

**BYLAWS  
OF  
MAUI LANI VILLAGE CENTER OWNERS ASSOCIATION**

**ARTICLE 1  
INTRODUCTORY PROVISIONS**

**Section 1.1 Name.** The name of the corporation is Maui Lani Village Center Owners Association, a Hawaii nonprofit corporation (the "**Association**").

**Section 1.2 Definitions.** The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Maui Lani Village Center Declaration of Covenants, Conditions, Restrictions and Easements dated October 1, 2009, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-154916, as the same may be amended and/or supplemented from time to time in accordance with the terms thereof (the "**Declaration**"), unless the context indicates otherwise. In addition to words defined elsewhere in these Bylaws, the words set forth in this Section 1.2 shall have the meanings defined and/or described below.

(a) "**Bylaws**" means these Bylaws of Maui Lani Village Center Owners Association adopted in accordance with the Declaration, as amended from time to time.

(b) "**Declarant**" means Maui Lani Village Center, Inc. and its successors or assigns. A Person shall be deemed a successor and/or assign of Declarant only if specifically so designated in a duly Recorded written instrument as a successor or assign of Declarant under the Declaration and/or under any Supplemental Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under the Declaration or under such Supplemental Declarations that are specifically designated in the Recorded written instrument. Declarant shall have the right to assign less than all of its rights hereunder and to impose such conditions and limitations thereon as Declarant may impose in its sole and absolute discretion.

(c) "**Guest**" means a person who enters upon the Project at the invitation or request (whether direct or indirect, express or implied) of an Owner or Occupant, including, without limitation, employees, servants, invitees, licensees, contractors, agents and family members who are not Occupants.

(d) "**Quorum**" means, in the case of Association meetings or actions, unless otherwise provided in the Project Documents or by law, the presence of Voting Delegates, in person or, if permitted by the Declaration or these Bylaws, by proxy, representing (i) a Majority of all Class "A" Member votes eligible to be cast at the meeting or on the issue, and (ii) during the Declarant Control Period, the Class "B" Member. In the case of Board of Director meetings or actions, "**Quorum**" shall mean a Majority of the total number of directors in office immediately before a meeting begins or an action is taken. The Board of Directors shall not have the power or authority to adopt a Bylaw amendment to reduce Quorum requirements for Association or Board meetings or actions.

**Section 1.3 Principal Office.** The principal office of the Association shall be located in the State of Hawaii. The Association may have such other offices, either within or outside the State of Hawaii, as the Board may determine or as the affairs of the Association may require. The address of the Association's initial office is the address for the Declarant shown in or pursuant to the Declaration.

**Section 1.4 Conflicts.** In case of any conflict between the provisions of Hawaii law, the Declaration, the Articles and/or these Bylaws, the provisions of Hawaii law, the Declaration and the Articles (in that order) shall prevail.

**Section 1.5 Application.** All present and future Owners and Occupants, their Guests, and any other Persons who may use any part of the Project in any manner are subject to the Project Documents. The acceptance of a deed or other conveyance, or the entry into a rental agreement, or the act of occupying a Lot or Subdistrict Unit by a Person, shall constitute an agreement that the Project Documents are accepted, ratified and legally binding on such Person.

## **ARTICLE 2 ASSOCIATION**

**Section 2.1 Membership in the Association.** Membership in the Association shall be as set forth in the Declaration, the terms of which pertaining to membership are incorporated herein by this reference.

### **Section 2.2 Record Date.**

(a) **Notice of Association Meetings.** The record date for the purpose of determining the Voting Delegates who are entitled to receive notice of a meeting of the Association shall be the close of business one business day before the day on which the notice is given.

(b) **Voting at Association Meeting.** The record date for the purpose of determining the Members whose votes are entitled to be cast by such Members' respective Voting Delegates at an Association meeting shall be the close of business two business days preceding the date of the meeting.

(c) **Action without a Meeting.** The Board may fix future dates, not more than 30 days in advance, as the record dates for (i) determining the Members who, through such Members' respective Voting Delegates, are entitled to take action without a meeting, and (ii) determining the Voting Delegates entitled to take such action on behalf of such Members. For any record date not so fixed, the record date shall be the date the first Voting Delegate signs a written consent for the action, as evidenced by the date on the consent.

(d) **Petition for Special Meeting.** The record date for purposes of determining whether the 10% requirement of Section 2.3(b) has been met is the close of business one business day before delivery of the demand or demands for a special meeting to any corporate officer.

### **Section 2.3 Meetings of the Association**

(a) **Annual Meetings.** The Association shall hold its first annual meeting not later than 180 days after the Recording of the conveyance of the first Lot or Subdistrict Unit in the Project. After the initial annual meeting of the Association, the Association shall hold annual meetings of the Association within 180 days following the close of each fiscal year of the Association on such date as the Board shall designate. Each annual meeting shall be a general meeting of the Association and any business within the powers of the Association may be transacted without special notice of such business, except as limited by law, the Declaration or these Bylaws.

(b) **Special Meetings.** Special meetings of the Association may be called by the President at any time, and shall be called by the President upon receipt of (i) a written request signed by any two directors, (ii) a petition signed by Voting Delegates representing not less than 10% of the total eligible Class "A" votes in the Association at that time, or (iii) written request signed by Declarant. Upon receipt of the call for a special meeting, the secretary of the Association shall send notice of the special meeting to all Voting Delegates. If notice of a special meeting is not given within 30 days of the secretary's receipt (or deemed receipt) of the demand for a special meeting, then any Person signing the demand may call the meeting by giving notice as provided in Section 2.3(f) below. The special meeting shall be held on the date, and at the time and place, specified in such call. Only such business shall be transacted at any special meeting as shall have been indicated by a specific or general description in the notice of the meeting.

(c) **Adjournment.** Any meeting of the Association may be adjourned to such date, time and place as may be determined by the affirmative vote of a Majority of the Class "A" Members' votes represented at the meeting, either in person or by proxy, whether or not a Quorum is present, and, during the Declarant Control Period, the Class "B" Member, without notice other than the announcement at such meeting; provided, however, that if a new record date must be fixed under Section 2.2, then notice of the adjourned meeting must be given to all persons entitled thereto as of the record date. At any such adjourned meeting at which a Quorum is present, any business may be transacted that might have been transacted by a Quorum at the meeting as originally called.

(d) **Open Sessions.** All meetings of the Association shall be open to all Voting Delegates, to Declarant and ML100, and all Owners, provided that Owners and other Persons who are not Voting Delegates may not participate in any deliberation or discussion unless expressly so authorized by the vote of a Majority of the Class "A" Members' votes represented at the meeting; provided, further, however, that Declarant and ML100 may participate in any deliberation or discussion even if they are not Owners or Voting Delegates.

(e) **Place of Meetings.** All meetings of the Association shall be held at the principal office of the Association unless the Board shall designate another place convenient to the Voting Delegates.

(f) **Notice of Meetings.**

(i) **Notice.** The notice of every meeting of the Association shall state whether it is an initial, annual or special meeting, the date, time and place of the meeting, any agenda items required to be in the notice for the meeting, and any other information permitted or required to be included in meeting notices by the Declaration, these Bylaws or by law. Notice of each meeting shall be given not less than 14 days and not more than 60 days in advance of the meeting, provided, however, that in the case of an emergency, a special meeting may be called by the President on not less than 48 hours notice.

(ii) **Delivery of Notice.** The notice for each meeting shall be given in any one or more of the following ways:

(A) by delivering it personally to the Voting Delegate;

(B) by depositing it in the mail, postage prepaid, addressed to the Voting Delegate at the address of such Voting Delegate as it appears in the Association's records;

(C) by facsimile transmission, sent to the Voting Delegate's facsimile number, if any, that appears in the Association's records; or

(D) by electronic mail (email) transmission, sent to the Voting Delegate's email address, if any, that appears in the Association's records.

(iii) **Notices Conforming to Requirements of this Section.** If notice is given in accordance with the provisions of this Section 2.3(f), then the failure of any Voting Delegate to receive actual notice of any meeting shall in no way invalidate the meeting or any proceedings at the meeting.

