

EXHIBIT "E"

BY-LAWS

OF

KAI AULU 'O KAKA'AKO OWNERS ASSOCIATION, INC.

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BY-LAWS
OF
KAIUALU 'O KAKA'AKO OWNERS ASSOCIATION, INC.

Chapter 1

Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Kaiaulu 'o Kaka'ako Owners Association, Inc. (the "**Association**").

1.2. Principal Office.

The Association's principal office shall be located in the City and County of Honolulu, Hawaii. The Association may have such other offices as the Board may determine or as the Association's affairs require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Community Charter for Kaiaulu 'o Kaka'ako, as it may be amended (the "**Charter**"). The term "**majority**," as used in these By-Laws, means those votes, Parcel Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Chapter 2

Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall have two classes of membership, one class consisting of the Parcel Owners and one class consisting of the Founder, as more fully set forth in the Charter. Provisions of the Charter pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

2.3. Association Meetings.

(a) *General.* The first Association meeting, whether a regular or special meeting, shall be held during the Association's first full fiscal year following its incorporation, but not later than one year after the closing of the first conveyance of a Parcel to a Person other than a Parcel Developer.

(b) *Annual Meetings.* The Board shall schedule a regular annual meeting to occur within 90 days before or after the close each of the Association's fiscal years, on such date and at such time and place as the Board shall determine.

(c) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon written petition of Parcel Owners representing at least ten percent of the total votes in the Association.

(d) *Open Meetings.* Association meetings shall be open to all Parcel Owners and Sub-Unit Owners (collectively, "Owner(s)"). The Board may regulate Owners' participation in discussions at meetings; provided after the Founder

Control Period, at any regular or special meeting, Owners must be given an opportunity to make comments during a designated time. If the meeting agenda is limited to specific topics, Owners' comments may be limited to those topics.

2.4. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Owners shall deliver or cause to be delivered to each Owner entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Charter, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 10 but not more than 60 days before the date of such meeting.

2.5. Waiver of Notice.

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

2.6. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, the Owners representing a majority of the votes present at such meeting may adjourn the meeting to a time at least 15 but not more than 30 days from the scheduled date of the original meeting.

At the reconvened meeting, if a quorum under these By-Laws is present, any business may be transacted that might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Owners of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Owners to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

2.7. Voting.

The voting rights with respect to the Parcels shall be as set forth in the Charter and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. Persons entitled to vote may vote in person, by proxy, or by written ballot in accordance with such rules and procedures as the Board may adopt.

2.8. Proxies.

On any matter to be voted on by the Owners, each Owner entitled to vote may vote in person or by proxy, subject to the limitations of Hawai'i law and subject to any specific provision to the contrary in the Charter or these By-Laws. A proxy shall be valid for only a specified meet-

ing of the Association and any adjournments of such meeting.

Every proxy shall be in writing, shall identify the Association, the date of the meeting to which it pertains, the date of the proxy, and the Parcel or Sub-Unit for which it is given. The proxy also shall contain the signature and printed name of the Owner or his duly authorized attorney-in-fact and must be filed with the Association's Secretary no later than 4:30 pm on the second business day prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Owner giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Parcel or Sub-Unit for which it was given; or (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of an Owner who is a natural person, unless a shorter period is specified in the proxy.

In addition to the above, the form and distribution of proxies shall conform to the requirements set forth in the Hawai'i Planned Community Associations Act, Section 421J-4.

2.9. Quorum.

Except as these By-Laws, the Charter, or the Articles may otherwise provide, the presence of Owners representing at least 25% of the total votes in the Association shall constitute a quorum at all Association meetings and the vote of Owners representing a majority of the total eligible votes cast shall constitute the action of the Owners.

2.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept in accordance with the requirements of the Hawai'i Planned Community Associations Act and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

2.11. Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Owners may be taken without a meeting, without prior notice, and without a vote if Owners representing at least the minimum number of votes in the Association necessary to authorize such action at a meeting, if all Owners entitled to vote on such matter were present and voted, sign a written consent specifically authorizing the proposed action. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Owners at a meeting.

Chapter 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The Board shall govern the Association's affairs. Each director shall have one vote. Directors shall be Parcel Owners or Sub-Unit Owners and no Parcel may have more than one representative (*e.g.*, the Parcel Owner and a Sub-Unit Owner of a Sub-Unit within the Parcel) on the Board at a time except in the case of a Parcel containing Sub-Units with different uses which are entitled to vote on directors as provided below and in the case of directors the Founder appoints.

