

APPENDIX "2"

BYLAWS OF LOKAHI MAKAI COMMUNITY ASSOCIATION

DECLARATION OF ADOPTION

By signing this Declaration of Adoption, the undersigned, being all of the initial Directors of the Lokahi Makai Community Association, adopt the following Bylaws as the Bylaws of said Association.



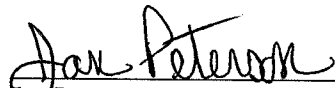
John R. Stevens

Dated: May 20, 2004



Alan Dickler

Dated: May 20, 2004



Jan Peterson

Dated: May 20, 2004

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**BYLAWS
OF
LOKAHI MAKAI COMMUNITY ASSOCIATION**

**ARTICLE I
INTRODUCTORY PROVISIONS**

1.1 Definitions. Defined terms, the first letters of which are capitalized and which are put in bold type and in quotes when first used in these Bylaws, shall have the meanings given to them in the Declaration (as hereinafter defined), except as otherwise expressly stated herein or clearly required by the context. As used in these **"Bylaws"**, the term (a) **"Declaration"** means the Declaration of Covenants, Conditions, Restrictions and Easements for Lokahi Makai, dated as of May 20, 2004, made by Sonny Ventures, LLC., a Hawaii limited liability company (the **"Declarant"**) and intended to be recorded in the Bureau of Conveyances of the State of Hawaii, as the same may be amended, supplemented or extended from time to time; and (b) **"Community Documents"** means the Declaration, these Bylaws, the **"Articles"**, the **"Association Rules"**, the **"Design Guidelines"**, and any **"Supplemental Declaration"**, as the same may be amended or supplemented from time to time. In case of any conflict between the provisions of Hawaii law, the Declaration, the Articles and/or these Bylaws, then the provisions of Hawaii law, the Declaration, the Articles and these Bylaws (in that order) shall prevail.

1.2 Application. All present and future **"Owners"** and their tenants, guests, family members and other invitees, and any other Persons who may use any part of the **"Community"** in any manner, are subject to the Community Documents. The acceptance of a deed or other conveyance, or the entry into a rental agreement, or the act of occupying, a **"Lot"** shall constitute an agreement that the Community Documents, as they may be amended or supplemented from time to time, are accepted, ratified and will be strictly complied with.

**ARTICLE II
MEMBERSHIP**

2.1 Members and Membership. The **"Association"** shall have one class of membership as set forth in the Declaration. The terms and provisions of the Declaration pertaining to membership in the Association are specifically incorporated into these Bylaws by reference; without limiting the generality of this incorporation, Members of the Association are the Owners of Residential Lots in the Community. It is intended that the Association qualify as a Homeowner's Association under Section 528 of the Internal Revenue Code of 1954, as amended and/or revised.

2.2 Meetings of the Association. Unless otherwise specifically provided in the Declaration or these Bylaws, meetings of the **"Members"** shall be held as follows:

(a) **Annual Meetings.** The first meeting of the Members shall be held not later than one year after recordation of the first conveyance of a Lot to a **"Person"** other than Declarant or an affiliate of Declarant. Subsequent to the first meeting of the **"Members"**, annual meetings of the Members shall be held during each calendar year on such date as the President or **"Board"** may designate. Each annual meeting shall be a general meeting and any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration, the Articles or these Bylaws.

(b) **Special Meetings.** Special meetings of the Members may be called by (1) the Board, the President or any two Directors; or (2) Members holding at least twenty-five percent (25%) of the voting power of the Association who have signed, dated, and delivered to any Officer one or more written demands for a special meeting describing the purpose(s) for which it will be held. Upon receipt of the demand for a special meeting, the Secretary shall

send notice of the meeting to all Members. If notice of a special meeting is not given within thirty days after the date the written demand is delivered to an Officer, any Person signing the demand(s) may set the time and place of the meeting and give notice as provided in Section 2.3. The meeting shall be held on the date at the time and place specified in such notice. Only such business shall be transacted at any special meeting as shall have been described in the notice of the meeting.

(c) **Adjournment.** Any meeting of the Members may be adjourned from time to time, to such place and time as may be determined by majority vote of the Members present at the meeting, either in person or by proxy and whether or not a quorum is present, without notice other than the announcement at such meeting. Notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting must be fixed, notice of the adjourned meeting shall be given to the Members as of the new record date. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

(d) **Place of Meetings.** All meetings of the Members shall be held at the Association's principal office or such other place within the County of Hawaii as shall be designated by the Person calling the meeting.

2.3 Notice of Meetings.

(a) The notice of every meeting of the Members shall state whether it is an annual or special meeting, the date, time and place of the meeting, the items on the agenda for the meeting and a standard proxy form authorized by the Board, if any, and any other information permitted or required to be given by these Bylaws or by law. Notice of each meeting, shall be given at least ten (10) days but no more than sixty (60) days before the date of the meeting, and delivered, either personally or by mail, to each Member entitled to vote at such meeting. If notice is given pursuant to the provisions of these Bylaws, the failure of any Member to receive actual notice of a meeting shall not invalidate the meeting or any proceedings taken at the meeting.

