

# KC HIGHLANDS HOMEOWNERS ASSOCIATION, INC.

An Oregon Planned Community restricted to residents fifty-five (55) years of age or older.

## BOARD OF DIRECTORS RESOLUTION #2013-15

**SUBJECT:** COLLECTION OF UNPAID ASSESSMENTS AND OTHER CHARGES

**PURPOSE:** To ensure the proper and timely processing and collection of unpaid assessments and other charges

**AUTHORITY:** The Declaration, Articles of Incorporation, Bylaws & CC&Rs of the Association, Oregon law, specifically ORS 94 Oregon planned Community Act, and ORS 65 Oregon Non Profit Corporation, and Title VIII of the Civil Rights Act of 1968 (The Fair Housing act) as amended in 1995 (HOPA).

**Whereas**, Under Section 2 of Article IX of the Declaration, Article V of the Bylaws, and ORS 94.630, the Board of Directors has all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law, the Declaration or Bylaws may not be delegated to the Board by the owners;

**Whereas**, ORS 94.630(1)(a) and Article V, Section 2(a), of the Bylaws empower the Board to adopt rules and regulations;

**Whereas**, Article XII, Section 1 specifies that each Owner and Occupant shall comply with the Declaration, Bylaws, and rules and regulations adopted thereto;

**Whereas**, "assessments," as used in this Resolution, includes all amounts validly assessed against a lot or living unit Owner ("Owner) pursuant to the Declaration, the Association's Bylaws, Rules and Regulations, and any board of Directors ("Board") Resolution, including, but not limited to common expense, interest, fees, fines, attorney fees and all collection costs;

**Whereas**, Article VI, Section 11; Article XII, Sections 1 and 2; and Article XV, Section 3 of the Declaration allow the Association to adopt rules and enforce compliance with the Declaration, Bylaws, and administrative rules and regulations;

**Whereas**, Article VI, Section II of the Declaration and Article V, Section 2(n) of the Bylaws authorize the Board to enforce provisions of the Declaration, Bylaws and Rules and Regulations, including actions to collect unpaid assessments;

**Whereas**, Article XII, Section 4 of the Declaration and ORS 94.630(l)(n) authorizes the Board to establish late charges and fines;

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Whereas, Article XI, Section 1 of the Declaration provide that all assessments, together with interest, attorney fees and costs of collection shall be a continuing lien upon the living unit against which each such assessment is made;

**Whereas**, Article XII, Sections 6 and 7 of the Declaration authorizes the Board, on behalf of the Association, to bring suit to foreclose the lien against the unit and/or to bring an action to obtain a money judgment against an Owner for damages and/or for unpaid assessments;

Whereas, Article XI, Section 1 and Article XII, Section 8 of the Declaration provides that owners shall be 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 suit or action is commenced;

Whereas, assessments are currently due and payable annually on the first of January each year;

Whereas, fro time-to-time Owners become delinquent in the payment of their assessments and fail to respond to the demands form the Board to bring their accounts current, and it is imperative that assessment payments are received in a timely manner;

Whereas, pursuant to Article XII, Section 4 of the Bylaws interest at the rate of twelve percent (12%) per annum on all unpaid charges shall accrue;

Whereas, pursuant to Article XII, Section 4 and ORS 94.630(1)(n) a late charge may be charged for each delinquent assessment in an amount established by resolution of the Board.

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

**THEREFORE BE IT RESOLVED THAT**, the following steps are adopted to provide for the uniform and systematic procedure for the collection of unpaid assessments:

- I. All assessments shall accrue interest at the rate of twelve percent (12%) per annum from the date such assessment is first due.



