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TMK No(s): (2) 3-5-001-017 (por.)

(2) 3-5-018-005, 009-011, 017-020, 023-025, 030, 032-047, 049, 051-056, 059-061, 084, 097-100, and 107-114

(2) 3-5-019-022, 070, 075, 076, 079, 080, 081, and 087

**AMENDMENT TO BY-LAWS
OF KEHALANI COMMUNITY ASSOCIATION**

Association: KEHALANI COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation

Association Address: P. O. Box 1437, Wailuku, Maui, Hawaii 96793



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**AMENDMENT TO BY-LAWS
OF KEHALANI COMMUNITY ASSOCIATION**

THIS AMENDMENT TO BY-LAWS OF KEHALANI COMMUNITY ASSOCIATION is executed this 4th day of September, 1996, but effective as of the date of recordation hereof, by KEHALANI COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation, whose post office address is P. O. Box 1437, Wailuku, Maui, Hawaii 96793 (the "Association").

WITNESSETH:

WHEREAS, C. Brewer Homes, Inc., a Delaware corporation, as Declarant, executed a Declaration of Covenants, Conditions and Restrictions for Kehalani dated March 17, 1995 (the "Declaration"), which Declaration was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-040251; and

WHEREAS, the By-Laws (the "By-Laws") of the Association, were attached as Exhibit "E" to the Declaration; and

WHEREAS, Section 6.6 of the By-Laws provides that By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent (75%) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists; and

WHEREAS, at a meeting of the Members of the Association held at the Sandalwood Golf Course, 2500 Honoapiilani Highway, Wailuku, Maui, Hawaii, on the 17th day of July, 1996, pursuant to a legal call therefor according to the By-Laws, there was present a quorum of the Members of the Association in accordance with Section 2.11 of the By-Laws, and the Members voted to amend the By-Laws by the requisite vote as set forth in Section 6.6 of the By-Laws;

NOW, THEREFORE, pursuant to the provisions of said By-Laws, the By-Laws are hereby amended in the following respects:

1. Section 2.3 of Article II of the By-Laws is hereby amended to read as follows:

"2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held either (i) on the same date and immediately following the election of the first Voting Member of a Neighborhood or (ii) on a date to be established by the Board after the election of the first Voting Member but in any event no later than sixty (60) days from said election of the first Voting Member.



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Subsequent regular annual meetings shall be set by the Board so as to occur during the second quarter of the Association's fiscal year on a date and at a time set by the Board."

2. Section 6.6(b) of Article VI of the By-Laws is hereby amended to read as follows:


"(b) By Members. Except as otherwise specifically provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 67% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in Article XII of the Declaration shall be met, if applicable.

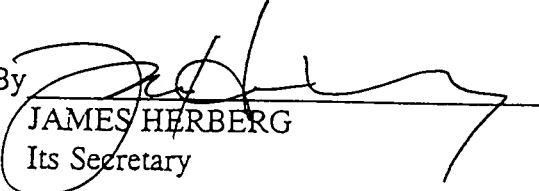
Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause."

3. In all other respects, said By-Laws are hereby ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed these presents on the day and year first above written.

KEHALANI COMMUNITY
ASSOCIATION, a Hawaii nonprofit
corporation

By 
Name: G. C. WENTWORTH
Title: President

By 
JAMES HERBERG
Its Secretary



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STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this 4th day of September, 1996, before me personally appeared G. C. WENTWORTH and JAMES HERBERG, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary/Treasurer, respectively, of KEHALANI COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.

Jeanne L. Hashimoto ^{LS}
Notary Public, State of Hawaii

My Commission Expires: 6-14-2022



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OF
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BY-LAWS
OF
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Article I
Name, Principal Office, and Definitions

1.1. **Name.** The name of the corporation is Kehalani Community Association (the "Association").

1.2. **Principal Office.** The principal office of the Association shall be located in the County of Maui, Hawaii. The Association may have other offices, either within or outside the State of Hawaii, as the Board of Directors (the "Board") may determine or as the affairs of the Association may require.

1.3. **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions, and Restrictions for Kehalani filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. **Membership.** The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as possible and practical.

