

AMENDED AND RESTATED BYLAWS  
OF  
KAUAI LAGOONS COMMUNITY ASSOCIATION

Adopted: March 27, 2008

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**Article 1**

**Definitions**

1.1     “Articles” shall mean the Amended and Restated Articles of Incorporation of the Corporation, as the same may be from time to time hereafter duly amended or otherwise modified.

1.2     “Board” or “Board of Directors” shall mean the Board of Directors of the Corporation.

1.3     “Bylaws” shall mean these Amended and Restated Bylaws of the Corporation.

1.4     “Corporation” shall mean the Kauai Lagoons Community Association, a Hawaii nonprofit corporation and a planned community association.

1.5     “Declarant” shall mean the declarant of the Declaration, its successors and assigns, and such Person to whom such declarant may assign its rights as “Declarant” in accordance with the terms of the Declaration.

1.6     “Declarant’s Control Period” shall mean the period during which the Declarant owns any interest in any portion of Kauai Lagoons or as otherwise provided in Section 3.2 of the Declaration, or such shorter period as the Declarant may establish by an amendment to the Declaration.

1.7     “Declaration” shall mean the Declaration of Covenants, Conditions and Restrictions for Kauai Lagoons recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-040613 and the Office of the Assistant Registrar of the State of Hawaii, as the same may be amended or supplemented from time to time in accordance with its terms.

1.8     “Delegate” shall mean the representative selected by the Owners of Units within a given District in accordance with the Declaration, who shall be responsible for casting all votes attributable to the Units which he or she represents on all matters requiring a vote of the membership, except as otherwise specifically provided in the Declaration, these Bylaws, or the Articles. The term “Delegate” shall also refer to the alternate Delegate acting in the absence of the Delegate and any Owner authorized personally to cast the vote for his or her respective Unit in accordance with the Declaration or these Bylaws.

1.9 "District" shall mean, upon improvement, each separately developed residential, commercial or resort area subject to the Declaration, whether or not governed by an association; for example, each condominium project, townhome community, single-family detached housing subdivision, commercial development, office complex, retail center, hotel, rental apartment complex, and golf course may constitute a separate District. Where the context permits or requires, the term District shall also refer to the owners association having jurisdiction over the applicable District, or in the case of a wholly owned District, the Owner of it. District boundaries may be established and modified as provided in Section 3.3 of the Declaration.

1.10 "HRS" shall mean the Hawaii Revised Statutes.

1.11 "Kauai Lagoons" shall mean the real property described in Exhibit "A" of the Declaration, any additional property annexed to Kauai Lagoons, as well as any other real property which is owned by the Corporation but not real property withdrawn from Kauai Lagoons.

1.12 "Lot" shall mean each subdivided lot within Kauai Lagoons.

1.13 "Member" shall mean each "Owner," as the term "Owner" is defined in the Declaration, and Declarant.

1.14 "Person" shall mean a natural person, a corporation, a partnership, a trustee, a limited liability company or any other legal entity.

1.15 "Project Documents" shall mean the Declaration, the Articles, these Bylaws, any rules and regulations adopted in accordance with the Declaration, the Design Guidelines defined in the Declaration and any leases, licenses and easements in favor of the Corporation as may be permitted by the Declaration or these Bylaws.

1.16 "Record Address" has the meaning given to it in Section 3.1(d) hereof.

1.17 "Unit" shall mean a portion of Kauai Lagoons, whether improved or unimproved, for residential, resort or commercial use, capable of independent ownership and located on a Parcel shown on the Master Plan. The term shall refer to the land, if any, which is part of the Unit as well as any improvements on it. A subdivided Lot shall be a single Unit unless it is submitted to a condominium property regime under Chapter 514B HRS (or any successor statute), in which case each condominium apartment shall be a Unit, or unless it is established as a cooperative housing project under Chapter 421I in which case each cooperative apartment shall be a Unit. Lots such as roadway or drainage lots shall not be considered Units.

1.18 All references to "President," "Vice President," "Secretary" or "Treasurer" shall refer to, unless otherwise provided, the Person elected by the Board of Directors to hold such office of the Corporation.

1.19 All other words in these Bylaws with an initial capital letter shall, unless otherwise expressly defined herein, have the same meaning given them in the Declaration.

## **Article 2**

### **Offices; Meetings; Seal; and Fiscal Year**

**2.1 Principal Office.** The mailing address of the principal office of the Corporation shall be at 3351 Hoolaulea Way, Suite 201, Kalapaki Beach, Lihue, Hawaii 96766 or at such other place in the State of Hawaii as the Board of Directors shall from time to time determine.

**2.2 Registered Office and Registered Agent.** The Corporation shall continuously maintain in the State of Hawaii (a) a registered office that may be the same as any of its places of business; and (b) a registered agent, who may be an individual resident, domestic entity, or foreign entity authorized to transact business in the State of Hawaii, whose business office is identical with the Corporation's registered office.