(b) If an annual or special meeting is called for any of the following purposes, the notice shall include a description of the proposed action: (i) approval of a transaction for which one or more Directors has a conflict of interest, (ii) determination or authorization of indemnification of a Director, Officer, employee or agent of the Association, (iii) amendment to the Articles or Bylaws, (iv) approval of a merger of the Association with another non-profit corporation, or (v) authorization of a dissolution of the Association. The Association shall include in the notice of a special meeting any matter for which the meeting is called.

(c) When giving notice of an annual or special meeting of Members, the Association shall give notice of a matter a Member intends to raise at the meeting if requested in writing to do so by Members entitled to call a special meeting and the request is received by the Secretary or President of the Association at least ten days before the Board gives notice of a meeting. If notice of a meeting is duly given, the failure of any Member to receive actual notice of a meeting shall not invalidate the meeting or any proceedings taken at the meeting.

2.4 Waiver of Notice. A Member may waive any notice required by the Declaration, the Articles, these Bylaws or by law before or after the date and time stated in the notice in a writing signed by the Member and delivered to the Association for inclusion in the Association's records. The attendance of a Member at a meeting: (a) waives any objection to lack of notice or defective notice of the meeting unless the Member objects at the opening of such meeting to the transaction of business at the meeting, and (b) waives any objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice unless the Member objects to consideration when the matter is presented.

2.5 Action Without a Meeting. Any action required or permitted to be taken by Members at a meeting may be approved without a meeting of the Members, if the action is approved by Members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the Association for inclusion in the minutes or filing with the corporate records. A consent signed under this Section has the effect of a meeting vote. Written notice of member approval by written consent shall be given to all Members who have not signed the written consent. If such written notice is required, Members approval pursuant to this section shall be effective ten days after the written notice is given.

2.6 Action by Ballot. Unless prohibited by law, any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the action. The ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this Section shall be valid only when the votes cast by ballot equal or exceed the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitation for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of Directors, and specify the time by which a ballot must be received by the Association in order to be counted, which in any event shall not be less than thirty days after the date the notice is given. A written ballot may not be revoked after delivery to the Association.

2.7 Record Date.

(a) The record date for the purpose of determining the Members who are entitled to receive notice of a meeting of Members shall be the close of business on the business day preceding the day on which the notice is given, or, if notice is waived, the close of business on the business day preceding the day on which the meeting is held.

(b) The record date for the purpose of determining the Members entitled to vote at a Members' meeting shall be the close of business two business days preceding the date of the meeting.

(c) The Board may fix in advance the record date for the purpose of determining the Members entitled to exercise any rights in respect of any lawful action other than voting at a Members' meeting. If no such record date is fixed, Members at the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) Those Members entitled to notice of a meeting or to vote at a meeting of Members shall also be those Members entitled to notice or to vote at any adjournment of the meeting, unless the Board fixes a new date for determining the right to notice or the right to vote. The Board must fix a new record date if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

2.8 Member List for Meeting. After fixing the record date for a notice of a meeting, the Association shall prepare an alphabetical list of the names of all its Members who are entitled to notice of the meeting. The list shall also show the address and number of votes each member is entitled to vote at the meeting. The Association shall update the list through the time of the membership meeting to indicate changes in those Members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, at the Association's principal office or at a reasonable place identified in the meeting notice in the location where the meeting will be held, beginning two (2) business days after notice of the meeting for which the list was prepared is given, and continuing through the

meeting. The Association shall make the list of Members available at the meeting; provided that a request for the list is submitted no fewer than five business days prior to the scheduled date of the meeting.

2.9 Quorum. The presence at any meeting in person or by proxy of Members representing more than forty percent of the votes eligible to vote on the matter at hand shall establish a quorum. The Board shall not have the power or authority to adopt a Bylaw amendment to reduce the quorum requirement for Member action.

2.10 Majority of Quorum. Except as otherwise provided in the Declaration, the Articles or these Bylaws, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative vote also constitutes a majority of the required quorum) is the act of the Association.

2.11 Voting. Except as otherwise provided in the Declaration, the votes allocated to each Residential Lot shall be exercised by the Member representing such Lot pursuant to the Declaration. The voting rights of the Members, and the manner in which votes may be cast shall be as set forth in the Declaration, and the terms and provisions of the Declaration governing or relating to such matters are specifically incorporated into these Bylaws by reference.

