

BYLAWS OF
KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION

ARTICLE I
NAME AND LOCATION: EFFECTIVE DATE

Section 1. Name and Location. The name of the corporation is KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation, herein referred to as the “association.” The initial principal office of the corporation shall be located at 4334 Rice Street, Ste. 202, Lihue, Kauai, Hawaii but meetings of Members and Directors may be held at such places within the State of Hawaii as may be designated by the Board of Directors.

Section 2. Definitions. The definitions of terms and other provisions related to the Association contained in the Kakela Makai Oceanview Subdivision Declaration of Covenants, Conditions and Restrictions dated February 16, 2000, and recorded in the Bureau of Conveyances of the State of Hawaii as Document N. 2000-072632 (the “Declaration”) are incorporated in these Bylaws by reference.

Section 3. Effective Date of Certain Provisions. Except as stated below, these Bylaws shall be effective as of the date of incorporation of the Association, i.e., November 9, 1999. Notwithstanding the foregoing effective date, however, the provisions of these Bylaws that are enumerated below shall be effective only upon the closings in escrow of the sales by the Developer, Kakela Makai Partners I, of not less than seventy-five percent (75%) of all residential lots included within all increments or phases of the Kakela Makai Oceanview Subdivision (e.g., if there are a total of 215 residential lots within all phases of the Subdivision, then the 75% threshold would be met upon the sale of the 162nd lot, regardless of in which increment or phase of the Subdivision those lots are located).

Until such time as 75% of the lots in the Subdivision have been sold and closed, the following provision of these Bylaws shall not apply or shall be revised as stated:

Article I. Section 1. – The specific mailing address of the corporation shall be at 304 Inverness Way South, Suite 180, Englewood, Colorado 80112-5820.

Article II. Section 2 – Members’ rights shall commence upon notification to the Members that the 75% lot sale threshold has occurred and that the limitation on the effectiveness of certain provision of these Bylaws has therefore expired.

Article III.

Article IV. – the Board of Directors shall consist of persons listed in the Association’s Articles of Incorporation, or their successors or replacements as appointed by the Developer.

Article V.

Article VI. – meetings of the Board of Directors shall be held at such time as the Directors shall determine from time to time, or upon the call of the President.

Article VIII. – The Officers of the Association shall be those persons listed in the Association’s Articles of Incorporation until their successors are duly elected or appointed by the Board of Directors.

Article XI.

ARTICLE II MEMBERSHIP

Section 1. Membership. Membership in the Association shall consist of the owners of Lots located within the Kakela Makai Oceanview Subdivision, situated at Kalaheo, Kauai, Hawaii and more particularly described in the Declaration (the “Project”).

Section 2. Members’ Rights. The rights of membership in the Association are subject to the payment of Assessments levied by the Association. The obligations of Association Assessments are imposed against each Owner and or become a lien upon, the property against which such Assessments are made, as provided by the Declaration and/or these Bylaws. The membership rights of any Member may be suspended by action of the Board of Directors during the period when the Member shall be in default in the payment of any Assessment levied by the Association; but, upon payment of such Assessments, his or her rights and privileges shall be automatically restored.

Section 3. Transfer of Membership. No membership shall be terminated or forfeited, and no Member may be expelled, except upon sale, transfer or conveyance of the Member’s interest in his or her Lot; provided, however, that upon execution and delivery of a valid agreement of sale (including in the term any type of installment purchase contract howsoever designated) of any interest in the Lot, the vendor’s Association membership, including voting rights appurtenant thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of the deed in compliance with said agreement of sale, unless otherwise provided in the agreement of sale. No Member may withdraw, nor shall any Member transfer or otherwise dispose of his or her membership, except upon lawful conveyance, assignment or transfer (or agreement of sale) of his or her rights and duties as the owner of any Lot in the Project.

ARTICLE III
MEEETINGS OF MEMBERS

Section 1. Annual Meetings. Regular annual meetings of the Association shall be held at such dates, times and places as may be determined by the Board of Directors, provided that such annual meetings shall be held within the first four (4) months of each fiscal year of the Association.