**2.3 Other Offices.** The Corporation may have such other offices within the State of Hawaii as the Board of Directors may designate.

**2.4 Place of Meetings.** All meetings of Members of the Corporation or their Delegates and of the Board of Directors shall be held at the principal office of the Corporation or at such other place in or out of the State of Hawaii as is stated in the call for the meeting.

**2.5 Seal.** The Corporation may (but need not) have a corporate seal. The seal of the Corporation shall be in such form and shall bear the name of the Corporation and such other words, devices and inscriptions as the Board of Directors from time to time shall prescribe.

**2.6 Fiscal Year.** The fiscal year of the Corporation shall be such as may from time to time be established by the Board of Directors.

## **Article 3**

### **Members and Delegates of the Corporation**

#### **3.1 Qualification; Proof of Status; Certificates.**

(a) **Owners.** Each Person who is an "Owner," as defined in the Declaration, shall be a Member of the Corporation, and no Person other than an Owner may be a Member of the Corporation. Every Owner shall be deemed to have a membership in the Corporation; however, there shall be only one membership per Unit. No Person shall be admitted as a member without the Person's consent.

(b) **Proof of Ownership.** No Person shall exercise the rights of membership in the Corporation until satisfactory proof has been furnished to the Secretary that he, she or it is an Owner. Such proof must consist of a copy of a duly executed, acknowledged and recorded (i) deed to a Unit or an undivided interest in a Unit, (ii) lease giving a right of occupancy of a Unit

having a term of thirty or more years from its commencement date, if the lease so provides, (iii) title insurance policy, showing said Person to be the Owner or, if an Owner has assigned such Owner's rights of membership to a vendee under an agreement of sale, in accordance with the provisions of the Declaration, then such proof must consist of a copy of the duly executed, acknowledged and recorded agreement of sale, or (iv) agreement of sale relating to a Unit or an undivided interest in a Unit if the agreement of sale so provides. Any such deed, lease, title policy or agreement of sale shall be deemed conclusive in the absence of a conflicting claim based upon a later deed, lease, title policy or agreement of sale. No assignment of an Owner's membership rights to a vendee under an agreement of sale shall be effective until a true and correct copy of the recorded agreement of sale has been delivered to the Board of Directors.

(c) Certificates of Membership. The Board of Directors, in its discretion, may provide for the issuance of certificates evidencing membership in the Corporation that shall be in such form as may be determined by the Board. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Corporation maintained by the Secretary. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued therefor upon such terms and conditions as the Board may direct.

(d) Owner's Address of Record. Upon becoming an Owner, each Owner shall promptly furnish to the Secretary an address to which the Corporation may mail or deliver any and all notices, demands or documents required or permitted to be mailed or delivered by these Bylaws, the Declaration, the Articles, or by law or otherwise (the "Record Address"). In the event of an Owner's failure to furnish such address, the Owner's Record Address shall be deemed to be the address of the Owner's Unit; provided, however, that prior to the time such Owner's Unit is serviced by the postal service, such notices shall be sent to the Owner's address set forth in the deed that is delivered to the Corporation pursuant to this Section 3.1(d). All such notices shall be deemed to be received by the Owner on the earlier of actual date of delivery or three business days after postmark (whether or not actually received by the Owner). If a Unit is owned by more than one Person, notice to any one Person shall be deemed to be notice to all such Persons, except that in the case of a Unit subject to a time share plan under Chapter 514E HRS or to a vacation ownership declaration, notice to bind all Owners shall be given to all Owners or to the plan manager or other Person authorized to receive such notice on behalf of all Owners. Each Owner, upon receiving or conveying fee simple ownership of a Unit or an undivided interest in a Unit shall immediately deliver or cause the new Owner to deliver a true and correct copy of the recorded deed to the Corporation at the Corporation's principal office (or to such other address as the Corporation shall have previously given in writing to the Owners in accordance with these Bylaws). Until the Corporation receives such deed, any notice identifying or sent to the Owner whose deed was last received by the Corporation, shall be deemed notice to the current Owner of the Unit. Notwithstanding an Owner's assignment of such Owner's membership rights to a vendee under an agreement of sale, all notices, demands or documents required or permitted to be mailed or delivered by these Bylaws, the Declaration, the Articles, or by law or otherwise, may be sent to the Owner at the Owner's Record Address, and it shall be the Owner's responsibility to deliver or communicate such notice, demand or document to the Owner's vendee. Any notice, demand or document shall be deemed duly and properly given or sent by the Corporation if given

or sent to the Owner as aforesaid, notwithstanding the failure of the Owner's vendee to receive the same.

(e) Electronic Notice, Proxies and Votes. To the extent permitted by Chapter 414D HRS and Chapter 421J HRS, notices may be given to Owners and Delegates by electronic mail or by posting on the Corporation's website (regardless of whether such site is maintained independently by the Corporation, by its managing agent or by any affiliate thereof), and proxies may be delivered by Owners and Delegates to the Corporation, and votes cast, by electronic mail or through the Corporation's website (regardless of whether such site is maintained independently by the Corporation, by its managing agent or by any affiliate thereof).