2.12 Proxies.

(a) A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment form either personally or by an attorney-in-fact. A Member may authorize another Person to act as a proxy for the Member by:

(1) executing a writing authorizing another Person or Persons to act as a proxy for the Member, which may be accomplished by the Member or the Member's authorized attorney-in-fact, Officer, Director, employee or agent, signing the writing or causing the Member's signature to be affixed to the writing by any reasonable means, including, without limitation, the use of a facsimile signature; or

(2) transmitting or authorizing the transmission of a telegram, cablegram, facsimile or other means of electronic transmission authorizing a Person or Persons to act as a proxy for the Member to the Person or Persons who will be the holder of the proxy; provided that any such transmission shall specify that the transmission was authorized by the Member. A copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to the foregoing may be used in lieu of the original instrument or transmission for any and all purposes for which the original instrument or transmission could be used, provided that any such copy, transmission or reproduction shall be a complete reproduction of the entire original instrument or transmission.

(b) Where two or more Persons are co-owners of a single Lot, any proxy with respect to the vote of such Members shall be signed by all such persons or entities.

(c) An appointment of a proxy is effective when received by the Secretary or agent authorized to tabulate votes. The appointment is valid for eleven months unless a different period is expressly provided in the appointment form; provided that no proxy shall be valid for more than three years from its date of execution.

(d) The appointment of a proxy, excluding any proxy given by way of a mortgage or as provided for in Section 414D-113(e), Hawaii Revised Statutes, is revoked by the Member appointing the proxy if the Member attends any meeting and votes in person or signs and delivers to the Secretary or agent authorized to tabulate votes a written revocation of the appointment or a subsequent appointment of a person as proxy prior to such meeting.

(e) The proxy may be limited in any manner expressed on the face of the authorization. The authorization must contain at least: the name of the Association, the date of the meeting at which the proxy is to be cast, the printed name and signature of the Person or Persons granting the proxy, the Lot for which the proxy is given, the date of the proxy, the printed name of the Person to whom the proxy is given, which may be a specified individual, a Director or the Board as a whole, state that the proxy is for quorum purposes only, if that is the case, and such other information as may be required by law.

2.13 **Order of Business.** The order of business at all meetings of the Members shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reports of the President and the chief financial Officer of the Association;
- (d) Report of Board (if any);
- (e) Reports of committees (if any);
- (f) Election of members (the “**Directors**”) of the Board (when required);
- (g) Appointment of auditor (when appropriate);
- (h) Unfinished business; and
- (i) New business.

ARTICLE 3 **BOARD OF DIRECTORS**

3.1 **Number and Qualification.** The affairs of the Association shall be governed by the Board. The Board shall be composed of not less than three nor more than seven persons, as provided in Section 3.4 below. The initial Board shall consist of three persons as identified in the Articles. Except with respect to Directors appointed by Declarant, all Directors shall be Members. An Officer of a corporate Member, the general partners of a general or limited partnership, and the fiduciary or Officer of the fiduciary Member, respectively, shall be deemed to be Members 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.

3.2 **Directors During the Declarant Control Period.** Subject to the provisions of Section 3.4 below, the Directors shall be selected and appointed by Declarant acting in its sole discretion and shall serve at the pleasure of Declarant at all times during the Declarant Control Period, as that term is defined in Section 8.4 of the Declaration.

3.3 **Nomination of Directors.** Except with respect to Directors selected and appointed by Declarant, nominations for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a chairman, who shall be a member of the Board, and three or more Members of the Association, with at least one representative from each phase of the Community, should more than one phase exist. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting of the Association to serve a term of

one year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall 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. The Nominating Committee shall nominate separate slates for the Directors to be elected at large by all Members, and for the Director(s) to be elected by and from each Subdistrict, if appropriate. Nominations for each slate shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.4 Election and Term of Office. Notwithstanding any other provision contained in these Bylaws:

(a) Until the time that the Association holds the special meeting described in subsection (b) below, the Board shall consist of three persons. At the first annual meeting of the Association, the Members excluding the Declarant shall elect one of the three Directors. The remaining two Directors shall be selected and appointed by Declarant, as provided in Section 3.2. above. The Director elected by the Members excluding the Declarant 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 Director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected by the Members excluding the Declarant at an annual meeting of the Association for a like term.

(b) Within 30 days after the expiration of the Declarant Control Period, the Board shall be increased to seven Directors. The Association shall thereupon call a special meeting at which the Members including the Declarant shall elect four of the seven Directors. The remaining three Directors shall be appointees of Declarant. The Directors elected by the Members excluding the Declarant shall not be subject to removal by Declarant acting alone and shall serve until the first annual meeting following the expiration of the Declarant Control Period. **PROVIDED** that if such annual meeting is required to be held within 90 days after the expiration of the Declarant Control Period, 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, the Directors shall be selected as follows: Seven Directors shall be elected by the Members. Four Directors shall be elected for a term of two years and three Directors shall be elected for a term of one year. At the expiration of the initial term of office of each member of the Board and at each annual meeting thereafter, a successor shall be elected to serve for a term of two years.