(iv) **Address for Notices to Voting Delegates.** The address for notices to any Voting Delegate shall be the last address shown in the records of the Association for such Voting Delegate, or if no address exists in the records of the Association for such Voting Delegate, then:

(A) For any Voting Delegate other than a Voting Delegate representing the Class "B" Member or a Subdistrict, the address for the Owner of the Lot which such

Voting Delegate represents as shown on the Recorded document conveying such Lot to such Owner, or if no such address exists, then to the address for such Lot.

(B) For any Voting Delegate representing a Subdistrict, the address shown in the records of the Association for the Subdistrict, or if no such address exists, then the address shown in the Hawaii Department of Commerce and Consumer Affairs records for such Subdistrict, or if no such address exists, then the address of any officer of the Subdistrict referenced in any document by which the Lot was conveyed to the Owner of the Lot.

(C) For the Voting Delegate representing the Class "B" Member, the address for Declarant as shown in the Declaration or otherwise provided by notice from Declarant to the Association.

(v) **Waiver of Notice.** The presence of a Voting Delegate, in person or by proxy (if permitted), at any meeting shall be deemed a waiver of any required notice to such Voting Delegate unless such Voting Delegate shall, at the opening of the meeting, object to the holding of such meeting because of the failure to give notice in accordance with the provisions of this Section 2.3(f). Further, a Voting Delegate may waive any notice required by the Project Documents or by law before or after the date and time stated in the notice in a writing signed by the Voting Delegate and delivered to the Association for inclusion in the Association's records.

(vi) **Waiver of Objection to Consideration of a Matter.** The presence of a Voting Delegate, in person, waives any objection by that Voting Delegate to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice unless the Voting Delegate objects to consideration of the matter prior to adjournment of the meeting at which the matter is presented.

#### **Section 2.4 Acts of the Association.**

(a) **Action by Vote of the Voting Delegates.** The affirmative vote of the Voting Delegate representing the Class "B" Member, if the Class "B" Member exists, and a Majority of the Class "A" Members' votes represented at a meeting of the Association at which a Quorum is present, shall be the act of the Association and binding on all Voting Delegates, Members, Owners and Occupants for all purposes, except when the law, these Bylaws or the Declaration requires a different percentage vote, in which case the specified percentage vote, if met, shall be the act of the Association. The Voting Delegates 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 Delegates 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 and the Class "B" Member, if it exists.

(b) **Action Without a Meeting.** Unless otherwise authorized in the Declaration or these Bylaws (except if such authorization is prohibited by law), any action required or permitted to be taken by Voting Delegates at any meeting of the Association may be approved without a meeting if the action is approved by the written consent or consents of Voting Delegates representing at least eighty percent (80%) of all Class "A" Member votes eligible to be cast on such matter, and, during the Declarant Control Period, by the written consent of the Voting Delegate for the Class "B" Member, if the concurrence of the Class "B" Member is required by the Project Documents in connection with the subject matter of such vote. The action must be evidenced by one or more written consents describing the action taken, signed by the requisite Voting Delegates, and such written consents shall be delivered to the secretary of the Association for inclusion in the minutes or filing with the corporate records. If the written consent is not unanimous, then the action so approved shall be effective 10 days after written notice of Voting Delegate consent is delivered (or deemed delivered) to Voting Delegates who did not sign a written consent, provided that in all cases requiring the concurrence of Declarant, the written consent of Declarant must be obtained. A consent signed pursuant to this Section has the effect of a meeting vote and may be described as such in any document.

(c) **Delinquent Assessments.** Notwithstanding anything in these Bylaws to the contrary, no vote shall be exercised on behalf of any Lot or Subdistrict Unit if any Assessment (or other charge due the Association) for such Lot or Subdistrict Unit is delinquent and such delinquency has continued for a period longer than 30 days after notice of such delinquency has been given by or on behalf of the Association to the Owner of such Lot or Subdistrict Unit. Until such delinquency is cured, the vote of any such Lot or Subdistrict Unit shall be suspended as if the Lot or Subdistrict Unit did not exist, meaning that such vote shall not be needed or counted for determining whether a quorum exists or whether an action should be taken or a measure should be passed.

**Section 2.5 Order of Business.** The order of business at all meetings of the Association shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reports, if any, of officers;
- (d) Reports, if any, of Board of Directors;
- (e) Reports, if any, of committees;
- (f) Election of members of the Board of Directors (when required);
- (g) Appointment of auditor (if and when appropriate);
- (h) Unfinished business; and
- (i) New business.

**Section 2.6 Conduct of Meetings.** All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

**Section 2.7 Voting and Proxies.**

(a) **Proxy Requirements.** The following shall apply in all cases where Voting Delegates are permitted by the Project Documents to vote by proxy:

(i) the authority given by any Voting Delegate to another Person to represent the Voting Delegate at meetings of the Association shall be by written proxy and must contain at least:

- (A) the name of the Association;
- (B) the date of the meeting of the Association;
- (C) the printed name and signature of the Voting Delegate or Voting Delegates giving the proxy;
- (D) the Lot, Lots, or Subdistrict with respect to which the proxy is given and the number of votes applicable to each such Lot or Subdistrict;
- (E) the printed name of the Person to whom the proxy is given;
- (F) the date on which the proxy is given;

- (G) boxes indicating if the proxy is given:
- (1) for Quorum purposes only;
  - (2) to the individual whose name is printed on a line next to this box;
  - (3) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the Majority of the Board; or
  - (4) to those directors present at the meeting and the vote to be shared with each director receiving an equal percentage; and
  - (5) any other information required by applicable laws.

(H) A statement to the effect that if a Voting Delegate does not check one of the boxes referred to in subsection (G) above, then it shall be considered a choice by the Voting Delegate that the vote be exercised by the Board of Directors as a whole and that the vote be made on the basis of the preference of the Majority of the Board.

(ii) **Proxies of Co-Owners.** In connection with a proxy given by a Voting Delegate representing an Owner Member pertaining to a Lot owned by two or more Persons, any one of such Persons may give or revoke a proxy for the entire vote of such Lot. Any proxy given by a cotenant or cotenants of a Lot may be exercised to cast the entire vote for such Lot.

(iii) **Death or Incapacity of Owner.** The death or incapacity of the Owner appointing a proxy does not affect the right of the Association to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(iv) **Acceptance of Vote by Proxy.** Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, the Association is entitled to accept the proxy's vote or other action as that of the Owner making the appointment.

(v) **Delivery of Proxy.** A proxy, to be valid, must be delivered to the secretary or the Project's Manager or Managing Agent (whether by hand delivery, facsimile or otherwise) no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains.

(vi) **Voting Agreements.** Two or more Owners of a Lot may provide for the manner in which they will vote by signing a voting agreement. Such an agreement may be valid for periods of up to 10 years, and is specifically enforceable.

(vii) **Duration; Limitations.** A proxy:

- (A) shall only be valid for the meeting to which the proxy pertains and its adjournments;
- (B) may designate any person as proxy; and
- (C) may be limited as the Owner desires and indicates; *provided, however,* that no proxy shall be irrevocable unless the proxy form conspicuously states that it is coupled with a financial interest.

(b) **Copied or Faxed Proxies.** A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for

which the original proxy could be used; *provided, however*, that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(c) **Use of Association Funds to Distribute Proxies.** If the Board uses Association funds to distribute proxies that include the election of directors, then the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least 30 days prior to its distribution of proxies; provided that if the Board receives, within seven days of the posted notice, a request by any Owner for nomination to the Board accompanied by a statement, the Board shall mail to all Owners either:

(i) A proxy form containing the names of all Owners who have requested nomination to the Board accompanied by their statements; or

(ii) A proxy form containing no names, but accompanied by a list of names of all Owners who have requested nomination to the Board and their statements, such statements to not exceed 100 words, indicating the Owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

## **Section 2.8 Voting Delegates.**

### **(a) Subdistrict Voting Delegates.**

(i) **Determination of Single Voting Delegate.** Each Subdistrict Association shall be represented in the Association by a single "Subdistrict Voting Delegate." If a Subdistrict is within the jurisdiction of a Subdistrict Association (such as a condominium association) that has been established, then the Subdistrict Voting Delegate from such Subdistrict Association shall be the most senior officer of the Subdistrict Association (e.g., the president of the Subdistrict Association), or such other person duly appointed in accordance with the bylaws of such Subdistrict Association, or, in the absence of appropriate provisions in the bylaws of such Subdistrict Association, by the Board of Directors of the Subdistrict Association. If a Subdistrict is subject to the jurisdiction of a Subdistrict Association that has not yet been established, then the Subdistrict Voting Delegate from such Subdistrict, who must be an Owner within the Subdistrict, shall be appointed by a Majority vote of the Owners of Subdistrict Units in such Subdistrict. In the absence of a vote by Subdistrict Owners, the Subdistrict Voting Delegate for any such Subdistrict (who shall be an Owner in such Subdistrict) shall be appointed by Declarant. Where a Lot within a Subdistrict is not within the jurisdiction of a Subdistrict Association, the Owner of the Lot shall be an Owner Member as provided in Section 7.1(b) of the Declaration.