2.3. **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one year beginning from the date of incorporation of the Association. Meetings shall be of the Voting Members only. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.



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2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Voting Members representing at least 10% of the total Class "A" votes of the Association.

2.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting are not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.



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2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates; provided, however, any Member who is only entitled to cast the vote(s) for his own Unit(s) pursuant to Section 3.4 of the Declaration may cast such vote in person or by proxy until such time as the Board first calls for election of a Voting Member to represent the Neighborhood of which the Unit is a part. On any matter as to which a Member is entitled to personally cast the vote for his Unit, such vote may be cast in person or by proxy, subject to the limitations of Hawaii law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. All proxies shall be in writing specifying the Unit for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or upon the expiration of eleven months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of Voting Members representing a majority of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association, and any decision of the majority of such quorum shall be valid and binding upon the Association except as otherwise provided in the Declaration, the Articles of Incorporation of the Association (the "Articles"), these By-Laws, or by statute.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Voting Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by all Voting Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of Hawaii. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Voting Members at a meeting.



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Article III
Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1. **Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors elected by the Class "B" Member, the directors shall be Members or residents; provided, however, no Owner or resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors elected by the Class "B" Member.

3.2. **Number of Directors.** The Board shall consist of an odd number of not less than three nor more than seven directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles.

3.3. **Directors During Class "B" Control Period.** Subject to the provisions of Section 3.5, the directors shall be elected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

- (a) when 80% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders;
- (b) December 31, 2014; or
- (c) when, in its discretion, the Class "B" Member so determines.

3.4. **Nomination and Election Procedures.**

(a) **Nominations and Declarations of Candidacy.** Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors elected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a ~~Chairman and two Members~~ **PROPERTY OF THE** more Members or



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representatives of Members, with at least one representative from each Voting Group. The members of the Nominating Committee shall be appointed by resolution adopted by a majority of the Board at each annual meeting and serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine but not less than the number of vacancies that are to be filled. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" votes, and for the director(s) to be elected by the votes within each Voting Group.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Voting Member may cast all votes assigned to the Units which it represents for each position to be filled from the slate of candidates on which such Voting Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors shall hold office until their respective successors are elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Units permitted by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Voting Members shall be entitled to elect one of the three directors, who shall be an at-large director. The remaining two directors shall be elected by the Class "B" Member. The director elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Units permitted by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Voting Members shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be elected by of the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is sooner. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.



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(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Voting Members shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be elected by the Class "B" Member. The directors elected by the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below. The directors elected by the Class "B" Member shall not be subject to removal by the Class "A" Members and shall serve at the pleasure of the Class "B" Member.

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Voting Members, with an equal number of directors elected by the Voting Members representing each Voting Group and any remaining directorships filled at large by the vote of all Voting Members. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves.

Until termination of the Class "B" membership, the Class "B" Member shall be entitled to elect one director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to elect a director to serve until the next annual meeting, at which time the Voting Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

Upon the expiration of the director's term of office of each director elected by the Voting Members, the Voting Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. The directors elected by the Voting Members shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Except as is otherwise provided in the Declaration or the Articles, any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director at a meeting duly called and held for such purpose. Any director whose removal is sought shall be given notice at a meeting duly called and held for such purpose. Upon removal of a director, a successor shall be elected by the Voting Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.



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In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Members entitled to fill such directorship may elect a successor for the remainder of the term.

In case of any temporary vacancy, such temporary vacancy shall be filled only for the period of the disability of the director whose place is being filled or the period of absence of the director from the State of Hawaii. The determination by the Board, as shown on the minutes, of the fact of such disability or absence and the duration thereof shall be conclusive as to all Persons and the Association.

Any director which the Board appoints shall be selected from among Members within the Voting Group represented by the director who vacated the position.

This Section shall not apply to directors elected by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to elect a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board shall be held at such time and place in the State of Hawaii as shall be fixed by resolution of a majority of the directors, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would be reasonably expected to communicate such notice promptly to the director; or (d) telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.



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3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board.