(d) The candidate(s) receiving the most votes shall be elected. Directors may be elected to serve any number of consecutive terms.

(e) After the expiration of the Declarant Control Period, for as long as Declarant shall own one or more lots, and for a period of two (2) years thereafter, Declarant may appoint a non-voting ex-officio member to the Board. The ex-officio member to the Board shall be treated as a Director, except as follows:

(1) The ex-officio member is not entitled to vote on any matters voted on by the other members of the Board and is not liable to the Owners for any mistake of judgment made by the Board.

(2) The ex-officio member may be excluded from executive sessions of the Board upon a majority vote of the Board.

(3) The ex-officio member shall not be included when determining the number of members or the Board to be elected in accordance with these Bylaws or contract to satisfy any quorum requirement.

(f) Declarant shall not exercise this right to appoint an ex-officio member to the Board under circumstances where Declarant's representative should serve as an elected member of the Board.

3.5 Removal and Vacancies.

(a) A Director elected by the Members may be removed by Members only at a meeting duly called for the purpose of removing the Director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the Director. Any Director elected by all the Members or by Members excluding the Declarant may be removed, with or without cause, by the vote of such Members holding a majority of the votes entitled to be cast for the election of such Director. Upon removal of a Director, a successor shall then be elected by the Members entitled to elect the Director so removed to fill the vacancy for the remainder of the term of such Director. An ex-officio Director named by Declarant may be removed at any time, with or without cause, by Declarant thereafter, a replacement may be appointed by Declarant in accordance with these Bylaws.

(b) Any Director elected by the Members 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 may be removed by a majority of the Directors present at a regular or special meeting of the Board at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

(c) In the event of the death, disability or resignation of a Director, a vacancy may be declared by the Board, and it may appoint a successor. If the Directors remaining in office constitute less than a quorum of the Board, the affirmative vote of a majority of all the Directors remaining in office shall control.

(d) If a vacancy on the Board occurs resulting from an increase in the number of Directors, the vacancy may be filled by the Members as provided by these Bylaws and otherwise by law;

3.6 Meetings of the Board.

(a) **Organizational Meeting.** The annual meeting of the Board shall be held at the place of and immediately following each annual meeting of the Members. No separate notice other than the notice of the annual meeting of the Members shall be necessary for such meeting. At such meeting the Board shall elect the "Officers" of the Association for the ensuing year.

(b) **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Fourteen days' prior written notice of regular meetings, if practicable, shall be given to each Director. The Board may act without a formal meeting, call or notice. The Board shall meet at least once a year in addition to the annual meeting.

(c) **Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the presiding Officer of the Board, the President or not less than twenty percent of the Directors then in office. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

(d) **Open and Executive Sessions.** Subject to the provisions of Section 3.6(e) below, all meetings of the Board shall be open to all Members, provided that Members who are not Directors may not participate in any deliberation or discussion 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, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or pending or threatened litigation or orders of business of a similar nature or as may be

necessary to protect the attorney-client privilege. The nature and all business to be considered in executive session shall first be announced in open session. Board Members may not vote by proxy on matters pending before the Board.

(e) **Action without a Meeting.** Unless otherwise required by law, any action required or permitted to be taken at a Board meeting may be taken without a meeting if the action is taken by all Directors. The action shall be evidenced by a written consent or consents describing the action taken, signed by each Director and filed with the minutes of the Association. Action taken under this section is effective when the last Director signs the consent, unless the consent specifies a different effective date.

(f) **Attendance by Telephone.** Any Directors or Members of any committee may participate in a regular or special meeting by any means of communication by which all persons participating can simultaneously hear each other during the meeting. Participation by such means shall constitute presence in person at the meeting.

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

(h) **Notice of Board Meetings.** All notices of Directors' meetings shall be in writing and shall specify the date, time and place of the meeting and for special meetings, the nature of any special business to be considered. The notice shall be given to each Director by any one of the following methods: (1) by personal delivery, including private courier; (2) by first class, certified or registered mail, postage prepaid; (3) by facsimile; or (4) by telegram, charges prepaid. All such notices shall be sent to the facsimile number or the address of each Director at the Director's last known address shown on the records of the Association.

3.7 **Waiver of Notice.** A Director may waive notice of any meeting of the Board at any time in a writing signed by the Director and filed in the minutes of the Association. Attendance at a meeting for which notice is required shall constitute a waiver of notice unless the Director objects to defective notice at the beginning of a meeting or prior to a vote on a matter not noticed in conformance with these Bylaws or applicable law and does not thereafter vote for or assent to the objected action.

3.8 **Quorum and Voting of Board.** At all meetings of the Board, the presence of a majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of Directors present is the act of the Board unless the Articles, Declaration, these Bylaws or applicable law requires the vote of a greater number of Directors. A Director may not cast a proxy at any meeting. If less than a quorum shall be present at any meeting of the Board, 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 which might have been transacted at the meeting originally called may be transacted without further notice.