Section 2. Special Meetings. Special meetings of the Association may be called at any time by the President or by the Board, or upon written request of the Members who are entitled to vote not less than one-fourth (1/4) of all the votes of the membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Association shall be given by or at the direction of, the Secretary or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meetings of Association entitled to cast or of proxies entitled to cast, one-third (1/3) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation of the Association, the Declaration, these Bylaws or Hawaii statute. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Order of Business. The order of business at all Association meetings shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers and committees;
- (e) Establish number of term of memberships of the Board of Directors (if required and if the notice of the meeting included this issue);
- (f) Appointment of inspectors of election;
- (g) Election of members of the Board of Directors (if required);
- (h) Ratification of budget (if required and if the notice included this issue);
- (i) Unfinished business;
- (j) New business; and
- (k) Adjournment.

Section 6. Voting. At all meetings of the Association, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary not less than twenty-four (24) hours prior to the time of the meeting. Every proxy shall be revocable and, unless cancelled earlier according to its terms, shall be automatically cancelled upon conveyance by the Member by his or her Lot. Votes may be cast in person or by proxy by the respective Members as shown in the record of ownership of the Association. A personal representative, guardian or trustee may cast in person or by proxy at any meeting of the Association the vote for any Lot owned or controlled by him or her in such capacity, whether or not the same shall have been transferred to his or her name in the Association's record of ownership, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such Lot in such capacity. The vote of a corporation or other legal entity may be cast by any officer of that corporation or legal entity in the absence of express notice of the designation of a specific person by the board of directors, managers, or bylaws of the corporation or legal entity. The vote of a partnership may be cast by any general partner of the partnership in the absence of express notice of the designation of a specific person by the partnership. The chair of the meeting may require reasonable evidence that a person voting on behalf of a corporation or other legal entity is qualified to vote.

Section 7. Voting Rights. The Association shall have one (1) class of voting membership. The Members shall be all Owners, and shall be entitled to one (1) vote for each Lot owned, except that in the election of Directors each Lot shall be entitled to vote for as many persons as there are positions to be filled by election. When more than one person holds an interest in any one Lot, all such persons shall be Members, and voting for such Lot shall be exercised as the Lot owners among themselves determine, but in no event shall such Lot owners be entitled to an aggregate of more than one (1) vote. A vote by a co-owner for the entire Lot's membership interest shall be deemed to be pursuant to a valid proxy, unless another co-owner of the same Lot objects at the time the vote is cast, in which case such membership's vote shall not be counted. Joint tenants or tenants by the entirety shall be deemed to own equal shares of their Lot for voting purposes.

ARTICLE IV

BOARD OF DIRECTORS; CLASSES; TERM OF OFFICE

Section 1. Number. The affairs of the Association shall be managed by a Board of Directors. The Board shall consist of not less than three (3) nor more than seven (7) Directors. The number of Directors on the Board may be increased or decreased by a vote of not less than two-thirds of all Members at any regular or special Association meeting called for that purpose; provided, however, that as long as there shall be Class A Directors (as defined in Section 2 below) serving on the Board, no change in the number of Directors shall act to deprive the Class A Directors of a majority of the total number of Directors. Directors need not be Members of the Association, but at least one Director shall be a resident of the State of Hawaii.

Section 2. Classes. There shall initially be two classes of Directors, hereafter referred to as “Class A Directors” and “Class B Directors.” Class A Directors shall be those Directors appointed by the Declarant pursuant to Section 3 below, and Class B Directors shall be those Directors elected pursuant to Article V of these Bylaws.

Section 3. Class A Directors. The Declarant shall be entitled to appoint as many Class A Directors as shall constitute a majority of the total number of Directors serving on the Board from time to time. Neither the Board nor the Members of the Association shall be responsible for verifying, nor entitled to verify, that the proper procedure has been followed by the Declarant in appointing or removing Class A Directors. Written notice of the identify of the Class A Directors shall be given to the Association by the Declarant from time to time, and each Class A Director Shall be authorized to serve as a Director until written notice of his or her removal is received by the Association. The Declarant shall be entitled to appoint Class A Directors until such time as (a) all common area and infrastructure construction in or serving the Project, and related development activity, in the sole opinion of the Declarant has been completed.