(ii) **No Vote by Proxy.** Except as provided in Section 2.8(c), a Voting Delegate representing a Subdistrict may not vote by proxy.

(iii) **Alternate Voting Delegates.** Subdistricts may appoint or elect Alternate Voting Delegates (who must otherwise meet the qualifications of Subdistrict Voting Delegates), and upon written notice to the secretary of the Association provided in the same manner as for Subdistrict Voting Delegates, such Alternate Voting Delegate shall have the right to exercise all of the voting rights of the Subdistrict Voting Delegate in such Subdistrict Voting Delegate's absence. Alternate Voting Delegates shall also have the right to exercise all of the rights of the Subdistrict Voting Delegate in the event of the resignation, death or disability of the Subdistrict Voting Delegate, until replaced by the Subdistrict Association.

(iv) **Notice to Secretary; Term of Appointment.** Each Subdistrict Association shall furnish the name and contact information of the duly appointed or elected Subdistrict Voting Delegate (and Alternate Voting Delegate, if any) to the secretary of the Association not less than one week prior to the meeting at which such Subdistrict Voting Delegate (or Alternate Voting Delegate, if any) is authorized to exercise the right to vote. The office of a Subdistrict Voting Delegate (and Alternate Voting Delegate, if any) shall continue for so long as is stated in the notice given to the secretary, and if no duration is given, until a replacement Subdistrict Voting Delegate (or Alternate Voting Delegate, if any)

is duly appointed or elected by the Subdistrict Association, or until written notice is provided to the secretary that such Subdistrict Voting Delegate (or Alternate Voting Delegate, if any) has been removed by the Subdistrict Association. The Board of Directors shall have the right to require each Subdistrict Association to provide such certifications and/or additional information regarding the authority of the Subdistrict Voting Delegate (or Alternate Voting Delegate, if appropriate) and any limitations thereon (for example, but not by way of limitation, (A) limitations on voting on behalf of Owners who have provided instructions delivered pursuant to Section 7.4 of the Declaration, (B) limitations on votes that may be cast on behalf of Owners that have unpaid Assessments and/or (C) in the case of Subdistrict Voting Delegates representing a Subdistrict Association that has not yet been established, information and/or documents allowing the Association to confirm the authority of the Subdistrict Voting Delegate to represent the Owners of Lots within such Subdistrict) as the Board may determine is appropriate or advisable.

(v) **Special Meeting of Subdistrict.** A Subdistrict Voting Delegate shall have the authority, in the Subdistrict Voting Delegate's sole discretion, to call a special meeting of the Subdistrict Unit Owners in such Subdistrict Voting Delegate's Subdistrict in the manner provided in the Recorded Condominium Documents or other instruments establishing or governing such Subdistrict, or, in the case of a Subdistrict Association that has not yet been established, in any manner reasonably calculated to give notice and opportunity to participate to all Subdistrict Unit Owners within the Subdistrict, for the purpose of obtaining instructions as to the manner in which such Subdistrict Voting Delegate is to vote on any issue to be voted on by the Subdistrict Voting Delegate. When a Subdistrict Voting Delegate is voting in the Subdistrict Voting Delegate's own discretion, without instruction from the Subdistrict Unit Owners whom such Subdistrict Voting Delegate represents, then such Subdistrict Voting Delegate may cast all of the votes that the Subdistrict Voting Delegate represents as a unit or such Subdistrict Voting Delegate may apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. It shall be conclusively presumed for all purposes of Association business that any Subdistrict Voting Delegate casting votes on behalf of the Subdistrict Unit Owners in such Subdistrict Voting Delegate's Subdistrict will have acted with the authority and consent of all such Subdistrict Unit Owners. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established in the Declaration, and in these Bylaws, shall be deemed to be binding on all Lot Owners, Subdistrict Unit Owners and their respective successors and assigns.

(b) **Owner Member Voting Delegates.** Unless otherwise specified in the Declaration or these Bylaws, the Owner of a Lot (including Declarant) that is not subject to the jurisdiction of a Subdistrict Association shall be the Voting Delegate for such Lot. If more than one Owner owns a Lot that has an Owner Membership appertaining to it, then the Voting Delegate shall be the Owner selected by and among such Owners, and the secretary of the Association shall be notified in writing of such selection not less than one week prior to the applicable meeting, to serve until replaced. In the absence of such notice, the Voting Delegate for such Owner Member shall be any Owner of such Lot exercising the right to vote on behalf of all of such Owners; provided that the vote(s) for the Lot shall be suspended (and not counted for quorum purposes) if more than one Owner seeks to exercise the vote(s). A Voting Delegate for an Owner Member may vote by proxy, subject to the requirements set forth in these Bylaws with respect thereto.

(c) **Voting Delegates Representing Declarant.** Any Person authorized to act on behalf of Declarant pursuant to Section 10.10 of the Declaration shall be the Voting Delegate for the Class "B" Member. A Voting Delegate for the Class "B" Member may vote by proxy, subject to the requirements set forth in these Bylaws with respect thereto.

**Section 2.9 General Assessments.** Each Owner shall pay General Assessments as provided in this Section and the Declaration. Except as otherwise specifically provided in the Declaration, payment of General Assessments shall be in such amounts and at such times as may be provided in these Bylaws or as determined by the Board. As set forth in Article 8 of the Declaration, not later than 60 days prior to the beginning of each fiscal year of the Association, the Board shall prepare a pro-forma operating statement or budget for the upcoming fiscal year, which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year; provided, however, that, with respect to the



Association's initial pro-forma operating statement or budget, the Board (via Declarant) shall only be required to prepare the statement or budget 60 days prior to the date that General Assessments are first assessed against Owners. The Board shall at the time determine the amount of the General Assessment to be paid by each Owner and notify such Owner. Each Owner shall thereafter pay to the Association said General Assessment in such a manner and on such schedule as the Board may provide. Each such installment shall be due and payable on the date and in the manner specified by the Board. In the event the Board fails for any reason to determine the budget for any fiscal year, then and until such time as a budget shall have been determined as provided herein, the budget and General Assessments in effect for the then-current fiscal year shall continue for the succeeding fiscal year. If the Board determines that the total General Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, but excluding any Common Expenses allocated as Subdistrict Expenses, Special Assessments or Benefited Expenses, then the Board shall determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of General Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total General Assessments for the current year prove to be excessive in light of the actual Common Expenses, then the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the General Assessments for the succeeding year, or abate collection of General Assessments for such period as it deems appropriate.

**Section 2.10 Reserves.** As set forth in Article 8 of the Declaration, any reserves included in the Common Expenses that are collected as part of the General Assessments shall be deposited by the Association in a separate bank account (or similar account with a recognized financial or investment institution) to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts, optimizing investment returns, or the laws, tax or otherwise, of the State of Hawaii or the United States relating to non-profit corporations or community associations. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners. The responsibility of the Board (whether while controlled by Declarant or the Class "A" Members) shall be only to provide for such reserves, if any, as the Board in good faith deems reasonable, and neither Declarant, ML100 nor the Board nor any Member thereof shall have any liability to any Member or Owner or to the Association if reserves prove to be inadequate.