3.9 **Conflicts of Interest.** A Director may vote on any transaction in which he has a direct or indirect conflict of interest, except as otherwise prohibited by the Declaration. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on the issue and the minutes of the meeting shall record the fact that a disclosure was made. A transaction with the Association in which a Director has a conflict of interest 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 is approved or ratified by the Board. A transaction in which a Director has conflict of interest is approved if the material facts of the transaction and the Director's interest were disclosed to the Board and the transaction is authorized, approved or ratified whether or not a quorum is present, by the affirmative vote of a majority of the Directors who have no direct or indirect interest in the transaction. Authorization, approval or ratification cannot be made by a single Director.

3.10 Compensation. Directors shall not receive any compensation from the Association for acting as a Director; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

3.11 Fidelity Bonds. The Board shall require that all Directors, Officers, trustees, employees, and volunteers responsible for handling funds belonging to or administered by the Association furnish adequate fidelity bonds naming the Association as the insured and providing coverage in such amounts as the Board deems adequate. The premiums on such bonds shall be, if paid by the Association, shall constitute a Common Expense. 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.

ARTICLE 4

OFFICERS

4.1 Designation. The principal Officers of the Association shall be the President, one or more vice Presidents, Secretary and Treasurer, all of whom shall be elected by the Board. The Board may appoint such other Officers as in its judgment may be necessary. Only the President, and no other Officer, is required to be a member of the Board. One individual may hold no more than two offices, provided that one individual may not hold the offices of President and Secretary.

4.2 Election of Officers. The Officers of the Association shall be elected annually by the Board and shall hold office at the pleasure of the Board.

4.3 Removal. Any Officer may be removed with or without cause by the Board. Vacancies may be filled by the Board at any regular meeting or at a special meeting of the Board called for such purpose.

4.4 President. The President shall be the chief executive Officer of the Association and shall preside at all meetings of the Members and of the Board. Subject to the control of the Board, he shall have all of the general powers and duties, which are incident to the office of President of a corporation organized under the laws of the State of Hawaii. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned to him from time to time by the Board.

4.5 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 shall appoint some other Director to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as may be assigned to him from time to time by the Board or by the President.

4.6 Secretary. The Secretary shall keep the minutes of all meetings of the Association and the Board; he shall have charge of such books and papers as the Board may direct; he shall have the responsibility of authenticate the records of the Association; and he shall in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii.

4.7 Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account 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 corporation organized under the laws of the State of Hawaii.

4.8 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 his duties of an Officer, as approved by the Board.

ARTICLE 5.

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

5.1 General Powers and Duties. The Board shall have the powers and duties 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, the Articles or these Bylaws are directed to be done and exercised exclusively by the Members acting through the Association. Such powers and duties 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 have custody and control over all funds of the Association, open bank accounts on behalf of the Association and designate the signatories of those accounts;
- (c) To keep books of accounts and records with respect to the Common Area;
- (d) To maintain, repair, replace and restore the Common Area and make any additions and alterations thereto, as provided in and subject to the Declaration and Declarant's Limited Warranty;
- (e) To make additions, alterations and improvements to the Common Area and repair and restore the Common Area in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty or as a result of condemnation;
- (f) To purchase, maintain and replace any equipment and provide all water and utility services required for the Common Area, as provided in and subject to the Declaration;
- (g) To employ, supervise and dismiss such personnel as may be necessary for the operation, repair, maintenance and replacement of the Common Area, as provided in and subject to the Declaration and Declarant's Limited Warranty;
- (h) To procure legal, accounting, and management 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 Declaration, these Bylaws and any other material documents affecting the Property;
- (i) To obtain and maintain in effect of all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws or the Board;

(j) To cause to be prepared and to approve operating statements or Budgets, in accordance with Article IX of the Declaration;

(k) To make Assessments, as provided in the Declaration, to establish the means and methods of collecting such Assessments, and to levy and collect Assessments and other charges payable by the Members;

(l) To pay all expenses which the Association is required to pay pursuant to the Declaration, these Bylaws 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 Member, the cost thereof shall be specially assessed for such expense after application of any available insurance proceeds to that Member, as provided in the Declaration;

(m) To pay and discharge any lien, encumbrance, tax or assessment levied against all or any portion of any real property, including any improvements thereon, belonging to the Association which may in the opinion of the Board constitute a lien against such real property. If one or more Members are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Board by reason of such lien;

(n) To enforce the provisions of the Community 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 hereunder; provided that such penalties, fines and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Member shall constitute a lien against his interest in his Lot, which may be foreclosed by the Board;

(o) From time to time to adopt, amend and enforce the Association Rules, as provided in the Declaration;

(p) To delegate its powers and duties to committees, agents, Officers, representatives and employees;

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

(r) To open and close bank accounts, and transfer funds on behalf of the Association and designate the signatories required;