3.2. Number of Directors.

The Board shall consist of three directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) *Initial Board.* The initial Board shall consist of three directors appointed by the Founder and identified in the Articles of Incorporation. The initial directors shall serve until their successors are appointed or elected as provided in this Section.

(b) *Directors During the Founder Control Period.* Except as otherwise provided in this subsection, the Founder may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Owners other than the Founder shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owners are referred to as "**Owner Directors**").

Within 30 days after the time that Persons other than Parcel Developers hold title to 50% of

the total acreage intended to be included within Kaiaulu 'o Kaka'ako under the Master Plan, or whenever the Founder earlier determines, the President shall call for an election by which the Owners shall be entitled to elect one director. The Owners other than the Founder shall elect such director "at-large." The directors shall continue to be appointees of the Founder.

The Owner Directors elected pursuant to the above paragraph shall be elected for a term of two years or until the happening of the event described in Section 3.3(c)(i), whichever is shorter. If such director's term expires prior to the happening of the event described in Section 3.3(c)(i), a successor shall be elected for a like term.

(c) *Directors After the Founder Control Period.*

(i) After termination of the Founder Control Period, the Board shall be increased to five directors and, within 30 days after termination of the Founder Control Period, the President shall call for an election by which the Parcel Owners and/or Sub-Unit Owners, as applicable, shall be entitled to elect all five Owner Directors as follows:

- Two directors shall be elected by Persons casting votes associated with residential uses on the Parcels ("**Residential Directors**").
- One director shall be elected by Persons casting votes associated with retail uses on the Parcels ("**Retail Director**").
- One director shall be elected by Persons casting votes associated with general office uses on the Parcels ("**Office Director**").

- One director shall be elected at-large by a vote of all Parcel Owners ("**At-Large Director**").

The number of votes assigned to particular uses shall be calculated as provided in Exhibit "D" to the Charter. With respect to any Parcel containing Sub-Units, if different Sub-Units within the Parcel have different uses (*e.g.*, a Parcel may contain residential Sub-Units and retail Sub-Units), then the Sub-Unit Owners within such Parcel, as opposed to the Parcel Owner of the Parcel, shall cast votes for directors; provided, if a group of like use Sub-Units are governed by a condominium or other owners association with no other members, the vote for such Sub-Units shall be cast by the board of directors of such owners association, as the directors of such association determine among themselves. Otherwise, the vote for a Parcel shall be cast by the Parcel Owner.

During the Founder Control Period, the Founder shall initially determine which Parcels, or portions of Parcels, fall into which use categories. The Founder shall make such determination on the intended uses in accordance with the Master Plan or based upon actual use. After termination of the Founder Control Period, the Board shall make determinations relating to use categories based upon actual use.

(ii) In order to establish staggered terms among the directors, one Residential Director, the Retail Director, and the Office Director elected pursuant to subsection (c)(i) shall serve until the second annual meeting following the termination of the Founder Control Period. The remaining directors elected pursuant to subsection (c)(i) shall serve until the third annual meeting following the termination of the Founder Control Period. Thereafter, upon expiration of the term of office of each Owner Director, the Parcel Owners or Sub-Unit Owners entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective

successors have been elected. Directors may serve any number of consecutive terms.

3.4. **Nomination and Election Procedures.**

(a) **Nomination of Candidates.** Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by a vote of the Parcel Owners.

The Board also may appoint a Nominating Committee to make nominations for election to the Board. The Nominating Committee, if any, shall consist of at least three Persons, including a chairman, who shall be a Board member, and two or more Parcel Owners or Sub-Unit Owners or representatives of Parcel Owners or Sub-Unit Owners.

In preparation for each election, the Nominating Committee, if created, shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled at such election. The Nominating Committee shall nominate separate slates for the directors to be elected at-large or from particular uses within Kaiaulu 'o Kaka'ako. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Parcel Owners and to solicit votes.

(b) **Election Procedures.** At each election, voting shall be by written ballot cast by mail, facsimile transmission, electronic mail, or at a meeting, as the Board determines, or by any

other method permitted by Hawai'i law. Each Parcel Owner or Sub-Unit Owner may cast all votes assigned to his or her Parcel or Sub-Unit for each position to be filled from any slate of candidates on which such Parcel Owner or Sub-Unit Owner is entitled to vote. Under no circumstances shall cumulative voting be permitted in any election of directors.