Section 4. Terms of Office of Class B Directors. Subject to the terms and conditions of Article V below, at the first annual Association meeting, the Members shall elect one (1) or more Class B Director (the exact number to be determined by the total number of Directors the Association determines pursuant to Section 1 about shall serve on the Board and the requirement under Section 2 above for a majority of the Directors to be Class A for terms of one (1), two (2), or three (3) years, as may be determined by the Members at the annual meeting. Thereafter, and subject to the terms and conditions of the Article V below, Class B Directors shall be elected for three-year terms at any annual meeting at which a Class B Director’s term on the Board expires. At such time as the Declarant has no further right to appoint Class A Directors, the Members shall elect, at their next annual meeting or at any special meeting called for the purpose, a sufficient number of Class B Directors to fill the number of Board positions previously held by Class A Directors. At that time, the newly-elected Class B Directors shall be elected for such initial terms of office as will enable the Members to thereafter elect an equal number of Directors, or as nearly equal a number of Directors as possible, at each succeeding annual meeting.

Section 5. Removal. Any Class B Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Class B Director, his or her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his or her predecessor or until the Members elect, at the next annual Members meeting or at any special meeting called for the purposed, a different person to serve for the unexpired term.

Section 6. Compensation. No director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

ARTICLE V
NOMINATION AND ELECTION OF CLASS B DIRECTORS

Section 1. Nomination. Nomination for election of Class B Directors to the Board shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairperson, who shall be a member of the Board, and two or more Members of the Association. The nominating committee shall be appointed by the Board prior to each annual meeting of the Members, shall serve through the close of such annual meeting, and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of Class B vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 2. Election. In electing Class B Directors to the Board, each Lot shall have one vote for each vacancy to be filled on the Board of Directors. At such election, each Owner may cumulate his or her votes and give one candidate a number of votes equal to the number of Class B Directors to be elected, or the Owner may distribute his or her votes among as many candidates and in any proportion as he or she may desire. The candidate(s) receiving the highest number of votes shall be elected to fill the vacant position(s).

ARTICLE VI
MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held at least once per year, at such place and hour as may be fixed from time to time by resolution of the Board or when called by the President of the Association after not less than ten (10) days' written notice to each Director. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than (10) days' written notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Action Without Meeting. The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the unanimous written consent of all Directors, which consent sets forth the action so taken and is signed

by all Directors entitled to vote on the subject matter. Such consent shall have the force and effect of a unanimous vote.

Section 5. Meetings By Telephone. Members of the Board of Directors may participate in a meeting of the Board by means of a conference telephone, videoconferencing, or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Management. The Board of Directors shall at all times have the exclusive right and responsibility to perform the duties and obligations and to exercise the powers and authority of the Association as set forth in the Articles of Incorporation, the Declaration and these Bylaws, except such powers and authority as may be reserved to the Members. The foregoing powers and authority shall include, but not be limited to, the matters set forth in Sections 3.5, 5.17, 6.13 and 6.14 of the Declaration.

Section 2. Manager. The Board of Directors may, but need not, employ a Manager to manage and control the Project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish.

Section 3. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

Section 4. Appeal of Notice of Noncompliance: Finding of Noncompliance. In the event the Design Committee issues any Notice of Noncompliance to a Member pursuant to Declaration Section 6.12, the Member shall have the right to appeal such Notice pursuant to Declaration Section 6.13 by delivering written notice of appeal to the Association. The Design Committee may also request from the Board a finding of noncompliance pursuant to Declaration Section 6.13 based on a Notice of Noncompliance previously issued by the Design Committee to the Member. In either case, upon receipt of the notice of appeal or the request for a finding of noncompliance the Board shall provide notice and hearing, and shall render its decision, according to the following procedures:

- (a) The Board shall give written notice to the Member in question and the Design Committee of the matter to be heard and the date, time and place of the hearing to consider the appeal or request and to take evidence of the noncompliance described in the notice. The notice shall state the specific

provisions of the Declaration or Design Review Requirements with which the Member may not have complied and a general description of the acts or failures to act that may have caused the noncompliance. The Member and one or more representative of the Design Committee may appear at the hearing, personally or by representative, to give testimony orally or in writing and to question the evidence presented by the other party, and to make arguments regarding the alleged noncompliance.