3.14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Voting Members and, if required by law, all Owners, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any such individual



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may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, the Articles, these By-Laws, or Hawaii law directed to be done and exercised exclusively by the Voting Members or the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget and establishing each Owner's share of the Common Expenses and any Neighborhood Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;



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(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles, these By-Laws, rules and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Hawaii law, the Articles or the Declaration; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.19. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program actions of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, or interfere with development, construction of any portion of the Properties, or diminish the level of services being provided by the Association. This right shall be exercisable only by the Class "B" member, its successors, and assigns. The right to disapproval above shall be as follows:

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) below have been met:



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(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting.

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

In the event of any conflict between the provisions of this Section and any other provision in these By-Laws, the Articles or the Declaration, the provisions of this Section shall control.

This Section may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

3.20. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 90 days' written notice.



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3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or



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insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Voting Member approval in the same manner provided in Section 8.6 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 5% of the budgeted gross expenses of the Association for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least 51% of the total Class "A" votes in the Association.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or resident associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24. Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these By-Laws, or any Association rules. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, these By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, these By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.



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(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 10 days after the hearing date.

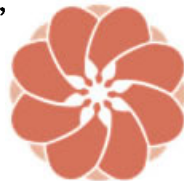
(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these By-Laws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or, following compliance with the dispute resolution procedures set forth in Article XIV of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

Article IV **Officers**

4.1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Voting Members, to serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.



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4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board.

4.5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board, the President shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. The President shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

4.6. Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice President shall have such other powers and duties as may be assigned to him from time to time by the Board.

4.7. Secretary. The Secretary shall have charge of the membership ledger, all documents pertaining to the title and interest in and to all real property owned or held by the Association, and all rules, regulations, and other documents required to be filed with the Association or in the office of the Association by the Declaration. An original or duplicate of each document shall at all times during the usual hours of business be open to examination by any Member at the principal office or place of business of the Association. The Secretary shall record all proceedings of the meetings of the Association and directors in a book, which shall be the property of the Association, to be kept for that purpose at the office of the Association and perform such other duties as shall be assigned to him. In the absence of the Secretary from any such meeting, a temporary Secretary, named by the presiding officer, shall record the proceedings of such meeting in the aforesaid book.

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

4.9. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.10. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.11. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12



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Article V
Committees

5.1. **General**. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. **Covenants Committee**. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws.

5.3. **Neighborhood Committees**. In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or association may elect a Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue, but shall not have the authority to bind the Board. Such Neighborhood Committees, if elected, shall consist of three to five Members, as determined by the vote of at least 51% of the Owners of Units within the Neighborhood.

Neighborhood Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Neighborhood shall be an ex officio member of the Neighborhood Committee. The Voting Member representing such Neighborhood shall be the chairperson of the Neighborhood Committee, shall preside at its meetings, and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3.9, 3.10, and 3.11. Meetings of a Neighborhood Committee shall be open to all Owners of Units in the Neighborhood and their representatives. Members of a Neighborhood Committee may act by unanimous written consent in lieu of a meeting.

Article VI
Miscellaneous

6.1. **Fiscal Year**. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. **Parliamentary Rules**. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Hawaii law, the Articles, the Declaration, or these By-Laws.



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6.3. Conflicts. If there are conflicts between the provisions of Hawaii law, the Articles, the Declaration, and these By-Laws, the provisions of Hawaii law, the Declaration, the Articles and these By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, these By-Laws, and the Articles, including any amendments, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.



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6.6. Amendment.

(a) By Class "B" Member. Until conveyance of the first Unit to a Person other than a Builder, the Class "B" Member may unilaterally amend these By-Laws for any purpose. Thereafter, the Class "B" Member may unilaterally amend these By-Laws if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in Article XII of the Declaration shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

(d) HUD/VA Approval. As long as the Class "B" Member controls the Association, any material amendment of these By-Laws shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing a mortgage on any Unit. In addition, as long as the Class "B" Member controls the Association, the items set forth in Article 12 of the Articles and Section 12.9 of the Declaration shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing a mortgage on any Unit.

If an Owner consents to any amendment to these By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.



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Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Kehalani Community Association, a Hawaii non-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 16th day of March, 1995.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of March, 1995.

Volney F. Finkland
Secretary



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