3.5. Removal of Directors and Vacancies.

Any Owner Director may be removed, with or without cause, by the vote of the Parcel Owners or Sub-Unit Owners holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, the Parcel Owners or Sub-Unit Owners entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who (a) has three consecutive unexcused absences from Board meetings; (b) is more than 30 days delinquent (or represents a Parcel which is so delinquent) in the payment of any assessment or other charge due the Association; or (c) fails to cure a violation of the Governing Documents pertaining to the Parcel for which he or she represents the Parcel Owner or pertaining to a Sub-Unit he or she owns after being given notice from the Board or its designee and a reasonable opportunity to cure such violation. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Parcel Owners or Sub-Unit Owners entitled to fill such directorship shall elect a successor for the remainder of the term.

This Section shall not apply to directors the Founder appoints. The Founder shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

B. Meetings.

3.6. Organizational Meetings.

The Board shall hold an organizational meeting within 30 days following each annual Association meeting at such time and place as the Board shall fix for the purpose of electing officers and providing for such other organizational functions as deemed appropriate.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least two times during each fiscal year with at least one meeting during each half of the fiscal year.

3.8. Special Meetings.

The Board shall hold special meetings when called by written notice the President, Vice President, or any two directors sign.

3.9. Notice; Waiver of Notice.

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (a) personal delivery; (b) first class mail, postage prepaid; (c) overnight delivery service (*e.g.*, FedEx), with proof of receipt; (d) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (e) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's tele-

phone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal or overnight delivery, telephone, or other electronic device at least 72 hours before the time set for the meeting.

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

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Hawai'i law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the depart-

ture of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to all Parcel Owners and Sub-Unit Owners entitled to vote on Association matters. Parcel Owners who are not directors may participate in any discussion or deliberation unless a majority of a quorum of the Board votes otherwise. In any case, the President may limit the time any such individual may speak.

(b) Upon approval of a majority of a quorum of the Board, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to the extent permitted by Hawai'i law. Notwithstanding the above, the Board may adjourn and reconvene in executive session only to discuss and vote upon matters concerning personnel or litigation in which the Association is or may become involved, or as may be necessary to protect the attorney-client privilege of the Association.

3.14. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.15. Powers.

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Hawai'i law require to be done and exercised by the membership.

3.16. Duties.

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;

(b) levying and collecting such assessments from the Owners and other Persons responsible for paying shared expenses pursuant to any agreement or recorded covenant;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and

materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(f) making and amending Rules in accordance with the Charter;

(g) opening bank accounts on the Association's behalf and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;

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

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

(l) keeping a detailed accounting of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Parcel or Sub-Unit, any Parcel Owner, any Sub-Unit Owner, and the holders, insurers, and guarantors of any Mortgage on any Parcel, current copies of the Governing Documents and all other books, records, and financial

statements of the Association as provided in Section 7.3;

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

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Hawai'i law, the Articles and these By-Laws.

3.17. Conflicts of Interest; Code of Ethics.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the directors relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

The Board may create and adopt a written "Code of Ethics" applicable to all directors and officers. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in a manner consistent with the Board Standards described in Section 6.1. Each officer and director, as a precondition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics.

Chapter 4

Officers

4.1. Officers.

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

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Owners, to serve until their successors are elected.

4.3. Removal and Vacancies.

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

4.4. Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose as long as such duties are not inconsistent with these By-Laws.

(a) President. The President shall be the Association's chief executive officer. The President (i) presides at all meetings of the Association and of the Board; (ii) has all the general powers and duties which are usually vested in the office of President of a corporation organized under the laws of the State of Hawai'i; (iii) has general supervision, direction, and control of the business of the Association, subject to the control of the Board; and (iv) sees that all orders and resolutions of the Board are carried into effect.

(b) Secretary. The Secretary (i) keeps the minutes of all meetings of the Board and of the Association; (ii) has charge of such books, papers, and records as the Board may direct; (iii) maintains a record of the names and addresses of the Parcel Owners and Sub-Unit Owners entitled to vote for the mailing of notices; and (iv) in general, performs all duties incident to the office of secretary.

(c) Treasurer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Charter and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Treasurer (i) is responsible for Association funds; (ii) keeps full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepares all required financial data and tax returns; (iv) deposits all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the Board; (v) prepares the annual and supplemental budgets of the Association; (vi) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (vii) performs all duties incident to the office of Treasurer.

4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on

the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Chapter 5

Committees

5.1. General.

The Board may, in the manner provided in the Hawai'i Planned Community Associations Act, appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three but no more than five Persons who shall not be officers, directors, or employees of the Association, or the spouse, parent, sibling, or child of any officer, director, or employee. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Chapter 8 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Service Area Committees.

Those Persons within a Service Area who are entitled to vote on Service Area matters may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services which the Association provides to all Parcels in Kaiaulu 'o Kaka'ako. A Service Area Committee, if elected, shall consist of no more than three representatives of the property within the Service Area.