(s) To enforce by legal means subject to the limitations provided in the Declaration, the provisions of the Community Documents and to bring any arbitration proceedings (or limited judicial proceedings authorized by the Declaration), which may be instituted on behalf of or against the Members concerning the Association;

(t) To make available to any prospective purchaser of a Lot, any Member, and any holder, insurer and guarantor of a mortgage on any Lot, current copies of the Community Documents and all other relevant (in the discretion of the Board) books, records and financial statements of the Association;

(u) To permit utility suppliers to use portions of the Property reasonably necessary to the ongoing development or operation of the Property;

(v) To indemnify a current or former Director, Officer or committee member, employee or agent of the Association as provided in the Articles and to the fullest extent allowed by law; and

(w) To comply with the obligations imposed on the Board pursuant to the Declarant's Limited Warranty including without limitation to execute and return any limited warranty validation form requested or required and to permit the onsite investigation, inspection and testing of conditions specified in and/or covered by the Limited Warranty.

5.2 Employment of a Managing Agent. The Board (on behalf of the Association) may employ a managing agent to perform such duties and services as the Board shall authorize, subject at all times to direction by the Board. The compensation of the managing agent shall be determined by the Board. Declarant, or an affiliate of Declarant, may be employed as managing agent and all costs related to such managing agent shall be Common Expenses.

5.3 Execution of Instruments. Unless otherwise provided by a resolution of the Board, all checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by (a) either the presiding Officer of the Board or the President and (b) anyone of the vice President, Secretary or Treasurer, or the managing agent if so provided in contract between the Association and the managing agent..

5.4 Deposits of Association Funds. The funds of the Association shall be deposited in financial institutions in the State of Hawaii in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by an agency of the United States of America. The funds in the general operating account of the Association shall not be commingled with other funds, nor shall the managing agent, if any, commingle any Association funds with its own funds and 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. Association funds shall not be transferred by telephone between accounts.

5.5 Books and Records of Account.

(a) **Financial Records.** The Board will maintain or cause to be maintained accurate and complete books of account and other financial records on a cash basis in accordance with recognized accounting practices. The records shall include, without limiting the generality of the foregoing, 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 Areas and any other expenses incurred, all vouchers authorizing payment of such expenses and monthly statements showing the total current delinquent amount of unpaid Assessments.

(b) **Annual Financial Statements.** Within 90 days after the end of each fiscal year of the Association, the Board will render or cause to be rendered to each Member the Association's annual audited financial statements, which shall include a balance sheet including the general account and all reserve accounts as of the end of that year, and operating statements showing receipts and disbursements, including Assessments received and receivable and changes in the general account and all reserve accounts, during that year.

5.6 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 the following permanent records:

(i) Minutes of all meetings of Members and the Board, all actions taken by the Members or Directors without a meeting, and a record of all actions taken by committees of the Board. The minutes shall include the recorded vote of each Director on all motions except matters voted upon in executive session.

(ii) Those books and records of account and annual financial statements referred to in Section 5.5 and all other appropriate accounting records, including, without limitation, general ledgers, accounts receivable ledgers, insurance policies, contracts, invoices of the Association and documents regarding delinquencies.

(iii) A record of Members in a form that permits preparation of a list of the name and address of all Members, in alphabetical order, showing the number of votes each Member is entitled to cast, and if a Lot is owned by more than one Person or is a legal entity, the individual entitled to cast the vote for the Lot, and the name and address of first mortgagees, if any.

(iv) Proxies, tally sheets, ballots, members' check-in lists and certificates of elections, if any, for a period of thirty days following a meeting of Members.

(c) The Association shall maintain a copy of the following records at its principal office:

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

(ii) The Bylaws or restated bylaws and all amendments currently in effect.

(iii) Resolutions of the Board relating to the characteristics, qualifications, rights, limitations and obligations of Members or any Class or category of Members.

(iv) Approved minutes of all meetings of Members and records of all actions approved by the Members for the past three years.

(v) Approved, written annual financial statements for the past three years.

(vi) A list of the names and business or home addresses of the Association's current Directors and Officers

(vii) The most recent corporate annual report filed with the Department of Commerce and Consumer Affairs of the State of Hawaii.

5.7 Location of Books and Records. All of the Association's books and records shall be kept at the principal office of the Association in the State of Hawaii or at such other convenient place within the State of Hawaii as the Board shall designate. The Board shall establish reasonable rules with respect to notice to be given to the custodian of the records by an Owner 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.