(f) Multiple or Entity Owners. In the event the Owner of a Unit is more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set out in this paragraph. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners under the Project Documents. The membership rights in the case of an Owner that is a corporation, partnership, or other legal entity shall be exercised by the individual designated in a written instrument filed with the Secretary of the Association from time to time or, in the absence of such designation, by the president, chief executive officer, general partner or manager of such entity.

(g) Member Delegates. As provided in the Declaration, each District shall appoint or elect a Delegate and alternate Delegate who shall cast the votes attributable to Units owned by Class "A" Members.

### 3.2 Voting Rights; Proxies.

(a) General. At any meeting of the Members or their respective Delegates, as the case may be, or whenever the consent or vote of the Members or their Delegates is required or called for under these Bylaws, the Declaration, the Articles, or pursuant to law or otherwise, each Member (whether Class "A" or Class "B") or its Delegate, as the case may be, shall be entitled to cast the number of weighted votes assigned to and permitted to be cast by such Member or Delegate on behalf of such Member in accordance with the provisions of Section 3.2 of the Declaration (hereinafter "weighted votes"), which are incorporated into these Bylaws by this reference.

(b) Voting by Delegate. Unless otherwise specified in the Declaration, the Articles or these Bylaws, the Delegate, representing the District of which the Unit is a part, shall exercise the votes for each Unit. The Delegate may cast all such votes as the Delegate, in the Delegate's discretion, deems appropriate. The constituent documents for a District association may provide that the board of the District association may direct the Delegate in the casting of votes, but the Corporation shall be under no duty to enquire whether the Delegate is complying with such directions and no duty to enforce such compliance. In the absence of the Delegate, the alternate Delegate may exercise such votes associated with the respective District.

(c) Member Voting where Multiple Owners. In any situation where a Member is entitled personally to exercise the weighted vote for his Unit (such as, by way of example and not

limitation, in the appointment of a Delegate for the District in which the Member's Unit is located), and there is more than one co-Owner of the Unit, the weighted vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Corporation prior to the vote. In the absence of such advice, the Unit's weighted vote shall be suspended if more than one Person seeks to exercise it.

(d) Member Proxies. In any case in which the Project Documents, Chapter 414D HRS or 421J HRS require that Members be permitted to attend and vote at meetings of the Members personally, rather than through Delegates, then Members may attend in person, or by a Member proxy holder duly appointed by a written proxy signed by the Member and filed with the Secretary. Proxies are limited as provided in Section 421J-4 HRS. Such proxy shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such Member, or upon termination of such Member's status as an Owner. Where two or more Persons own a Unit any one of said Persons may exercise, in person or by proxy, the weighted vote allocated to the Unit on behalf of all such Persons, unless the Corporation is notified in writing that such Persons disagree as to how the vote should be cast, in which event the weighted vote for the Unit shall not be counted unless such Persons unanimously agree.

### 3.3 Resignation, Suspension

(a) No Resignation. A Member may not resign from the Corporation.

(b) Suspension. The voting rights (in the case of Member meetings) or the weighted vote (in the case of Delegate meetings) of any Member may be suspended by action of the Board of Directors, during the period when the Member shall be in default in the payment of any assessments levied by the Corporation, or the observance of any provision of the Project Documents. The procedures for suspension of voting rights are set out in Article 8 below.

### 3.4 Meetings; Notice; Quorum

(a) Annual Meetings. An annual meeting of the Members of the Corporation or their Delegates shall be held each year on such date and at such time as the Board of Directors may determine, and at the principal office of the Corporation or at such other place in or out of the State of Hawaii as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting. Notwithstanding the foregoing, no annual meeting of the Members of the Corporation or their Delegates need be held (but may, if so determined by the Board), until one year after the closing of the first conveyance of a Unit to a Person other than Declarant (or its Affiliates); provided, however, that each Owner shall nevertheless be subject to and shall be required to comply with the provisions of the Declaration, the Articles and these Bylaws. At the annual meeting, the officers shall make such reports as are required by Chapter 414D HRS or 421J HRS.

(b) Special Meetings. Special meetings of the Members of the Corporation or their Delegates may be held at such time and at the principal office of the Corporation or at such other place in or out of the State of Hawaii, and for such purposes as shall be specified in a call for any such meeting made by the President or by the Board of Directors, or by Members or their

Delegates entitled to cast twenty-five percent (25%) of the total weighted votes of all Members of the Corporation.