### **ARTICLE 3 BOARD OF DIRECTORS**

**Section 3.1 Number and Qualification.** The affairs of the Association shall be governed by the Board of Directors. The Board of Directors shall be composed of an odd number of persons, being not less than three or more than seven persons; provided, however, that these Bylaws may be amended to authorize a Board of Directors composed of nine persons. Except with respect to directors appointed by Declarant, all directors shall be Owners. An officer of a corporate Owner, a general partner of a general or limited partnership Owner, a member or manager of a limited liability entity Owner and a trustee of a trust Owner, respectively, shall be deemed to be Owners for the purposes of this Section. Except with respect to directors appointed by Declarant, there shall not be more than one representative on the Board from any one Lot, nor more than one representative on the Board from any one Subdistrict. Any and all directors appointed by Declarant shall serve at the pleasure of Declarant and may be replaced at any time and from time to time by Declarant.

**Section 3.2 Initial Board of Directors.** The initial Board shall consist of three persons, all of whom shall be appointed by Declarant acting in its sole discretion.

**Section 3.3 Nomination of Prospective Directors after Expiration of the Declarant Control Period.** Except with respect to the meetings described in Section 3.4 below, at every annual meeting of the Association following the expiration of the Declarant Control Period, nominations for

election to the Board of Directors can be made by any Voting Delegate. The number of nominations for election to the Board of Directors shall not be less than the number of positions to be filled. The list of persons who are nominated and whose nomination is communicated in a writing that is received by the Board or the Managing Agent at least 65 days before the annual meeting must be sent to the Voting Delegates; provided, however, that if the list is received by the Board or the Managing Agent five or more days before the notice of the meeting is to be sent to the Voting Delegates, then the list must be sent with the notice. Each qualified person nominated must be placed on the ballot at the meeting. At the meeting, however, any Voting Delegate present may nominate any other qualified person for director, and, if the nominated person agrees, the person so nominated must be added to the ballot. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Delegates and to solicit votes.

### **Section 3.4 Election and Term of Office.**

(a) Within 90 days after the date that Lots representing 60% of the total number of Class "A" votes in the Association have been conveyed to Persons other than Declarant or other than Persons holding title solely for the purpose of development and sale, or whenever Declarant earlier determines, a special meeting of the Association shall be called at which the Board shall be increased to five directors. The Association shall call a special meeting at which Voting Delegates representing the Class "A" Members shall elect two of the five directors and the remaining three directors shall be appointees of Declarant; provided, however, that if an annual meeting of the Association is scheduled within such 90-day time period, then the election shall take place at such annual meeting and no such special meeting need be called. The directors elected by Voting Delegates representing the Class "A" Members shall not be subject to removal by Declarant acting alone and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (b) below, then successors shall be elected for a like term.

(b) Within 90 days after the expiration of the Declarant Control Period, a special meeting of the Association shall be called at which Voting Delegates and Members will be advised that the Class "B" Membership has terminated and at which the Board shall be increased to seven directors. Voting Delegates representing the Class "A" Members shall elect four of the seven directors and the remaining three directors shall be appointees of Declarant; provided, however, that Declarant may, in its sole and absolute discretion, waive all or part of such right of appointment and allow the Voting Delegates to elect one, two or all three of the remaining three directors. The directors elected by Voting Delegates representing the Class "A" Members shall not be subject to removal by Declarant acting alone and shall serve until the first annual meeting of the Association following the expiration of the Declarant Control Period. If such annual meeting is required to be held within 90 days after the expiration of the Declarant Control Period, then this subsection shall not apply and directors shall be elected in accordance with subsection (c) below.

(c) At the first annual meeting of the Association after the expiration of the Declarant Control Period, seven directors shall be elected by Voting Delegates representing the Class "A" Members, with four of the directors being elected for a term of two years and three of the directors being elected for a term of one year. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two years, subject to removal as herein provided.

(d) Except with respect to directors appointed by Declarant, the election of directors shall be by secret written ballot at each annual meeting and any special meeting called for that purpose. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. Directors may be elected to serve any number of consecutive terms.

### **Section 3.5 Resignation, Removal and Vacancies.**

(a) Any director may resign at any time by giving written notice of such resignation to the Board of Directors. Any director (other than a director appointed by Declarant) may be removed, with or without cause, at any duly called regular or special meeting of the Association at which a Quorum is present, by a Majority of the Class "A" votes represented at the meeting. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director at a meeting of the Association, a successor shall then be elected by the Voting Delegates entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director; provided, however, that any vacancy in the Board of Directors, including a vacancy created by an increase in the number of directors, that is not filled by Voting Delegates at a meeting of the Association may be filled for the unexpired portion of the term by the affirmative vote of the Majority of the remaining directors then serving. Any director so elected by the Board shall hold office until the next succeeding annual meeting of the Association or until the election of his or her successor.

(b) At a regular or special meeting of the Board at which a Quorum is present, the Board may (i) remove any director (other than a director appointed by Declarant) who has three consecutive unexcused absences from regular Board meetings or who is delinquent in the payment of any Assessment or other charge due the Association for more than 30 days after notice of such delinquency has been given to such director, or (ii) declare vacant the office of a director (other than a director appointed by Declarant) who is deceased, is incapacitated or has resigned. In either case, the vacancy shall be filled by vote of the Majority of remaining directors, even though they may not constitute a Quorum. Each person so elected shall serve until a successor is elected at the next annual meeting of the Association or the next special meeting called for the purpose.

### **Section 3.6 Meetings of the Board of Directors.**

(a) **Organizational Meeting.** The initial organizational meeting of the Board of Directors shall be held at the place of and immediately following the initial annual meeting of the Association; provided, however, that the initial directors appointed by Declarant may, in their sole discretion, hold meetings and take actions prior to the date of the initial annual meeting of the Association. No separate notice other than the notice of the annual meeting of the Association shall be necessary for the organizational meeting of the Board of Directors. At such meeting, the Board shall elect the officers of the Association for the ensuing year; provided, however, that the initial directors appointed by Declarant may, in their sole discretion, elect or appoint the officers of the Association prior to the date of the initial annual meeting of the Association.

(b) **Regular Annual Meetings.** Regular annual meetings of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. No separate notice other than the notice of the annual meeting of the Association shall be necessary for such meetings. At such meetings, the Board shall elect the officers of the Association for the ensuing year.

(c) **Additional Regular Meetings.** The Board shall meet at least four times per year, including the annual meeting following the annual meeting of the Association. The Board of Directors may fix dates, times and places of additional regular meetings of the Board of Directors. If practicable, 14 days' prior written notice of such additional regular meetings shall be given to each director. Until such time as Voting Delegates representing the Class "A" Members are entitled to elect any directors, as provided in Section 3.4 of these Bylaws, the directors appointed by the Class "B" Member may act without a formal meeting, call or notice.

(d) **Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the date, time and place of the meeting and may, but need not, state the nature of the business to be considered at the meeting. The notice shall be given to each director by one of the following methods: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) email; (iv) telegram, charges prepaid; or (v) facsimile. Notices not delivered to the director personally shall be delivered to the director's post office

address, email address or facsimile number shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five days before the date set for the meeting. Notices given by personal delivery, email, telegraph or facsimile shall be delivered, telephoned or sent by facsimile at least three days before the date set for the meeting.

(e) **Open and Executive Sessions.**

(i) Subject to the provisions of Section 3.6(f) below, all meetings of the Board shall be open to all Voting Delegates, Members, and, if required by law, Owners. No other Person may attend Board meetings unless expressly so authorized by the vote of a Majority of a Quorum of the Board. The Board, with the approval of a Majority of a Quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters concerning personnel, existing, threatened or possible litigation in which the Association is or may become involved, orders of business of a similar nature, or as may be necessary to protect the attorney-client privilege of the Association. The Board shall also meet in executive session as required by other provisions of these Bylaws or the Declaration. The general nature of the business to be considered in executive session shall first be announced in open session.

(ii) Voting Delegates and Members who are not directors may participate in any deliberation or discussion of the Board, other than those during executive sessions, unless a Majority of a Quorum of the Board votes otherwise. No other person may participate in any deliberation or discussion of the Board, unless expressly so authorized by the vote of a Majority of a Quorum of the Board.