- (b) The hearing shall be conducted subject to informal and reasonable rules of procedure determined by the Board to enable a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision.
- (c) After consideration of the evidence and arguments presented at the hearing, the Board shall decide whether there has been any noncompliance with the Design Review Requirements or the Design Standards for improvements within the Project, and if so, the nature thereof and the estimated cost of correcting or removing the same. The decision may be rendered immediately after the hearing, but in any case shall be rendered not later than thirty (30) days after the hearing. The Member in question and the Design Committee shall be notified of the decision in writing.

ARTICLE VIII

OFFIERS AND THEIR DUTIES

Section 1. Enumeration of Office. The officers of this Association shall be a President who shall at all times be a Member of the Board, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create. Officers need not be members of the Association.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual Association meeting. The initial officers are named in the Articles of Incorporation and they shall serve until their successors are duly elected at the first annual Association meeting.

Section 3. Term. The officers of this Association shall be elected annually by the Board and shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, and have such authority, and perform such duties as the Board may, from time to time determine; provided, however, that the authority and duties so determined shall not exceed those that the Board itself is entitled or empowered to exercise.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special officers created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

- (a) President. The President shall preside at all meetings of the Members and of the Board; shall see that orders and resolutions of the Board are carried out, and, unless otherwise provided by the Board or these Bylaws, shall sign all written instruments and shall co-sign all checks and promissory notes.
- (b) Vice President. The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.
- (c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- (d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; shall keep proper books of account; at the Board's direction shall cause an annual audit of the Association books to be made by a public accountant at the end of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to

be presented for Board approval and to the membership at its regular annual meeting, and deliver a copy thereof to each of the Members.

ARTICLE IX **RULES AND REGULATIONS**

Section 1. Adoption. The Board shall from time to time adopt and publish such rules and regulations, consistent with the Articles of Incorporation, these Bylaws and the Declaration, governing the use of the Common Areas and facilities, the personal conduct of the Members and their guests thereon, such other items as may be appropriate, and to establish penalties for the infraction thereof.

Section 2. Promulgation. The Secretary shall mail a true and correct copy of all rules and regulations, or amendments thereto, to each Member of the Association as appears on the membership roll of Association at his or her last know address, and shall enter upon the records of the Association a certificate of such mailing.

Section 3. Effective Date. Any such rule or regulation or amendment thereto adopted by the Board shall be effective commencing at 12:01 A.M. on the fifth (5th) day following the date of such mailing, unless the Board, in adopting the same, shall specify some other later effective date.

Section 4. Advisory Committee. The President, with the approval of the Board, may appoint a committee of Members to prepare drafts of such rules and regulations, to suggest amendments thereto, and generally to advise the Board in regard to the use of the Common Areas and facilities of the Association.

ARTICLE X **COMMITTEES**

The Board shall appoint a nominating committee, as provided in these Bylaws. In addition, the Board shall appoint such other committees as it deems appropriate in carrying out the purposes of the Association.

ARTICLE XI **BOOKS AND RECORDS**

The books, records, and papers of the Association shall at all times, during reasonable business hours, and with not less than one (1) month's advance notice, be subject to inspection by any Member. The Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association, where copies may be obtained at reasonable costs, with not less than forty-eight (48) hours advance notice.

ARTICLE XII
ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association general and special Assessments that are secured by a continuing lien upon the interest in the lot against with the Assessment is made. Any Assessments that are not paid when due shall be delinquent. If the Assessment is not paid by the due date, the Assessment shall bear interest from the date of delinquency at the rate provided for in the Declaration or, if none is so provided for, as the Board may determine. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his or her Lot. If rental income is being derived from any delinquent Owner's Lot, the Association may claim such income from the tenant and/or rental agent less commission, to satisfy any assessment delinquency.