(c) Quorum; Adjournment; Action. At any meeting of the Members or their Delegates, the presence of the Class "B" Member or Delegates entitled to cast twenty-five percent (25%) of the total weighted votes of all Members of the Corporation shall constitute a quorum, but whether a quorum be present or not, the concurrence of more than fifty percent (50%) of the weighted votes present at the meeting may adjourn such meeting from time to time without having to give notice of such adjournment or the new meeting date to the Members or Delegates not present at the adjourned meeting, but may not transact any other business. An adjournment for lack of quorum shall be to a date not less than one (1) day and not more than sixty (60) days from the original meeting date when a quorum is present at any meeting. At any continuation meeting of an adjourned meeting, the presence of the Class "B" Member or Delegates entitled to cast at least fifteen percent (15%) of the total weighted votes of all Members of the Corporation shall constitute a quorum. The concurring vote of more than fifty percent (50%) of the weighted votes present at the meeting shall be valid and binding upon the Corporation except as otherwise provided by law, the Articles, the Declaration or these Bylaws.

(d) Notice. Notice of any annual or special meeting shall be given to each Member or Delegate, as the case may be, in any manner permitted by Chapter 414D HRS and 421J HRS, including (if so permitted) by electronic mail or by posting on the Corporation's website (regardless of whether such site is maintained independently by the Corporation, by its managing agent or by any affiliate thereof), not less than ten (10) nor more than sixty (60) days prior to the time set for each meeting. The Board of Directors may fix or provide the manner of fixing a date as the record date for determining the Members or Delegates entitled to notice of said meeting. If no such record date is fixed, Members or Delegates at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(e) Rules of Order. All Member or Delegate meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise waived by a vote of the Members or Delegates.

(f) Lists for Meetings. After fixing a record date for notice of a meeting, the Corporation shall prepare an accurate list of the names, addresses and weighted vote of each of the Corporation's Members or their Delegates, as the case may be, entitled to vote at the meeting. The Member or Delegate list will be available for inspection by Members or Delegates to the extent required by Chapter 414D or 421J HRS. The Secretary of the Corporation may require a Member or Delegate who is requesting access to such list to furnish the Corporation with an affidavit stating that the use of the Member or Delegate list is requested in good faith for the purpose of communicating with other Members or Delegates concerning the meeting.



## Article 4

### Board of Directors

#### 4.1 Number; Election; Tenure; Removal; Vacancies.

(a) Number. There shall be a Board of Directors of the Corporation of not less than three (3) directors (but always of an odd number). During Declarant's Control Period there shall be three (3) directors until otherwise determined by the Board with the consent of the Declarant. After Declarant's Control Period, there shall be three (3) directors until the Members shall otherwise determine at any annual or special meeting of the Corporation, or until otherwise determined by the Board.

(b) Qualifications. After Declarant's Control Period ends, every member of the Board of Directors shall be a Member of the Corporation, including representatives of entity Members. Except for directors appointed by Declarant, every director shall be an officer or director of a District association or an Owner in a District with no District association..

(c) Limitation. Except for directors appointed by Declarant, there shall not be more than one representative on the Board of Directors from any one Unit.

(d) Declarant's Control Period Elections. During Declarant's Control Period all directors shall be appointed by the Declarant, unless and to the extent Declarant gives written notice to the Corporation that Declarant permits the Class "A" Delegates to elect one or more directors. After the Declarant's Control Period ends, the Members, through their respective Delegates, shall elect the Board of Directors.

#### (e) Term of Office.

(i) During Declarant's Control Period each director shall hold office for a term of two (2) years, or until his or her successor shall have been appointed or elected, or until his or her death or resignation or removal from office.

(ii) After Declarant's Control Period ends, the director elected with the largest number of votes shall have a three (3) year term, the director elected with the second largest number of votes shall have a two (2) year term and the third director elected shall have a one (1) year term. All directors elected when the initial terms expire, shall have three (3) year terms. In no event shall a Director hold office for more than six (6) consecutive years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor is elected, including in case of delay in the election of a successor. If the number of directors is increased, the terms shall be adjusted so that the terms of at least one-third of the directors terminate each year. For example, if the Board is increased to five (5) directors then the terms will be adjusted to two (2) year terms with the terms of three (3) Directors expiring one year and two (2) the next.

(f) Nominations. Prior to any meeting called for the purpose of electing directors (not including directors appointed by Declarant), any Delegate may nominate candidates for such election; provided, however, that all nominations not made by the Board or Declarant must be in writing, must identify the name and address of the nominee and contain a summary of such nominee's business background and other qualifications, and must be received by the Secretary at least five (5) business days prior to the date of the meeting for the election of directors.

(g) Removal. Directors appointed by Declarant may be removed by Declarant, with or without cause. Directors elected by the Members or their Delegates may be removed by the Members or their Delegates with or without cause.

(h) Vacancies. Vacancies on the Board created by the death, incapacity, resignation or removal of a director appointed by Declarant may be filled by Declarant. Vacancies created by the death, incapacity, resignation or removal of a director elected by the Members or their Delegates shall be filled by a majority of the remaining directors though less than a quorum or by a special meeting of the Members or their Delegates called for that purpose. Each director so elected shall hold office until the next annual or special meeting of the Members or their Delegates and thereafter until a successor shall be duly elected by the Members or their Delegates and any such successor filling a vacancy shall serve for the remaining unexpired term in respect of which the vacancy occurred.