(f) **Action Without a Formal Meeting.** Any action to be taken at a Board meeting or any action that may be taken at a Board meeting may be taken without a meeting if a consent document, describing the action taken, is signed by all of the directors and is included in the minutes filed with the corporate records reflecting the action taken. Such consent shall have the same force and effect as a unanimous vote of the Board. The action shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

(g) **Attendance by Telephone or Other Means.** Members of the Board of Directors or of any committee may participate in a meeting by means of a telephone conference or similar means of communication by which all directors participating in the meeting can simultaneously hear each other during the meeting. Participation by such means shall constitute presence in person at such a meeting.

(h) **Conduct of Meetings.** All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

**Section 3.7 Waiver of Notice.** A director may waive notice of any meeting of the Board in writing. A director's attendance at or participation in a meeting shall constitute a waiver of notice of such meeting, unless such director, at the beginning of the meeting or prior to the vote on a matter not noticed in conformity with these Bylaws or applicable laws, objects to lack of notice and does not thereafter vote for or assent to the action being objected to by such director. If all the directors are present without objection at a meeting of the Board, then notice shall not be required and any business may be transacted at such meeting.

**Section 3.8 Quorum; Acts of the Board of Directors.** The votes of a Majority of the directors present at a meeting at which a Quorum is present shall constitute an act of the Board, except as may be otherwise specifically provided by the Declaration, these Bylaws or applicable law. A director may not cast a vote by proxy at any meeting. If less than a Quorum shall be present at any meeting of the Board, then a Majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a Quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice. The directors 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 directors 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.

**Section 3.9 Conflicts of Interest.**

(a) A conflict of interest transaction is a transaction with or on behalf of the Association in which a director of the Association has a direct or indirect interest. For purposes of this Section 3.9, a director of the Association has an indirect interest in a transaction if:

(i) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(ii) Another entity of which the director is a director, officer, limited liability company member or manager, partner or trustee is a party to the transaction.

(b) A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or if the transaction is approved as provided in the next sentence. A transaction in which a director has a conflict of interest may be approved if:

(i) The material facts of the transaction and the director's interest were disclosed or known to the Board of Directors or a committee of the Board and the transaction was authorized, approved or ratified by the Board or committee of the Board; or

(ii) The material facts of the transaction and the director's interest were disclosed or known to the Voting Delegates and they authorized, approved or ratified the transaction.

(c) For purposes of Section 3.9(b)(i), a conflict of interest transaction is authorized, approved, or ratified by the Board or a committee of the Board if such transaction receives the affirmative vote of a Majority of the directors or committee members who have no direct or indirect interest in the transaction; provided that a transaction may not be authorized, approved or ratified under this section by a single director or committee member. If a Majority of the directors on the Board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, then a Quorum will be deemed to be present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect conflict of interest in the transaction does not affect the validity of any action taken under Section 3.9(b)(i); provided the transaction is otherwise approved as provided in Section 3.9(b).

(d) For purposes of Section 3.9(b)(ii), a conflict of interest transaction is authorized, approved, or ratified by the Voting Delegates if such transaction receives a Majority of the votes entitled to be counted under these Bylaws. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in Section 3.9(a), are not to be counted in a vote of Voting Delegates to determine whether to authorize, approve, or ratify a conflict of interest transaction under this section. A Majority of the votes, whether or not present, entitled to be counted in a vote on the transaction under this section constitutes a Quorum for the purpose of taking action under this section.

**Section 3.10 Compensation.** No individual shall receive any compensation from the Association for acting as a director, but may be reimbursed for actual expenses incurred in the course of performing the duties of a director, as approved by a Majority of the other members of the Board.

**Section 3.11 Minutes of Meetings.** After directors representing the Class "A" Members are elected to the Board, the Board of Directors shall keep minutes of their meetings which shall include the recorded vote of each director on all motions, except motions voted upon in executive session.

## **ARTICLE 4 OFFICERS**

**Section 4.1 Designation.** The principal officers of the Association shall be the President, a vice president, a secretary and a treasurer, all of whom shall be appointed or elected by the Board. The Board may appoint or elect such other officers as in its judgment may be necessary. Only the President, and no other officer, is required to be a director. Any two or more offices may be held by the same individual, except that the offices of President and secretary may not be held by the same person.

**Section 4.2 Election of Officers.** The officers of the Association shall be appointed or elected annually by the Board and shall hold office at the pleasure of the Board; provided, however, that the initial slate of officers shall be appointed or elected by the directors appointed by Declarant and such appointment or election may take place prior to the date of the initial meeting of the Association or of the Board.

**Section 4.3 Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, 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.

**Section 4.4 Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may, at any regular meeting, or at any special meeting called for such purpose, fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

**Section 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 have all the general powers and duties that are incident to the office of President of a non-profit corporation organized under the laws of the State of Hawaii. The President shall have such other powers and duties as may be provided by these Bylaws or assigned to the President from time to time by the Board.

**Section 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. If neither the President nor the vice president is able to act, the Board of Directors shall appoint some other director to act temporarily in the place of the President. The vice president shall have such other powers and duties as may be assigned to the vice president from time to time by the Board or by the President.

**Section 4.7 Secretary.** The secretary shall: (a) keep the minutes of meetings of the Association and the Board; (b) keep an updated record of each Voting Delegate and the Lot, Subdistrict, Member and/or Owner that such Voting Delegate represents, and the notice address and other contact information for such Voting Delegate; (c) have charge of such books and papers as the Board may direct; and (d) in general, perform all the duties incident to the office of secretary of a non-profit corporation organized under the laws of the State of Hawaii. The secretary shall have such other powers and duties as may be assigned to the secretary from time to time by the Board or by the President.

**Section 4.8 Treasurer.** The treasurer shall be responsible for the keeping of full and accurate financial records and books of account of the Association, showing all receipts and disbursements, and for the preparation of all required financial data. The treasurer shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be designated by the Board; and the treasurer shall, in general, perform all the duties incident to the office of treasurer of a non-profit corporation organized under the laws of the State of Hawaii. The treasurer shall have such other powers and duties as may be assigned to the treasurer from time to time by the Board or by the President. The duties of the treasurer may be delegated to and performed by the Managing Agent or an outside accounting organization.

**Section 4.9 Assistant Treasurer and Assistant Secretaries.** If the Board appoints or elects assistant treasurers and/or assistant secretaries, they shall, in general, perform such duties as shall be assigned to them by the treasurer or the secretary or by the President or the Board of Directors.

**Section 4.10 Compensation.** No individual shall receive any compensation from the Association for acting as an officer, but may be reimbursed for actual expenses incurred in the course of performing the duties of an officer, as approved by the Board.

## **ARTICLE 5 BOARD OF DIRECTORS; POWERS AND DUTIES**

**Section 5.1 General Powers.** The Board of Directors shall have such powers as are necessary for the control, management and administration of the affairs of the Association and may do all acts and things, except those which, by the Declaration or these Bylaws, are directed to be done and exercised exclusively by the Association, the Voting Delegates or the Owners generally. Such powers include, without limitation, the following:

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

(b) To employ, supervise and dismiss such personnel as may be necessary for the operation, repair, maintenance and replacement of the Common Area;

(c) To procure legal, accounting, management and other professional services, with appropriate staff personnel, necessary or proper for the administration of the affairs of the Association or the interpretation, enforcement or implementation of the Project Documents and any other material documents affecting the Property and/or the Project;

(d) To enforce and carry out, by legal means, the provisions of the Project Documents and establish, assess and collect such penalties and fines and any interest as the Board 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 under the Project Documents; provided that such penalties, fines and interest are not inconsistent with the law or the provisions of the Project Documents;

(e) To adopt, amend and enforce the Association Rules;

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

(g) To bring any actions or proceedings that may be instituted on behalf of or against Subdistricts, Subdistrict Associations and/or Owners concerning the Association;

(h) To enforce the Design Guidelines and, from time to time, adopt and amend supplementary standards and guidelines applicable to the Project, in accordance with the Project Documents; and

(i) To do such other acts and things as may be permitted of the Board pursuant to law, the Project Documents or any other applicable Recorded document.