ARTICLE XIII
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words "KAKELA AMAKI OCEANVIEW COMMUNITY ASSOCIATION," and such additional words as may be appropriate.

ARTICLE XIV
AMENDMENTS

Section 1. During all periods of time when there are Class A Directors serving on the Board of Directors, these Bylaws may be amended at any regular meeting of the Association or at any special meeting of the Association called for the purpose, by a vote of not less than two-thirds (2/3) of the Members present in person or by proxy. No amendment to these Bylaws shall be adopted that would affect or impair the validity or priority of any mortgage covering any Lot or that would change the provisions of the Bylaws with respect to institutional mortgages of record. The Secretary shall mail the amendment to all Members promptly after the meeting at which the amendment is approved.

ARTICLE XV
FISCAL YEAR

The fiscal year of the Association shall begin on the first day of July and end on the 30th day of June of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

ARTICLE XVI
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Indemnification by Corporation.

- (a) For the purposes of this Section 1, “agent” means any person who is or was a director, officer, employee or other agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another foreign or domestic corporation which was a predecessor corporation of the Association or of another enterprise at the request of such predecessor corporation: “proceeding” means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and “expenses” includes, without limitation, attorneys’ fees, any expenses of a completed action or proceeding, and any expenses of establishing a right to indemnification under sub-section (d) or (e) of this Section 1.
- (b) Subject to any limitation contained in the Hawaii Nonprofit Corporation Act or its successor statute, the Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Association) by reason of the fact that such person is or was an agent of the Association, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Association or that the person had reasonable cause to believe that the person’s conduct was unlawful.
- (c) The Association shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was an agent of the Association, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Association. No indemnification shall be made under this sub-section (c) in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable for negligence or

misconduct in the performance of the person's duty to the Association unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall deem proper.

- (d) To the extent that an agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in sub-section (b) or (c) above, or in defense of any claim, issue or matter therein, the agent shall be indemnified by the Association against expenses actually and reasonably incurred by the agent in connection therewith.
- (e) Any indemnification under subsection (b) or (c) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in the sub-section (b) or (c). The determination shall be made:
 - (1) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding; or
 - (2) If a quorum is not obtainable, by independent legal counsel in a written opinion; or
 - (3) By the majority vote of the Members; or
 - (4) By the court in which the proceeding is or was pending upon application made by the Association or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the Association.
- (f) No indemnification or advance shall be made under this Section 1, except as provided in sub-section (d) above, in any circumstance where it appears that:
 - (1) It would be inconsistent with a provision of the Articles of Incorporation, the Bylaws or an agreement in effect at the time of the occurrence of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were

- paid, which prohibits or otherwise limits indemnification; or
- (2) It would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 2. Advancing Expenses. The Association may advance to each agent the expenses incurred in defending any proceeding referred to in Section 1 above prior to the final disposition of such proceeding upon receipt of any undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in Section 1.

Section 3. Insurance. The Association shall have power to purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such a capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under the provisions of this Article XVI.

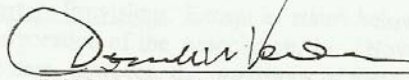
Section 4. Limitation. This Article XVI shall not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity, although such person may also be an agent of the Association as defined in Section 1 (a) above. Nothing contained in this Article XVI Shall limit any right to indemnification to which such trustee, investment manager, or other fiduciary may be entitled by contract or otherwise.

ARTICLE XVII **SUBORDINATION**

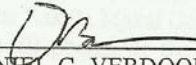
Section 1. These Bylaws are subordinated and subject to the Declaration, the Articles of Incorporation and the Hawaii Nonprofit Corporation Act, Ch. 415B, Hawaii Revised Statutes, each of which shall control in case of any conflict.

ADOPTION OF BYLAWS

The undersigned incorporators of KAKELA MAKAI OCEANVIEW COMMUNITY ASSOCIATION hereby adopt the foregoing as the Bylaws of the Association this 1st day of April, 2003.



DONALD W. VERDOORN



DANIEL C. VERDOORN