5.8 Inspection of Records. Subject to any conditions provided below and applicable law, a Member or its duly authorized agent or attorney is entitled to inspect and copy, at a reasonable time and location specified by the

Association, upon written notice at least five business days before the date upon which the Member wishes to inspect or copy, the following records:

(a) The then current version of the Community Documents and any of the records described in Section 5.6 above;

(b) The records listed below only if (1) the Member's request is made in good faith and for a proper purpose; (2) the Member describes with reasonable particularity the purpose and the records the Member desires to inspect; and (3) the records are directly connected with the purpose:

(i) Excerpts of records maintained under Section 5.6 (b) above to the extent not subject to inspection under this Subsection (a) or applicable law;

(ii) Accounting records of the Association for the current year and the prior year; and

(iii) The membership list.

This Section does not affect (1) the right of a Member to inspect (a) membership lists in accordance with Section 2.8 (b) records available to Members who are litigants with the Association if the Member is in litigation with the Association; or (2) the power of a court to compel production of corporate records for examination.

(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 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 has a conflict of interest or public policy mandates that certain records including the records covered by Section 5.10(c) not be open to inspection by all Members. The right of inspection by a Director includes the right to make extracts or copies of the documents at his own expense.

(e) The Board may require that a Member or other Person permitted to inspect or copy records pay a reasonable fee for duplication, postage, stationary and other administrative costs associated with handling the request.

(f) Within five business days after a Member makes a written request to the Board to examine documents of the Association, the Board shall provide a written authorization or a written refusal with an explanation for the refusal.

5.9 Audit. The Association, by its Board, shall require an annual audit of the Association's financial accounts and no less than one yearly unannounced verification of the Association's cash balance by an independent public accountant.

5.10 Record of Ownership. Every Member shall promptly file with the Association a copy of the instrument of conveyance by which the Member acquired title to and an interest in a Lot or Unit, the First Mortgage, if any, and evidence of insurance, together with mailing addresses for each of the foregoing documents and such other data reasonably related thereto as the Board may request.

5.11 Representation. The Board may represent the Association or any two or more Members in any action, suit, hearing or other proceeding affecting the Association, the Common Area, or more than one Lot, 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 Members individually to appear, to sue or be sued. Service of process on two or more Members in any such action, suit or proceeding may be made on the President.

5.12 Liability and Indemnity of the Board and Officers. The Directors and Officers of the Association shall not be liable to the Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall indemnify each current or former Director and Officer of the Association as provided in the Articles and to the fullest extent allowed by law.

ARTICLE 6.

COMMITTEES

The Board may, by a majority vote, delegate portions of its authority to an executive committee or to other committees, to Officers of the Association or to agents and employees of the Association in accordance with the Articles 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 a majority vote of the Board, provided, however, that the Board shall not delegate to any committee of the Board and no committee shall have authority to: (1) authorize distributions, (2) approve or recommend to Members dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Association's assets, (3) elect, appoint or remove Directors or fill vacancies on the Board or any of its committees, (4) adopt, amend or repeal the Articles or the Bylaws, or (5) authorize any action that requires a vote greater than a majority of the Board under the Community Documents. All committee meetings shall be conducted in accordance with Sections 3.6 thru 3.8 of these Bylaws and Robert's Rules of Order, Newly Revised. Each committee shall otherwise operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by a majority vote of the Board.

ARTICLE 7.

MEMBER RESPONSIBILITY

NOTICE AND HEARING PROCEDURE

7.1 Member Responsibility; Expenses. Each Member shall abide by and comply with the provisions of the Community Documents. Each Member shall pay when due all such dues, assessments, penalties and other charges which may be levied or assessed under the foregoing instruments or under any applicable Supplemental Declaration (as defined in the Declaration). Further, every Member shall pay all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent Assessments against such Member, in foreclosing its lien therefor or in enforcing any provision of the Community Documents against such Member.

7.2 Suspension of Privileges. In the event of an alleged violation of the Community Documents, and after written notice of such alleged violation is delivered (in the manner prescribed in the Declaration) to the Member or any agent of the Member ("Respondent") alleged to be in default, the Board shall have the right, after affording the respondent an opportunity for an appropriate hearing, which hearing may be waived, as hereinafter provided, and upon an affirmative vote of a majority of all Directors on the Board, to take any one or more of the following actions ("Sanctions"): (1) levy a Special Assessment as provided in the Declaration; (2) suspend or condition the right of said Member to use any facilities owned, operated or maintained by the Association, as provided in the Declaration; (3) enter upon a Lot to make necessary repairs or to perform maintenance which, according to the Declaration, is the responsibility

of the Owner thereof; or (4) record a notice of noncompliance encumbering the Lot of the respondent. Any such suspension shall be for a period of not more than 30 days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after it becomes delinquent) may be imposed for so long as the violation continues. The failure of the Board to enforce any provision of the Community Documents shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws, or by the Association Rules, may be exercised only by the Board.