**Section 5.2 General Duties.** The Board of Directors shall have such duties as are necessary for the control, management and administration of the affairs of the Association, and shall do all acts and things, except those which, by the Declaration or these Bylaws, are directed to be done and exercised exclusively by the Association, the Voting Delegates or the Owners generally. Such duties include, without limitation, the following:

- (a) To have custody and control over all funds of the Association, open and close bank accounts on behalf of the Association and designate the signatories of those accounts;
- (b) To keep books of accounts and records with respect to the Common Area;
- (c) To maintain, repair, replace and restore the Association Property and make any additions and alterations thereto, in accordance with the Project Documents;
- (d) To purchase, maintain and replace any equipment and provide water, sewer and other utility services necessary or desirable for the Association Property;
- (e) To obtain and maintain in effect all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws or the Association;
- (f) To cause to be prepared and to approve operating statements or budgets in accordance with the Project Documents;
- (g) To make Assessments, to establish the means and methods of collecting such Assessments, and to levy and collect Assessments and other charges payable by the Owners, Occupants, the Subdistricts and the Subdistrict Associations;
- (h) To pay all expenses that the Association is required to pay pursuant to the Project Documents or by law or which in the Board's opinion shall be necessary or proper for the administration of the affairs of the Association, provided that if any such payment is required because of a particular wrongful or negligent action by any Owner, Occupant or Guest, the applicable Owner shall be specially assessed for such expense after application of any applicable insurance proceeds, as may be provided in the Project Documents;
- (i) To pay and discharge any lien, encumbrance, tax or assessment levied against all or any portion of the Association Property that may in the opinion of the Board constitute a lien against such property;
- (j) To keep, or cause to be kept, an accurate and current list of Voting Delegates, Subdistricts, Subdistrict Associations, Lots, Owners and their respective current addresses;
- (k) To make available to any prospective purchaser, Owner, or First Mortgagee and the holders, insurers and guarantors of a First Mortgage, current copies of the Project Documents and annual financial statements of the Association, subject to the payment of reasonable fees as provided in Article 6 of these Bylaws;
- (l) To permit utility suppliers to use portions of the Common Area that are reasonably necessary to the ongoing development or operation of the Project;
- (m) To indemnify a current or former director, officer, committee member, employee or agent of the Association, as provided in the Project Documents; and
- (n) To collect any Assessments levied under the Project Documents and remit such collected Assessments to the Association.

**Section 5.3 Borrowing.** The Board shall obtain the approval of the Class "B" Member (if it exists) and of a Super-Majority vote of the Voting Delegates representing the Class "A" Members at a meeting of the Association at which a Quorum is present before it borrows money, on behalf of the Association, for the purpose of making discretionary capital improvements where the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.



**Section 5.4 Fidelity Bonds.** The Board shall require that all directors, officers, trustees, committee members, employees, and volunteers responsible for handling funds belonging to or administered by the Association furnish fidelity bonds naming the Association as the insured and providing coverage in such amounts as the Board deems adequate. The premiums on such fidelity bonds shall be paid by the Association and shall constitute a Common Expense. To the extent available at reasonable cost, every such bond shall:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least 60 days' prior written notice to the Board and every other Person in interest who shall have requested such notice; and

(b) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered.

**Section 5.5 Committees.**

(a) The Board of Directors may create and appoint such general or special committees or subcommittees, including an executive committee, as the affairs of the Association may deem appropriate. The Board may delegate portions of its authority to such committees, to officers of the Association or to agents and employees of the Association in accordance with the Declaration and these Bylaws, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association. Such committees, officers, agents or employees are hereby authorized to perform such tasks and to serve for such periods as may be designated by the Board, provided, however, that the Board shall not delegate to any committee of the Board and no committee shall have authority to: (i) authorize distributions; (ii) approve or recommend to the Owners the dissolution or merger of the Association, or the sale, pledge or transfer of all or substantially all of the Association's assets; (iii) elect, appoint or remove directors or fill vacancies on the Board or any of its committees; (iv) adopt, amend or repeal the Articles or these Bylaws; or (v) authorize any action that requires a Super-Majority vote of the Board under the Project Documents.

(b) In the minutes of the meeting at which the action was taken to appoint the committee or subcommittee, the Board shall:

(i) Report that the committee or subcommittee was appointed;

(ii) Identify the members of the committee or subcommittee; and

(iii) Describe the matter that the committee or subcommittee is to review and consider.

(c) Each committee and subcommittee shall operate in accordance with the terms of the resolution of the Board designating the committee or subcommittee or with rules adopted by the Board.

**Section 5.6 Liability and Indemnity of the Board of Directors and Officers.** The directors and officers of the Association shall not be liable to the Owners or to the Association for any mistake of judgment or otherwise except for their own gross negligence or willful, fraudulent or criminal misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities that may be incurred by or imposed on him in connection with any claim, action, proceeding, investigation or inquiry made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been a director or officer of the Association, or by reason of any past or future action taken, authorized or approved by him or any omission to act as a director or officer, whether or not he continues to be such director or officer at the time of the incurring or imposition of such costs, expenses or liabilities. Such costs, expenses or liabilities shall include judgments, amounts paid in

compromise settlements and amounts paid for services of counsel and other related expenses, except those costs, expenses and liabilities as shall relate to matters as to which he shall be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful, fraudulent or criminal misconduct toward the Association in the performance of his duties as a director or officer. In the absence of a final adjudication of the existence or nonexistence of a director's or officer's liability to the Association, the determination of whether a director or officer has acted with gross negligence or willful, fraudulent or criminal misconduct may be made (a) by the Board of Directors by a Majority vote of a Quorum consisting of disinterested directors, or (b) if such Quorum is not obtainable, or, even if obtainable, if a Quorum of disinterested directors so directs, by independent legal counsel selected by the Board of Directors, or (c) if a Quorum of disinterested directors so directs, by a Majority vote of the Voting Delegates representing the Class "A" Members. The foregoing right of indemnification shall not be exclusive of other rights that any director or officer may have and shall inure to the benefit of the heirs and personal representatives of each director or officer.

**Section 5.7 Advance Payments.** Expenses incurred in defending any proceeding may be paid by the Association in advance of the final disposition of the proceeding as authorized by the Board of Directors in a particular case on the following conditions: (a) the indemnified party certifies that he or she has met the standards of conduct required by the Project Documents; (b) the indemnified party agrees to repay such amount if it is ultimately determined that he or she did not meet the standard of conduct required by the Project Documents; and (c) the Board of Directors determines, under facts then known at the time of determination, that indemnity of said Person by the Association is not precluded.

**Section 5.8 Insurance.** The Board on behalf of the Association shall purchase and maintain insurance on behalf of all directors and officers of the Association, in such amount as the Board shall reasonably determine, against liability asserted against or incurred by the director's or officer's status as such, whether or not the Association would have the power or obligation to indemnify the director or officer against liability under the Project Documents.

**Section 5.9 Representation.** The Board may represent the Association or any two or more Owners in any action, suit, hearing or other proceeding affecting the Association, the Common Areas, the Association Property or more than one Lot or Subdistrict Unit, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any Owners individually to appear, to sue or be sued. Service of process on two or more Owners in any such action, suit or proceeding may be made on the President.

## **ARTICLE 6 CONTRACTS, FUNDS, RECORDS AND REPORTS**

**Section 6.1 Execution of Instruments.** Unless otherwise provided by a resolution of the Board, all deeds, mortgages, bonds, checks, drafts, orders, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by any two different people, being the President, vice president, secretary, treasurer, and/or any other such person or persons as may be designated by the Board in a general or special resolution of the Board.

### **Section 6.2 Association Finances and Funds.**

(a) **Fiscal Year.** The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

(b) **Financial Records.**

(i) The Board of Directors will maintain or cause to be maintained accurate and complete books of account and other financial records of the Association in a manner consistent with recognized accounting practices. The financial records shall include, without limiting the generality of the foregoing, financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers,

check ledgers, insurance policies, contracts, invoices of the Association for the duration those records are kept by the Association, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration and replacement of the Common Area and any other expenses incurred, all vouchers authorizing payment of such expenses, documents regarding delinquencies in the payment of Assessments of 90 days or more, and monthly statements showing the total current delinquent amount of unpaid Assessments.