#### **4.2     Meetings; Notice; Quorum.**

(a) Annual Meeting. An annual meeting of the Board of Directors shall be held each year immediately after the annual meeting of the Members or their Delegates and at the place of such annual meeting, without call or formal notice. Regular meetings of the Board of Directors, other than annual meetings, shall be held on such day and at such time and at the principal office of the Corporation or such other place in or out of the State of Hawaii as shall be determined from time to time by the Board of Directors, and when any such meeting or meetings shall be so determined no further notice thereof shall be required. Special meetings of the Board of Directors may be called by the President or by any two (2) directors, and any such meeting shall be held on such day, at the principal office of the Corporation or such other place in or out the State of Hawaii, as shall be specified by the Person or Persons calling the meeting.

(b) Notice. The Secretary shall give notice to the directors of each meeting of the Board of Directors in writing by mailing the same not less than three (3) days before the meeting or by giving notice personally, by telephone, electronic mail or facsimile not less than one (1) day before the meeting, or as otherwise prescribed by the Board. The failure of the Secretary to give any notice required by the foregoing, or the failure of any director to receive such notice, shall not invalidate the proceedings of any meeting at which a quorum of directors is present. Notice need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice, and the presence of any director at a meeting shall be the equivalent of a waiver by him of notice of the meeting. Except as otherwise provided by law, the Articles or by these Bylaws, a notice or waiver of notice need not state the purposes of such meeting.

(c) Quorum. A majority of the directors comprising the Board of Directors shall constitute a quorum for the conduct of business at any meeting, and any decision of a majority of such quorum, within the scope of the authority of the Board of Directors, shall be valid and binding on the Corporation, except that any decision requiring the approval or consent of the Members, Delegates or Declarant pursuant to the Declaration or these Bylaws shall not be valid or binding without the approval or consent of the Members, Delegates or Declarant in writing. Any business within the scope of the authority of the Board of Directors may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted at the meeting which may be set forth in the call or notice thereof.

(d) Action by Written Consent. Notwithstanding anything to the contrary contained in the foregoing, any action that may be taken at a meeting may also be taken by unanimous written consent of all directors, unless otherwise prohibited by 414D HRS and 421J HRS.

(e) Minutes. Minutes of the meetings of the Board of Directors shall include the recorded vote of each Board member on all motions except motions voted upon in executive session.

(f) Proxy. No Board member shall vote by proxy at Board meetings.

(g) Conflicts of Interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(h) Rules of Order. All meetings of the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise waived by a vote of the directors.

**4.3** Compensation of Directors. Members of the Board of Directors shall receive no compensation for their services as directors but they may, subject to the Board's approval, be reimbursed for actual reasonable expenses incurred and indemnified for actions covered by Article 7 herein.

**4.4** General Powers. The property, business and affairs of the Corporation shall be managed and controlled by the Board of Directors, which shall have and may exercise all of the powers of the Corporation, including, without limitation, all of the powers of the Corporation as set forth in the Declaration and the Articles, except such as are expressly reserved to or may from time to time be conferred upon the Members by law, the Articles, the Declaration or these Bylaws. Such powers and duties that the Board may exercise include, without limitation, the following:

(a) Contract. To contract and incur liabilities in connection with the exercise of any of the powers and duties of the Board of Directors;

(b) Funds; Bank Accounts. To have custody and control over all funds of the Corporation, open and close bank accounts on behalf of the Corporation, transfer funds on behalf of the Corporation, and designate the signatories required for such accounts and such activities;

(c) Books and Records. To keep books of accounts and records with respect to the Common Areas;

(d) Common Area Maintenance. To maintain, repair, replace and restore the Common Area and, to the extent applicable, other Area of Common Responsibility and make any additions, alterations and improvements thereto, as provided in and subject to the Declaration (including, without limitation, any additions, alterations and improvements resulting from damage or destruction by fire or other casualty or as a result of condemnation), such alterations and additions to be subject to the prior written consent of Declarant to the extent provided in the Declaration;

(e) Common Area Equipment. To purchase, maintain and replace any equipment and provide all water and utility services required for the Common Areas and to the extent applicable other Area of Common Responsibility, as provided in and subject to the Declaration;

(f) Common Area Personnel. To employ, supervise and dismiss such personnel as may be necessary for the operation, repair, maintenance and replacement of the Common Areas, and to the extent applicable other Area of Common Responsibility, as provided in and subject to the Declaration;

(g) Professional Staff. To procure legal, accounting, and management services with appropriate staff personnel, necessary or proper for the administration of the affairs of the Corporation or the interpretation, enforcement or implementation of the Declaration, these Bylaws and any other Project Documents;

(h) Insurance. To obtain and maintain in effect of all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws or the Board of Directors;