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- II. There is hereby levied a late fee against any assessment account for any assessment which is not paid in full within thirty (30) days of the date such assessment is due; and such fee shall be thirty dollars (\$30).
- III. If any assessment remains unpaid by an Owner for more than thirty (30) from the due date for its payment, the Board shall send a notice to the Owner indicating the amount due, including notice of the late fees and interest, and demand for immediate payment thereof. See Exhibit "A" attached hereto.
- IV. If any assessment remains unpaid by the Owner for more than sixty (60) days from the due date for its payment, the Board shall turn over collection to the Association's attorney ("Attorney"), who shall: (a) send a written demand for payment and any notice as required by the Federal Fair Debt Collection Practices Act, if applicable; (b) prepare and record a lien against the Owner's unit; (c) notify the Owner within twenty (20) days of recording that the lien has been recorded; and (d) may notify any first mortgage or trust deed holder of the Owner's default, if applicable. The lien amount shall include all collection costs to date, including attorney's fees and the cost of preparing and/or recording the lien, any notice of lien required by law, and any notice to a first mortgage holder, if applicable. The demand for payment shall notify the Owner of the Owner's liability for payment of charges imposed by Attorney to cover fees and costs associated with all collection efforts. The demand for payment shall include all collection costs to date.
- V. If any assessment remains by the Owner thirty (30) days after the date of Attorney's demand, Attorney shall send Owner a ten (10) day demand letter for payment notifying the Owner that if full payment is not received within ten (10) days of the date of the letter the Association intends to file suit to either obtain a money judgment or foreclose on the Lien. The demand shall include the updated amount owing, including all collection costs to date.
- VI. If any assessment remains unpaid by the Owner ten (10) days after the Attorney's ten-day demand letter/notice of intent to file suit, Attorney may file suit for a money judgment unless the Board, after recommendation by Attorney, determines that lien foreclosure is inadvisable under the circumstances. In the event the Board approves, Attorney may file a lawsuit for money judgment, for foreclosure, or for both a money judgment and foreclosure, as permitted by applicable law.



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VII. If the Association is success in obtaining a money judgment, Attorney shall collect on the judgment in the following order, unless Attorney determines other actions or another order of collection is appropriate under the circumstances: (a) file and send a ten (10) day demand to pay judgment; (b) garnish accounts, wages and/or rents; (c) levy against any personal and real property; and (d) levy against the unit. Additional steps may be necessary to determine the availability and location of the judgment debtor's assets. If the Association is successful in a suit to foreclose on the lien, Attorney shall proceed as necessary to complete the foreclosure unless otherwise directed by the Board.

**THEREFORE LET IT BE FURTHER RESOLVED THAT**, all legal fees and costs incurred in the collection of a delinquent account shall be assessed against the delinquent Owner and shall be collected as an assessment as provided in the Bylaws, the Declaration, and/or the Act.

**THEREFORE LET IT BE FURTHER RESOLVED THAT**, all contacts and/or contracts with the delinquent Owner shall be through Attorney. Neither the Board nor any of its agents shall discuss the collection of the account directly with the Owner after it has been turned over to Attorney unless one of the Attorneys is present or has consented to the contact and/or contract.

**THEREFOR LET IT BE FURTHER RESOLVED THAT**, Attorney shall have the discretion to enter into an installment payment plan with a delinquent Owner in appropriate circumstances. In all cases in which a lawsuit has been filed, a Stipulated Judgment must secure any such plan. Any payment plan providing for a down payment of less than the greater of one-third (1/3) of the delinquent balance or twice the current monthly assessment, or a duration in excess of twelve (12) months shall require approval of the Board president.

**THEREFORE LET IT BE FURTHER RESOLVED THAT**, Attorney, in its initial demand notice, shall communicate to Owner that the account has been turned over to it for collection, and that all payments are to be made to Attorney until the account has been brought current. The Association hereby grants to Attorney its limited power of attorney to endorse for deposit checks made payable to the Association (or its agent management company, if any) in satisfaction of accounts sent to Attorney for collection. Attorney shall deposit all payments in its trust account. All amounts collected shall be distributives by Attorney according to the provisions of the Association and Attorney representation agreement.



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NOW LET IT BE FURTHER RESOLVED THAT, nothing in this Resolution precludes the Board from taking further action in the collection of unpaid assessments permitted by the Association's governing documents or applicable law, including, but not limited to, adopting or enforcing rules regarding the termination of utility services paid for out of assessments or the association and access to and use of recreational and service facilities available to Owners and, after giving notice and an opportunity to be heard, terminate the rights of any Owners to receive such benefits or services until the correction of any violation covered by such rule has occurred.

NOW LET IT BE FURTHER RESOLVED THAT, a copy of this Resolution shall be sent to all owners at their last known address.

The provisions contained in this document shall be formally reviewed and approved or rescinded by the Board of Directors at the beginning of each successive three (3) year period effective January 2014.

As reviewed and approved by action of the Board of Directors of the KC Highlands Homeowners Association, Inc an Oregon Planned Community restricted to residents fifty-five (55) years of age or older, and Non Profit Corporation.

By: May Davis Date: 11-13-13  
President

Attested: Suzanne Whitten Date: 11-13-13  
Secretary

- Attachment: Exhibit "A": Sample Demand Letter
- Attachment: Vial Fotheringham Cash Flow Enhancement Program (CFE)
- Attachment: (CFE) Representation Agreement