed 10 days after the hearing date.

ARTICLE 6

OTHER LEGAL ACTION

- 6.1 **Board Actions.** In addition to levying fines, action by the Board may include, but need not be limited to:
- (a) Seeking injunctive or declaratory relief action against any Alleged Offending Owner and tenants, guest, or other occupants of the Alleged Offending Owner; and/or
 - (b) Taking immediate legal action, as the Board finds reasonably necessary, to stop conduct which it determines is in violation of the Governing Documents, Bylaws, Rules and Regulations, or applicable state or federal law.
- 6.2 **Additional Corrective Action by Board.**
- (a) **Right of Board to Take Additional Corrective Action.** If the Alleged Offending Owner fails to correct the matter, which is the ultimate cause of the violation, the Board may take additional corrective action without prior notice to the Offending Owner or opportunity for a hearing.
 - (b) **Notice of Additional Action.** The Board shall give an Alleged Offending Owner written notice of any additional action taken under Subsection (a) of this section.

ARTICLE 7

MISCELLANEOUS

- 7.1 **Renters and Other Non-Owner Occupied Lots and Guests.** The owner of any lot shall be responsible for the violations of any renter, tenant, guest, or family member who violates any portion of the Declaration, Bylaws, or Rules and Regulations.
- 7.2 **No Fines Pending Resolution of a Hearing.** Pending resolution of a requested hearing, no fines may be charged against the account of an Alleged Offending Owner.
- 7.3 **Mediation.** ORS 94.630(4)(a) provides for dispute resolution prior to any litigation being initiated between the Association and any member of the Association. For purposes of this Enforcement Resolution, the dispute resolution requirements of the OPCA and the Bylaws do not apply to the actions of the Association in its enforcement responsibilities, as long as no litigation has been filed.

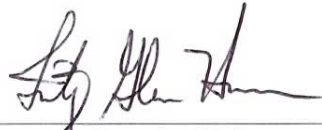
BE IT FURTHER RESOLVED that:

- III.** The *Schedule of Fines* attached as **Exhibit A** is adopted by the Board of Directors to determine the fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association.
- VI.** A copy of this Resolution and amendments will be sent to each owner at the address shown in the records of the Association.

ATTEST:



President, Board of Directors,
Mountain Gate Owners Association



Secretary, Board of Directors,
Mountain Gate Owners Association

DATED: 12/11/17

DATED: 12/11/2017

EXHIBIT "A"

SCHEDULE OF FINES

1. Parking violations, including prohibited parking of business vehicles, trailers, or RVs (Declaration, Section 6.4.3; 2002 Parking Resolution):
\$25/week
2. Architectural Control Committee violations such as failure to obtain approval for a new roof, new paint or new visible structure (Declaration, Section 5.2.1; 2003 Roof Resolution): **\$25/day**
3. Erecting or using a temporary structure on any Lot (Declaration, Section 6.4.6):
\$25/week
4. Violations of yard and landscaping rules (Declaration, Sections 5.2.8, 6.3, 6.4.5):
\$25/week
5. Unauthorized raising, breeding, keeping, or permitting of a pet on a Lot (Declaration, Section 6.4.2): **\$25/week**
6. Failure to control a pet from being a nuisance (Declaration, Section 6.4.2):
\$25/occurrence
7. Leaving animal defecation on common grounds (Declaration, Section 6.4.2):
\$25/occurrence
8. Unrestrained/unleashed dogs leash in common area (Declaration, Section 6.4.2):
\$25/occurrence
9. Using any Lot or part of the Common Areas as a dumping ground for trash or rubbish or keeping garbage or trash bins visible on the lot (Declaration, Section 6.4.5):
\$25/occurrence
10. Failure to screen service yards (garbage cans, fuel tanks, clotheslines, etc.) from being visible from the street (Declaration, Sections 5.2.6, 5.2.7, 5.2.8):
\$25/week
11. Non-residential use or activity (Declaration, Section 6.2): **\$25/week**
12. Noxious or offensive activities such as regular noise during night hours (Declaration, Section 6.4.1): **\$25/occurrence**
13. All violations of the Declaration, Bylaws, or Rules and Regulations (**per occurrence**):
\$25/occurrence

14. All continuing violations of the Declaration, Bylaws, Rules and Regulations (**Per Week**):
\$25/week

For all per-occurrence violations, the Board may levy a fine of \$50 for the second violation and \$100 for the third and all subsequent violations.