(i) Assessments. To make Assessments, as provided in the Declaration, to establish the means and methods of collecting such Assessments, in accordance with the Declaration and to levy and collect Assessments and other charges payable by the Owners;

(j) Expenses. To pay all expenses that the Corporation is required to pay pursuant to the Declaration, these Bylaws or by law or which, in the Board of Director's opinion, shall be necessary or proper for the administration of the affairs of the Corporation, provided that if any such payment is required because of a particular wrongful or negligent action by any Owner, the cost thereof shall be specially assessed for such expense, as provided in the Declaration;

(k) Liens. To pay and discharge any lien, encumbrance, tax or assessment levied against all or any portion of any real property, including any improvements thereon, belonging to the Corporation that may, in the opinion of the Board of Directors, constitute a lien against such

real properly. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Corporation by reason of such lien;

(l) Project Documents. To enforce the provisions of the Project Documents, and establish, assess and collect such penalties and fines and any interest as the Board of Directors deems appropriate with respect to such enforcement, including penalties, fines and interest for failure or refusal to pay on demand all costs and expenses required to be paid hereunder; provided that such penalties, fines and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Member shall constitute a lien against his interest in his Unit, which may be foreclosed by the Board of Directors;

(m) Delegation. To delegate its powers and duties to committees, agents, officers, representatives and employees;

(n) Lists. To keep, or cause the managing agent, if any, to keep, an accurate and current list of Members and Delegates and their current addresses; and

(o) Provide Information. To make available to any prospective purchaser of a Unit (or any interest therein), any Owner, any holder of a first mortgage on a Unit, and the holders, insurers and guarantors of any first mortgage on any Unit, current copies of the Project Documents and all other relevant (in the discretion of the Board of Directors) books, records and financial statements of the Corporation.

**4.5** Committees. The Board of Directors may appoint committees of two or more directors, who shall serve at the pleasure of the Board. The creation of a committee and appointment of Board members to it must be approved by a majority of the entire Board of Directors. If the Board of Directors appoints an executive or other committee, the executive or other committee may exercise all powers of the Board of Directors, except that the executive or other committee may not: (a) authorize distributions; (b) approve or recommend to the Members and Delegates the dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Corporation's assets; (c) elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees; or (d) adopt, amend or repeals the Articles or these Bylaws.

#### **4.6** Open Meetings.

(a) General. Whenever practicable, all meetings of the Board of Directors, other than executive sessions, shall be open to all Delegates and, to the extent required by Chapter 421J, all Members. Delegates, or to the extent required by Chapter 421J all Members, who are not on the Board of Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise.

(b) Executive Session. The Board of Directors, with the approval of a majority of a quorum of the Board's members, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters of a sensitive nature including matters concerning personnel,

litigation in which the Corporation is or may become involved, or as may be necessary to protect the attorney-client privilege of the Corporation. The general nature of any business to be considered in executive session shall be first announced in the regular session.

## **Article 5**

### **Officers and Agents**

#### **5.1    Designation; Duties.**

(a) Appointment. The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer who shall be appointed by the Board of Directors and who shall hold office until their successors are appointed and qualified. In the absence of any specified term, all officers shall be elected or appointed for a term of one year by the Board of Directors, provided that the failure to reappoint and qualify any officer shall not affect the legality of the officer's actions performed within the scope of his or her duty. The Corporation may have such other subordinate officers, agents and employees as may be deemed necessary or desirable, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board of Directors. So far as is permitted by law, the same Person may hold any two or more offices. In addition to the duties and powers herein set forth, each officer shall have such duties and powers as the Board of Directors shall from time to time designate. In all cases where the duties of any officer, agent or employee are not specifically prescribed by these Bylaws or by the Board of Directors, such officer, agent or employee shall obey the orders and instructions of the President. No officer need be a Member or Delegate of the Corporation.

(b) President. Subject to the control of the Board of Directors, the President shall be the chief executive officer of the Corporation and shall exercise general supervision and direction over the management and conduct of the affairs and business of the Corporation. Unless the Board of Directors otherwise directs, the President shall preside at all meetings of the Members and Delegates of the Corporation.

(c) Vice President. The Vice President, or if more than one shall have been appointed, the Vice Presidents in order of priority of appointment, shall assume and perform the duties of the President whenever the office of President is vacant. Each Vice President shall have such other powers and duties as may be given to him or her by law or in these Bylaws and as may be assigned to him or her from time to time by the Board of Directors or by the President.

(d) Secretary. The Secretary shall have charge of the membership list, all documents pertaining to the title of all real property owned or held by the Corporation, and all rules, regulations and other documents required to be filed with the Corporation or in the office of the Corporation by the Declaration. An original or duplicate of each such item shall be open to the examination of every Member and Delegate, at all times during the usual hours of business, at the principal office of the Corporation or such other location as may be required by the Board of Directors. The Secretary shall record all proceedings of the meetings of the Members, Delegates

and directors in a book that shall be the property of the Corporation, to be kept for that purpose at the principal office of the Corporation. The Secretary shall perform such other duties as shall be assigned to him or her. In the absence of the Secretary from any such meeting, a temporary secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book. Any meeting of a Delegate with the Members of the District that the Delegate represents is not considered a meeting of Members or a meeting of Delegates.