7.3 Written Complaint. A hearing to determine whether a right or privilege of the Respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a Special Assessment should be levied, shall be initiated by the filing of a written "**Complaint**" with the President or other presiding member of the Board, which Complaint may be initiated by any Member or by any Officer or member of the Board. The Complaint shall constitute a written statement of the charges, and shall set forth, in ordinary and concise language, the acts or omissions with which the respondent is charged, and it shall include a reference to the specific provisions of the Community Documents that the respondent is alleged to have violated. A copy of the Complaint shall be delivered to the Respondent in accordance with the notice procedures set forth in the Declaration, together with a statement which shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as Respondent in the accompanying Complaint is delivered or mailed to the Board within fifteen (15) days after the date noted on the Complaint, the Board may proceed upon the Complaint without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "**Notice of Defense**" to the Board at the following address: _____. You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board, you may contact _____.

The Respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely delivered or mailed to the Board; provided, however, that if the complaint involves the failure to pay an Assessment, the disputed amount shall first be paid in full to the Association. The respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

7.4 Notice of Hearing. If a hearing is requested by the Respondent and the Notice of Defense is timely delivered or mailed, the Board shall serve a notice of hearing, as provided herein, on all relevant parties at least 10 days prior to the hearing. The hearing shall be held no sooner than 30 days after the Complaint is mailed or delivered to the respondent as provided in Section 7.3. The notice to the respondent shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Board of Directors of Lokahi Makai Community Association at _____ on the day of _____ 20____, at the hour of ____:____, upon the charges made in the Complaint served upon you. You may be present at the hearing, you may, but need not, be represented by counsel, you may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by requesting such attendance and/or production from the Board of Directors of the Association.

7.5 Hearing. If the Notice of Defense is timely delivered or mailed, the hearing shall be held before the Board, or before a forum of Members appointed by the Board, in executive session on the date specified in the Notice of

Hearing delivered to the respondent. If the Notice of Defense is not timely delivered or mailed, the Respondent's right to a hearing shall be deemed waived and the Board, in executive session, may proceed upon the Complaint without a hearing. Prior to the effectiveness of any Sanction hereunder, proof of notice, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Officer or Director who mailed or delivered such notice. The notice requirement shall be deemed satisfied if a violation appears at the meeting. The minutes of the meeting shall contain a written statement of the results, limitation or action. Any proceeding challenging a suspension or other Sanction imposed by the Board under this Article, including a proceeding by which defective notice is alleged, must be brought within one year after the effective date of the suspension or other Sanction of the hearing and the Sanction, if any, imposed.

7.6 Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Community Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit in equity or at law to enjoin any violation, to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the respondent responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

ARTICLE 8

GENERAL PROVISIONS

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

8.2 Amendment.

(a) **By Declarant.** At all times during the Declarant Control Period, Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, Declarant may unilaterally amend these Bylaws at any time and from time to time as specifically authorized by the Declaration or these Bylaws, or if such amendment is (1) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (2) necessary to enable any title insurance company to issue title insurance coverage on the Lots; (3) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; or (4) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Member who is the Owner thereof shall consent thereto in writing. Further, and without limiting the foregoing, so long as it still owns any Property in the Community to the Declaration for development as part of the Property, Declarant may unilaterally amend these Bylaws for other purposes, provided the amendment has no material adverse effect upon any right of any Member as an Owner. Notwithstanding the foregoing, during the Declarant Control Period, the Department of Housing and Urban Development or the Veterans Administration may veto any amendments to these Bylaws. If an Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority to so consent and no contrary provision in any mortgage or contract between the Member as an Owner and a third party will affect the validity of such amendment.

(b) **By Membership.** Except as otherwise specifically provided in Section 8.2(a) above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members

representing sixty-five percent (65%) of the total votes in the Association. In addition, any amendment to these Bylaws shall conform with the provisions and limitations of Article XX of the Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Rights of Declarant.** No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

8.3 Manner of Giving Notices. Unless otherwise specifically provided herein or in the Declaration or the Association Rules, all notices permitted or required to be given under these Bylaws, the Declaration or the Association Rules must be in writing and must be delivered either personally or by mail. All notices mailed to Members shall be sent by registered or certified mail to the Member at the address furnished in writing to the Association, or if no address has been furnished, to the address of the Lot of such Member. In any situation where there is more than one Member as an Owner of a Lot, notice to any one Member shall be deemed as notice to all of the Persons constituting the Owner. All notices to the Board may be personally delivered to a Director or may be sent by registered or certified mail or facsimile to the office of the managing agent or to such other address as the Board may hereafter designate from time to time by notice in writing to all Members and First Mortgagees. All notices to First Mortgagees shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices given by mail shall be deemed to have been given 24 hours after being deposited in the United States mail, postage prepaid, except notices of changes of address which shall be deemed to have been given when received.

8.4 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 hereof.

8.5 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.

8.6 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

8.7 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.

8.8 Interpretation. These Bylaws shall be interpreted in accordance with the provisions of Hawaii law and except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of these Bylaws. In the absence of any adjudication to the contrary by a court 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 benefitted or bound by the provisions of the Declaration.