

KULA NANI ESTATES COMMUNITY ASSOCIATION

COLLECTION POLICY

RECITALS

WHEREAS, the Kula Nani Estates Community Association (the "Association") is charged with certain responsibilities regarding the care, maintenance, and service of certain portions of the community; and

WHEREAS, the Association must have the financial ability to discharge its responsibilities; and

WHEREAS, the payment of common assessments is necessary for the proper operation and management of the Association; and

WHEREAS, the governing documents of the Association and Chapter 421J, Hawaii Revised Statutes ("HRS"), provide that the duties of the Association shall include levying and collecting assessments from members; and

WHEREAS, the Board of Directors (the "Board") is charged with pursuing collection of assessments and other charges from delinquent members; and

WHEREAS, the Board of the Association desires to adopt a uniform, non-discriminating and systematic procedure to collect assessments and other charges of the Association;

NOW, THEREFORE, BE IT RESOLVED that the Association does hereby adopt the following procedures and policies for the collection of assessments and other charges of the Association.

TERMS OF POLICY

1. **Assessments Generally.** Assessments shall be made for common expenses based on a budget adopted at least annually by the Board. The term "common expense" means expenditures made by, or financial liabilities of, the Association for operation of the property, and shall include but not be limited to allocations to reserves, regular annual assessments, special assessments, common area repairs, and any other charges to the Association. No member shall withhold any assessment claimed by the Association. All sum assessed by the Association but unpaid for the share of the common expenses chargeable to any property shall constitute a lien on the property.

2. **Due Date.** Assessments shall be due and payable monthly in 12 installments due on the 1st day of each month.

3. **Late Charges and Interest.** An assessment shall be past due and delinquent if not paid by the 15th day of the month in which it is due. If full payment is not received by the 15th of each month, interest at the rate of twelve percent (12%) per annum will be charged on the past due amount inclusive of all accrued interest. In addition, a late fee of \$75.00 per month will be assessed on balances sixty ~~60~~ days or over. The late charges and interest shall be the personal

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obligation of the member for which such assessment is unpaid. All late charges and interest shall be due and payable immediately.

4. **Return Check Charges.** Due to the administrative time and costs incurred, a \$25.00 fee shall be assessed against a member in the event any check or other instrument attributable to or payable for the benefit of such member is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. Such return check charge shall be due and payable immediately upon demand. If two or more of a member's checks are returned unpaid by the bank within any calendar year, the Association may require that all of the member's future payments, for a period of one year, be made by certified check or money order.

5. **Full and Partial Payment.** All delinquent accounts remain delinquent until paid in full. No partial payments will waive the Association's right to pursue full payment and/or to enforce the provisions of this Policy.

6. **Attorney's Fees and Costs on Delinquent Accounts.** The Association shall be entitled to recover all of its reasonable attorney's fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent member. The reasonable attorney's fees incurred by the Association shall be due and payable immediately when incurred, upon demand.

7. **Application for payments made to the Association.** Failure to pay late fees, legal fees, fines and interest may result in the deduction of such late fees, legal fees, fines and interest from future common expense payments, so long as a delinquency continues to exist. Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines and interest from the payment. Payments received from a member will be applied and credited in the following order:

- (1) Charges for legal fees, court costs and other costs of collection;
- (2) All late charges and interest accrued, as applicable;
- (3) All other fines, penalties and charges incurred by the Association as a result of any violation by a member, his/her family, employees, agents or licensees, of the governing documents and/or applicable Hawaii statutes and regulations and federal law;
- (4) The monthly assessment for a property, including any accelerated or special assessment due, as applicable; payments shall be applied toward the oldest month(s) then owed.

8. **Notices.** Notices and letters will be mailed to the member's address as shown in the Association's books and records. Owners shall provide to the Association's Board of Directors their current mailing addresses.

9. **Attorney Action.** Generally, the managing agent will first provide notice of the delinquency to the member prior to referring to Association's attorneys; however, the Association may, at any time after the member becomes delinquent, direct its attorneys to proceed with collection action, as certain circumstances may require. Once referred to the attorneys' office, the member shall communicate directly with the attorneys' office and will be

responsible for all attorneys' fees incurred for such communication, unless informed otherwise. Upon referral of the delinquent account to the Association's attorneys' office, the Board authorizes the attorneys' office to take all actions allowable by the governing documents, this Policy, HRS Chapter 421J and HRS Chapter 667, including but not limited to the following actions:

- (1) Send a demand letter;
- (2) Record a lien against the property;
- (3) Foreclose by action or power of sale procedures set forth in HRS Chapter 667;
- (4) File an action to recover a money judgment;
- (5) Negotiate and execute payment plans; and
- (6) Mediate and/or arbitrate any dispute concerning the delinquency.

10. Suspend privileges and access to amenities. With the requisite approval of the members as may be necessary, if a property is owner-occupied, the Association may, after sixty (60) days notice to the member and to the property's first mortgagee of the nonpayment of the delinquency, terminate the delinquent member's access to the common elements and cease supplying the delinquent property with any and all services and utilities normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

11. Collection of Past Due Assessments from Tenants/Rental Agents. With the requisite approval of the members as may be necessary, if a member shall at any time rent or lease the property and shall default for a period of thirty (30) days or more in the payment of the member's share of the common expenses, the Board may, at its option, so long as such default shall continue, may demand in writing and receive each month from any tenant occupying the property, or from any such member's rental agent who collects rentals from lessees on behalf of the member, an amount sufficient to pay all sums due from the property member to the Association.

- (1) The tenant's payment shall not exceed the tenant's rent due each month.
- (2) The tenant or rental agent's payment shall discharge the amount of payment from the tenant's rent obligation.
- (3) The member shall not take any retaliatory action against the tenant for payments made to the Association.
- (4) Before demanding any rent from the tenant, the Board shall give the member written notice that the Board intends to collect the rent from the tenant. The notice shall be sent to the member by first-class and certified mail at the member's address shown on the records of the Association.

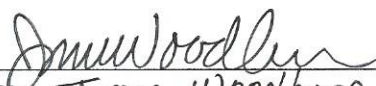
(5) Demanding rent from a tenant shall not be deemed to prevent the Board from proceeding with foreclosure or any other means of collecting the Member's delinquent common expenses.

12. **Foreclosure special assessment.** The Association may impose a special assessment for the amount of unpaid regular common assessments against a person other than the mortgagee who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent property upon giving proper notice. This special assessment shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure, and cannot exceed the maximum allowed by law.

13. **Dispute of assessments.** Except as otherwise provided in the governing documents, the Association shall not be required to mediate or arbitrate actions to collect the assessments unless the member has first paid to the Association the full amount claimed by the Association. A member who pays the full amount may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. A member has all rights of appeal granted by the Association's governing documents and Hawaii law.

14. **Effect of Policy.** This Collection Policy shall supersede and replace any previously adopted collection policies.

IN WITNESS WHEREOF, the undersigned has executed this Collection Policy the 16 day of September in the year 2016.

Signature: 
Printed Name: Jamie Woodburn
Its: President

CERTIFICATE

I, hereby certify that the foregoing is a true copy of the Policy duly adopted at a meeting of the Board of Directors duly held on September 10, 2016 and duly entered in the book of minutes of the Association, and that this Policy is in full force and effect.

KULA NANI ESTATES COMMUNITY ASSOCIATION


Authorized Signature

John B. Dugan
Printed Name

Title: Secretary