(ii) If financial statements are prepared for the Association on the basis of generally accepted accounting principles, then the annual financial statements must also be prepared on that basis.

(iii) If the Association's financial statements are reported upon by a public accountant, then the accountant's report must accompany them. If not, then the statements must be accompanied by the statement of the President or the Treasurer:

(A) Stating the President's or the treasurer's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(B) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) **Audit.** The Association may require audits of the Association's financial accounts and/or unannounced verifications of the Association's cash balance by an independent public accountant.

(d) **Association Funds.**

(i) The funds held in the general account of the Association shall not be commingled with funds of other activities, nor shall the Managing Agent commingle any of its funds with the funds of the Association.

(ii) All funds collected by the Association or the Managing Agent shall be: (A) deposited in a financial institution, including a federal or community credit union, located in the State of Hawaii, authorized to do business in Hawaii, whose deposits are insured by an agency of the United States of America; and (B) invested in: (1) demand deposits, investment certificates or certificates of deposit; (2) obligations of the United States of America, the State of Hawaii, or their respective agencies; provided that those obligation shall have stated maturity dates no more than ten years after the purchase date; or (3) obligations of, or obligations fully guaranteed as to principal by, an agency of the United States of America.

(iii) All funds collected by the Association shall only be disbursed by officers of the Association under the supervision of the Board. All funds collected by the Managing Agent from the Association shall be held in a client trust fund account and shall be disbursed only by the Managing Agent or its employees under the supervision of the Board. Neither the Managing Agent nor the Board shall transfer Association funds by telephone between accounts.

**Section 6.3 Association Records.**

(a) The Association records shall be maintained in written form or other form capable of conversion into written form within a reasonable time.

(b) The Association shall keep and maintain a copy of the following records at its principal office or at such other convenient place within the State of Hawaii as the Board shall designate:

(i) Approved minutes of meetings of the Association and the Board for the past three years, records of actions taken and/or approved by the Association or directors without a meeting for the past three years, and a record of actions taken by committees of the Board for the past three years. The minutes shall include the recorded vote of each director on motions, except matters voted upon in executive session.

(ii) All written financial statements furnished for the past three years, meeting, at a minimum, the applicable requirements of Haw. Rev. Stat. Ch. 414D and Haw. Rev. Stat. Ch. 421J (or successor statutes).

(iii) A record of Members in a form that permits preparation of a list of the names and addresses of all Members, in alphabetical order, showing the number of votes each Member is entitled to cast, the name of any Subdistrict to which such Member belongs, and if a Lot is owned by more than one Person or is a legal entity, the Voting Delegate entitled to cast the vote for the Lot, and the name and address of First Mortgagees, if any.

(iv) A record of Voting Delegates in a form that permits preparation of a list of the names and addresses of all Voting Delegates, in alphabetical order, showing the Owner and Lot or Subdistrict such Voting Delegate represents, and the number of votes each Voting Delegate is entitled to cast.

(v) Proxies, tally sheets, ballots, members' check-in lists and certificates of elections, if any, for a period of 30 days following a meeting of the Association.

(vi) The Articles or restated articles and all amendments currently in effect.

(vii) These Bylaws or restated bylaws and all amendments currently in effect.

(viii) Resolutions of the Board relating to the qualifications, rights, limitations and obligations of Members.

(ix) A list of the names and business or home addresses of the Association's current directors and officers.

(x) The Association's most recent Annual Report filed with the Department of Commerce and Consumer Affairs of the State of Hawaii.

**Section 6.4 Record of Ownership.** Every Owner shall promptly file with the Association or Managing Agent a copy of the instrument of conveyance by which the Owner acquired title to and an interest in the Owner's Lot or Subdistrict Unit, together with the Owner's current mailing address, telephone number, email address and such other information and/or documentation as the Board may reasonably request. Lot or Subdistrict Unit Owners shall be obligated to inform the Association or the Managing Agent of any change in the Owner's current mailing address, telephone number or email address within 30 days after such a change.

**Section 6.5 Inspection of Records.** The Board of Directors shall establish reasonable rules with respect to notice to be given to the custodian of the records by a Member desiring to make inspection, the hours and days of the week when such inspection may be made and the payment of the cost of reproducing copies of documents so requested. Subject to any conditions provided below and applicable law, every Member, or such Member's duly authorized agent or attorney, shall be entitled to inspect and copy, at a reasonable time and location specified by the Board, upon written notice at least 10 business days before the date upon which the Member wishes to inspect or copy: excerpts of records maintained under Section 6.3(b) above to the extent not subject to inspection under this Section 6.5 or applicable law; and the membership list; provided, however, that: (a) the Member's request is made in good faith and for a proper purpose; (b) the Member describes with reasonable particularity the purpose

and the records the Member desires to inspect; and (c) the records are directly connected with the purpose. This Section 6.5 does not affect: (x) the right of a Member to inspect a membership list prepared by the Association after the record date of an Association meeting has been fixed for the purposes of communication with other Members concerning the meeting, which inspection period shall begin two business days after the notice of meeting for which the list is prepared and continue through the meeting; (y) records available to litigants with the Association if the Member is in litigation (including Negotiation, Mediation or Arbitration) with the Association; or (z) the power of a court or arbitrator to compel production of corporate records for examination.

#### **Section 6.6 Parameters of Inspection.**

(a) The Board, upon written request from a Member, shall furnish that Member copies of the Association's latest financial records, and such financial records shall be made available for examination by Members at reasonable hours at a location designated by the Board; provided that Members shall pay all reasonable costs associated with the examination of these documents, including costs for duplication, postage, stationery, and other administrative costs associated with furnishing the copies, the Member's examination or otherwise handling the request. The Board may require Members to furnish the Association with an affidavit stating that the foregoing information and documents are requested in good faith for the protection of the interests of the Association, its Members, or both.

(b) Upon written request and payment of a fee equal to the cost of reproduction and postage, the Board shall mail to any First Mortgagee a copy of the latest annual financial statements of the Association.

(c) Books and records kept by the Association may be withheld from inspection and copying to the extent they concern information relating to business transactions currently in negotiation, privileged communications, complaints against individual Members of the Association, personnel records, an individual's medical records, records which if released could be in violation of law, and similar records.

(d) Every director and every Voting Delegate shall have the right at any reasonable time to inspect books, records and documents of the Association and the physical properties owned or controlled by the Association, except in instances when such inspection has an improper purpose or the director or Voting Delegate has a conflict of interest or public policy mandates that certain records not be open to inspection by all directors and Voting Delegates. The right of inspection by a director or Voting Delegate includes the right to make extracts or copies of the documents at his own expense.

(e) Within 10 business days after a Member makes a written request to the Board to examine documents of the Association and pays the applicable fee, the Board shall provide a written authorization or a written refusal with an explanation for the refusal.

**Section 6.7 Gifts.** The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

### **ARTICLE 7 OWNER RESPONSIBILITY; SANCTIONS, SUSPENSIONS AND FINES**

**Section 7.1 Owner Responsibility; Expenses.** Each Owner, Occupant and Guest shall abide by and comply with the provisions of the Project Documents. Each Owner shall pay when due all dues, Assessments, fines, penalties and other charges that may be levied or assessed under the foregoing instruments. Further, every Owner shall pay all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent Assessments against an Owner, in foreclosing its lien therefor or in enforcing any provision of the Project Documents against an Owner.

**Section 7.2 Fines, Sanctions; Notice; Hearing.** The Board shall have the right (but not the obligation) to impose fines on an Owner or impose Sanctions (as defined below) on an Owner and an Owner's Occupants or Guests if the Board determines that the Owner or the Owner's Occupants or Guests are in default in the payment of Assessments or other charges owed to the Association or are in material default of one or more obligations under any of the Project Documents. Notice of the default shall be sent to the Owner at least 15 days prior to the effective date of the proposed fine or Sanction. The notice shall provide notice of the grounds of default and an opportunity to be heard orally or in writing by the Board at least five days prior to the effective date of the proposed fine or Sanction. The Sanction or the imposition of a fine shall not relieve the Owner from future obligations to pay any Assessments or charges to the Association or to comply with the Project Documents.