The election of a Service Area Committee may be held by written ballot sent to all Parcel Owners and Sub-Unit Owners entitled to vote on matters relating to the Service Area, or at a meeting of all such Persons within the Service Area, as the Board determines. The Board or any Person entitled to vote on matters relating to the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected.

Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an ex officio member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Parcels in the Service Area and their representatives.

Chapter 6

Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability to the maximum extent provided for directors of corporations under Hawai'i law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Hawai'i law.

6.2. Liability.

(a) A director or officer shall not be personally liable to the Association, any Parcel Owner, any Sub-Unit Owner, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which he or she reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he or she has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of property within Kaiaulu 'o Kaka'ako); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be owners of property within Kaiaulu 'o Kaka'ako).

6.3. Indemnification.

Subject to the limitations of Hawai'i law, the Association shall indemnify, defend, and hold harmless every officer, director, and committee member for, from, and against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the

Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Hawai'i law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association;

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth by Hawai'i law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

Chapter 7

Management and Accounting

7.1. Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Owners representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Managing Agent.

The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or any Founder Affiliate as managing agent or manager.

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

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

7.3. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

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

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the first quarter following the year in which the first Parcel is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

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

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

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

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

(v) a delinquency report listing all Parcel Owners and Sub-Unit Owners, as applicable, who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) Association financial reports shall be made available for review as and in the manner provided in the Hawai'i Planned Community Associations Act.

7.4. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Owner approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

7.5. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other owners or residents associations, within and outside Kaialu 'o Kaka'ako. The Board shall consent to any common management agreement.

7.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other

person or persons as the Board may designate by resolution.

Chapter 8

Enforcement Procedures

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) the alleged violator shall have 10 days to present a written request for a hearing to the Board or the Covenants Committee (if one has been appointed pursuant to Chapter 5), and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 10 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 10-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Chapter, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the Board's or Committee's decision) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

Chapter 9

Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Hawai'i law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of Hawai'i law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of Hawai'i law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) *Turnover of Books and Records.* Within 60 days after termination of the Founder Control Period, the Founder shall deliver to the Association all property, books and records of the Association.

(b) *Inspection by Owners and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Parcel, any Parcel Owner, any Sub-Unit Owner entitled to vote on Association matters, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Parcel: the Governing Documents, the membership register, books of account, the minutes of meetings of the Owners, the Board, and committees, Association insurance policies, and any other records as re-

quired by Hawai'i law. The Board shall provide for such inspection to take place within 10 business days after receipt of a written request for access at the Association's office or at such other place within Kaiaulu 'o Kaka'ako as the Board shall designate or as otherwise required pursuant to the Hawai'i Planned Community Associations Act.

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

(i) the frequency and manner of inspection;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

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

9.5. Notices.

(a) *Form of Notice and Method of Delivery.* Except as otherwise provided in the Charter or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to an Owner, at the address, telephone facsimile number, or e-mail address which the Owner has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Parcel or Sub-Unit of such Owner;

(ii) if to a Parcel Association or other owners association entitled to cast votes on behalf of Sub-Unit Owners, the board of directors of the Parcel Association or other owners association, as applicable, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Parcel Association or other owners association or its managing agent, or at such other address as the Parcel Association or other owners association shall designate by notice in writing to the Association pursuant to this Section;

(iii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Parcel Owners pursuant to this Section; or

(iv) if to the Founder, at the Founder's principal address as it appears on the Secretary of State's records, or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission.

9.6. Amendment.

(a) By Founder. Until termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws for any purpose; provided, no unilateral amendment by the Founder may materially adversely effect the substantive rights of Parcel Owners who are the owners of more than 10% of the total acreage comprising the Parcels.

(b) By the Board. The Board may unilaterally amend these By-Laws if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Parcels; (iii) to satisfy the requirements of any local, state, or federal governmental agency; or (iv) as necessary to clarify or correct technical, typographical, or scrivener's errors. However, no amendment under this paragraph that would adversely affect the title to any Parcel shall be binding upon such Parcel unless the Parcel Owner shall consent in writing.

(c) By Owners. Except as otherwise specifically provided above and elsewhere in these By-Laws, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 67% of the total votes in the Association. In addition, during the Founder Control Period, any such amendment shall also require the Founder's written consent.

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.

(d) *Validity and Effective Date of Amendments.* Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Founder without the written consent of Founder or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Kaiaulu 'o Kaka'ako Owners Association, Inc., a Hawai'i nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 20__.

_____[SEAL]
Secretary