(e) Treasurer. Subject to the direction and under the supervision of the Board of Directors, and subject to the provisions of the foregoing paragraph, the Treasurer shall have the care and custody of the Corporation's funds and valuable papers, shall have the power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the Corporation or its order, and shall keep or cause to be kept accurate financial books and accounts of the Corporation and to render statements of the same in such form and as often as required by the Board of Directors.

**5.2** Removals; Reservations; Vacancies. The Board of Directors may, at any meeting called for the purpose, by vote of a majority of their entire number, remove from office any officer of the Corporation, for or without cause. The Board of Directors may, at any meeting, accept the resignation of any officer of the Corporation, or remove or accept the resignation of any agent or employee or any member of any committee appointed by the Board of Directors. Any vacancy occurring in the office of President, Vice President, Secretary, Treasurer or any other office shall be filled by the Board of Directors, and the officers so chosen shall hold office for the unexpired term in respect of which the vacancy occurred and until their successors shall be duly elected and qualified.

**5.3** Compensation. Officers of the Corporation shall receive no compensation for their services as officers but they may, subject to the Board's approval, be reimbursed for reasonable actual expenses incurred and indemnified for actions covered by Article 7 herein.

## **Article 6**

### **Execution of Instruments**

All checks, notes, bonds, deeds, leases, contracts and other instruments shall be executed by such Person or Persons as shall be provided by general or special resolution of the Board of Directors, and in the absence of any such general or special resolution of the Board of Directors, then such instrument or instruments shall be executed by any one of the following officers: the President, a Vice President, the Treasurer or the Secretary; provided, however that the two officers shall not be one and the same person.

## Article 7

### Indemnification

**7.1 No Liability.** No director, officer, or employee of the Corporation and no Person serving at the request of the Corporation as a director, officer, employee, member or agent of another corporation, partnership, joint venture, trust, committee or other enterprise and no heir, devisee, or personal representative of any such Person, shall be liable to the Corporation for any loss or damage suffered by the Corporation on account of an action or omission by such Person as a director, officer, employee or Person serving at the request of the Corporation as hereinabove provided if such Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Corporation.

**7.2 Indemnification Generally.** The Corporation shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that the Person is or was a director, officer, employee or Person serving at the request of the Corporation as provided in Section 7.1 against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with the action, suit or proceeding if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe the Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which the Person reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, create a presumption that the Person had reasonable cause to believe that the Person's conduct was unlawful.

**7.3 Suits by or in the Right of the Corporation.** The Corporation shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the Person is or was a director, officer, employee or Person serving at the request of the Corporation as provided in Section 7.1 against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection with the defense or settlement of the action or suit if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which the Person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of the Person's duty to the Corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.



**7.4** Effect of Success in Defense. To the extent that a Person who is or was a director, officer, employee or Person serving at the request of the Corporation as provided in Section 7.1 has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 7.2 and 7.3 above, or in defense of any claim, issue or matter therein, the Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection therewith.

**7.5** Authorization for Indemnification. Any indemnification under Sections 7.2 and 7.3 above (unless ordered by a court) shall be made by the Corporation only if authorized in the specific case upon a determination that indemnification of the Person is proper in the circumstances because the Person has met the applicable standard of conduct set forth in Sections 7.2 or 7.3 above. The determination may be made:

(a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding;

(b) if a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Corporation;

(c) if a quorum of disinterested directors so directs, by a vote of a majority of the weighted votes present at a meeting of the Delegates of the Corporation; or

(d) by the court in which the proceeding is or was pending upon application made by the Corporation or the agent, attorney, or other Person rendering services in connection with the defense, whether or not the application by the agent, attorney or other Person is opposed by the Corporation.

**7.6** Advances. Expenses incurred in defending any action, suit or proceeding may be paid by the Corporation in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the Person to repay the amount unless it shall ultimately be determined that the Person is entitled to be indemnified by the Corporation as authorized in this Article 7.

**7.7** Indemnification Not Exclusive. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a Person who has ceased to be a director, officer, employee or Person serving at the request of the Corporation as provided in Section 7.1, and shall inure to the benefit of the heirs, personal representatives, successors or assigns of the Person.

**7.8** Insurance. The Corporation shall have the power, but not the obligation, to purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or Person serving at the request of the Corporation as provided in Section 7.1 against any liability asserted against the Person and incurred by the Person in any such capacity or arising out of the Person's status as such, whether or not the Corporation would have the power to indemnify the Person against such liability under the provisions of this Article 7. Insurance may be procured from any insurance company designated by the Board of Directors.