**Section 7.3 Sanctions.** The following actions ("**Sanctions**") may be taken by the Board: (a) levy a Special Assessment; (b) suspend or condition the right to use the Common Areas; (c) suspend an Owner's right to vote on Association-related matters; (d) enter upon a Lot or Subdistrict Unit to make necessary repairs or to perform maintenance that is the responsibility of the Owner; (e) perform self-help to rectify a violation; or (f) Record a notice of noncompliance encumbering the Lot or Subdistrict Unit. Any Sanction shall not exceed 30 days for any non-continuing default. For a continuing default (including nonpayment of any Assessment after it becomes delinquent), such Sanction may be imposed for so long as the violation continues.

**Section 7.4 No Waiver; Coordination of Sanctions.** The failure of the Board to enforce the Project Documents in a particular instance shall not constitute a waiver of the right to enforce the same thereafter, nor shall it be a basis for alleging liability on the part of the Board. Sanctions and other remedies set forth in the Project Documents may be exercised only by the Board (including while it is controlled by Declarant). Any actions taken pursuant to one or more of the Project Documents for an alleged violation of the Project Documents shall be coordinated with any actions that might be taken pursuant to any of the other Project Documents so that there is not a duplication of effort or Sanctions with respect to a particular alleged violation.

## **ARTICLE 8 GENERAL PROVISIONS**

### **Section 8.1 Notice; Manner of Giving and Waiver.**

(a) Unless otherwise specifically provided in the Project Documents, all notices permitted or required to be given under the Project Documents must be in writing and may be given: (i) by delivery in person; (ii) by private courier against receipt; (iii) by first class mail, postage prepaid; (iv) by certified mail, return receipt requested and postage prepaid; or (v) by telegram, charges prepaid.

(b) Notices shall be addressed or delivered as follows:

(i) All notices to the Association or the Board shall be addressed or delivered to the office of the Managing Agent, if a Managing Agent has been appointed, otherwise to the principal office of the Association or to such other address as the Board may hereafter designate from time to time by notice in writing to all Voting Delegates, Subdistricts, Subdistrict Associations, Owners, First Mortgagees who have requested such notice and to the Declarant.

(ii) All notices to Voting Delegates shall be addressed or delivered as determined under Section 2.3(f).

(iii) All notices to an Owner shall be addressed or delivered to the last known address of the Owner on the Association's current list of Members, or if no address has been furnished, to the address for the Owner shown on the Recorded document conveying the Lot or Subdistrict Unit to such Owner, or if no such address exists, then to the address for such Lot or Subdistrict Unit. For

purposes of these Bylaws, notice to one Owner of a Lot or Subdistrict Unit shall constitute notice to all Owners of that Lot or Subdistrict Unit.

(iv) All notices to a Subdistrict or Subdistrict Association shall be addressed or delivered to the last known address of the Subdistrict or Subdistrict Association in the Association's records, or if no such address exists, the address shown in Hawaii Department of Commerce and Consumer Affairs records for the Subdistrict or Subdistrict Association, or if no such address exists, then the address of any officer of the Subdistrict or Subdistrict Association referenced in any document by which a Lot or Subdistrict Unit was conveyed to the Owner of the Lot or Subdistrict Unit.

(v) All notices to the Declarant shall be to the last known address shown for the Declarant in the Association's records, or if no such address exists, then to the address for the Declarant as shown in the Declaration or otherwise provided by notice from the Declarant to the Association.

(vi) All notices to First Mortgagees requesting such notices shall be sent or delivered to the last known addresses on the records of the Association as designated by such First Mortgagees from time to time, in writing, to the Association. If no address for a First Mortgagee has been given to the Association, then there shall be no obligation to provide a notice to such First Mortgagee.

(vii) Any Person entitled to notice under these Bylaws may change the address for notice by providing written notice thereof to the Association.

(c) A notice shall be effective: (i) upon receipt in the case of personal delivery or delivery by telegram; (ii) five days after deposit with the United States Postal Service with the correct address and first class postage affixed; (iii) on the date shown on a return receipt, if sent by certified mail, return receipt requested, signed by or on behalf of the addressee; or (iv) on the date shown on a receipt, if sent by private courier, signed by or on behalf of the addressee. Actual receipt of notice shall be effective notice regardless of the manner in which the notice was given.

(d) Whenever any notice is required to be given under the provisions of the Hawaii Nonprofit Corporation Act or under the provisions of the Project Documents, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 8.2 Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions of these Bylaws.

**Section 8.3 Gender.** The use of a pronoun of any gender in these Bylaws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural whenever the context requires.

**Section 8.4 Waiver.** No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

**Section 8.5 Severability.** The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

**Section 8.6 Interpretation.** These Bylaws shall be interpreted in accordance with the provisions of Hawaii law and, except for judicial or arbitrator construction, the Board shall have the exclusive right to construe and interpret the provisions of these Bylaws. In the absence of any determination to the contrary by a court or arbitrator of competent jurisdiction, the Board's construction or

interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the provisions of the Declaration.

## **ARTICLE 9 AMENDMENT**

**Section 9.1 Amendment to Bylaws.** Amendments to these Bylaws shall be made by an instrument in writing entitled "Amendment to Bylaws" which sets forth the entire amendment. Except as otherwise specifically provided in these Bylaws, any proposed amendment must be approved by a Majority of the Board prior to its adoption by Voting Delegates. Except as provided in Section 9.2 below, amendments may be adopted upon the vote or written consent of Voting Delegates representing a Super-Majority of the Class "A" Member votes, or such other percentage as may otherwise be required by law. Except as provided in Section 9.2 below, the amendment when adopted shall bear (a) the signature of the President or a vice president of the Association and shall be attested by the secretary or an assistant secretary of the Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association, or (b) the signatures of Voting Delegates comprising the required Super-Majority of eligible votes. 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.

**Section 9.2 Required Approvals.** The foregoing provisions of this Article 9 notwithstanding:

(a) Until the expiration of the Declarant Control Period, these Bylaws may not be amended by the Voting Delegates without the written consent of Declarant, which consent may be withheld for any reason in the sole and absolute discretion of Declarant.

(b) Without the written consent of Declarant, these Bylaws may not be amended at any time to remove, revoke or modify any right or privilege of Declarant under these Bylaws.

(c) Until the expiration of the Declarant Control Period, Declarant reserves the right to unilaterally amend these Bylaws without the approval of the Board, the Voting Delegates, the Members, the Owners or any Mortgagees; provided, however, that after the conveyance of the first Lot or Subdistrict Unit to an Owner other than Declarant, any such amendment shall have no material adverse effect upon the rights or obligations of any Owner other than Declarant, other than as expressly permitted in the Project Documents.

(d) These Bylaws may not be amended in any manner that affects the obligations of the Owners relative to the Project Documents, without the prior written consent of the appropriate entity thereunder.

**Section 9.3 Effect of Consent to Amendment.** If a Voting Delegate consents to any amendment to the Declaration or these Bylaws, then it will be conclusively presumed that such Voting Delegate has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner represented by the Voting Delegate and a third party will affect the validity of such amendment.

**Section 9.4 Validity and Effective Date of Amendments.** Amendments to these Bylaws, once properly adopted, shall be effective upon such date as may be specified in the amendment, unless a later effective date is specified. Any procedural challenge to an amendment must be made within six months of its adoption 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 Bylaws.

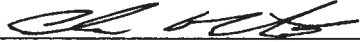


**CERTIFICATE OF SECRETARY**

I certify that:

1. I am the secretary of the Association.
2. The attached Bylaws are the Bylaws of the Maui Lani Village Center Owners Association adopted by the Board of Directors on October 9, 2009, effective as of October 9, 2009.

DATED: October 9, 2009\_\_\_\_\_.



\_\_\_\_\_  
Name: Andrew Matsumoto  
Title: Secretary

**BYLAWS  
OF  
MAUI LANI VILLAGE CENTER OWNERS ASSOCIATION**

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