## **Article 8**

### **Member and Delegate Responsibility**

Each Member and Delegate shall abide by and comply with the provisions of the Project Documents. Each Member shall pay when due all such dues, assessments, penalties and other charges that may be levied or assessed under the Project Documents. Further, each Member shall pay all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Corporation in collecting any delinquent assessments against such Member, in foreclosing its lien therefor, or in enforcing any provision of the Project Documents against such Member. For failure to comply with the requirements of this Article 8 or any other provision of any Project Document, the Board may suspend a Member's weighted vote or a Member's use rights to the Common Area or other Area of Common Responsibility upon compliance with the following procedural safeguards. The safeguards may be waived by the Owner or other person against whom the Corporation proposes to impose a penalty or suspension:

- (a) A written statement of the alleged violations shall be provided to any Owner or other person against whom those charges are made, and that written statement shall provide a date on which the charges shall be heard;
- (b) No proceedings under this Article 8 shall be brought against any Owner or other Person unless that Owner or other Person has received a written statement of charges at least fifteen (15) days prior to that hearing;
- (c) No proceeding shall be brought against any Owner or other Person more than ninety (90) days after the occurrence of the events upon which the charge is based, unless the Owner or the other parties involved are unavailable during that ninety (90) day period;
- (d) The Board shall appoint a panel of three (3) persons (one of whom shall be designated as chairman) who may or may not be Owners, and who shall hear the charges and evaluate the evidence of the alleged violation;
- (e) At the hearing, the Owner or other person so charged shall have the right to present oral and written evidence and to confront and cross-examine adverse witnesses; and
- (f) The panel shall deliver to the Owner or other person so charged within seven (7) days after the hearing a written decision which specifies the fines, penalties or suspension levied, if any, and the reasons for them.

## **Article 9**

### **Amendment; Reconciliation of Conflicts**

**9.1** Amendment. These Bylaws may be amended or repealed only upon the vote or written consent of either (a) a majority of the Board of Directors, or (b) Delegates

representing sixty-five percent (65%) of the total weighted vote of all Members of the Corporation; provided that during Declarant's Control Period the written consent of the Declarant shall also be required for any amendment or repeal of these Bylaws.

**9.2** Declarant Amendments Permitted by the Declaration. During such time as Declarant owns any Unit within Kauai Lagoons, the Declarant shall have the right to amend these Bylaws for any purpose permitted in the Declaration.

**9.3** Reconciliation of Conflicts. In the case of any conflict between the Articles and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. Chapter 421J HRS shall apply and, in the case of any conflict between Chapter 414D HRS and Chapter 421J HRS, Chapter 421J shall control.

## **Article 10**

### **Association Rules**

Each Member and Delegate recognizes the right of the Board of Directors from time to time to establish and amend such uniform rules and regulations as the Board of Directors may deem necessary for the management and control of the Corporation and Kauai Lagoons, as more particularly described in the Declaration. Each Member and Delegate agrees to obey all such rules and regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by the family, invitees, guests, employees, tenants and vendees of the Member and/or Delegate.

## **Article 11**

### **Emergency Provisions**

**11.1** Emergency Provisions. The provisions of this Article 11 shall be effective only in an emergency where a quorum of directors cannot readily be assembled because of some catastrophic event. All provisions of the other sections of these Bylaws consistent with this section remain effective during the emergency.

**11.2** Notice of Emergency Board Meeting. Any one member of the Board of Directors or any one of the officers of the Corporation may call an emergency meeting of the Board of Directors. Notice of such meeting need be given only to those directors whom it is practicable to reach, and may be given in any practical manner, including by publication and radio. Such notice shall be given at least six (6) hours before commencement of the meeting.

**11.3** Temporary Directors and Quorum. One or more officers present at an emergency meeting of the Board of Directors shall be deemed to be directors for the meeting, in order of rank, and within the same rank, in order of seniority, as necessary to achieve a quorum

of the Board. In the event that less than a quorum of the directors are present (including any officers who are to serve as directors for the meeting), then those directors present (including the officers serving as directors) shall constitute a quorum notwithstanding the higher quorum requirement elsewhere in these Bylaws.

**11.4 Permitted Actions.** The Board, after notice and as so constituted, may: (a) prescribe emergency powers to any officer; (b) delegate to any officer or director, any of the powers of the Board of Directors; (c) designate lines of succession of officers and agents, in the event that any of them are unable to discharge their duties; (d) relocate the Corporation's principal place of business, or designate successive or simultaneous principal places of business; and (e) take any other action convenient, helpful, or necessary to carry on the business of the Corporation.

**CERTIFICATE**

The Secretary of KAUAI LAGOONS COMMUNITY ASSOCIATION (the "Corporation") hereby certifies that the foregoing Amended and Restated Bylaws were duly adopted by the board of directors of the Corporation by meeting or unanimous written consent effective as of March 27, 2008, and that they remain in full force and effect.

DATED: March 27, 2008

  
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Secretary