

**BY-LAWS
OF
KOA RIDGE OWNERS ASSOCIATION**

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BY-LAWS
OF
KOA RIDGE OWNERS ASSOCIATION

Chapter 1

Name, Principal Office, Definitions and Interpretation

1.1 Name.

The name of the corporation is Koa Ridge Owners Association (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 not otherwise defined herein shall have the same meaning as set forth in that certain recorded Declaration of Community Covenants for Koa Ridge dated June 8, 2020, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-74660352, and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-11118135, as it may from time to time be amended (the “**Declaration**”). The term “**majority**,” as used in these By-Laws, means those votes, Members, Parcel Owners, or other group, as the context may indicate, totaling more than 50% of the total number of eligible votes, Members, Parcel Owners, or other group, as applicable.

1.4 Interpretation.

These By-Laws shall to the extent possible be interpreted and enforced in a manner consistent with the terms of the Declaration. If there are conflicts among the provisions of Hawaii law, the Declaration, Supplements, the Articles of Incorporation, these By-Laws, the Design Guidelines the Rules, and/or Board Resolutions; then provisions of Hawaii law, the Declaration, the Articles of Incorporation, these By-Laws, the Design Guidelines, the Rules, and the Board Resolutions (in that order) shall control; provided that a Supplement recorded or approved in writing by Declarant during the Development and Sale Period shall take precedence over all other Governing Documents if it so specifically states.

Chapter 2

Membership: Meetings, Quorum, Voting, Proxies

2.1 Membership.

The Association shall have such class or classes of membership as are set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated by this reference. Initially, the Association shall have two classes of membership, one class consisting of the Residential Class of Members, and one class consisting of the Non-Residential Class of Members, as more fully set forth in the Declaration. During the Declarant Control Period, the Association shall have a Declarant Member as described in the Declaration, which Declarant Member shall be a member of both the Residential Class of Members and the Non-Residential Class of Members.

If a Parcel has more than one owner, has more than one Sub-Unit, or is represented by a Parcel Association, the rights of membership, including attendance at meetings and exercise of voting rights, shall be exercised by a single duly-appointed representative ("**Member Delegate**"). Notice given to the Member Delegate of any Parcel shall constitute notice to (a) the Parcel Association (if any) for such Parcel, (b) to each member of, and to each Sub-Unit Owner and Parcel Owner within the jurisdiction of, such Parcel Association, and (c) each co-owner and holder of any interest in such Parcel or any Sub-Unit within such Parcel. Actions taken, instructions given, agreements made, and votes cast by any such Member Delegate shall be binding upon and shall be considered to be actions taken, instructions given, agreements made, and votes cast by and on behalf of each such Parcel Association, member of such Parcel Association, Sub-Unit Owner, Parcel Owner, and co-owner and holder of any interest in

any such Parcel or Sub-Unit. In the absence of designation of a Member Delegate for a Parcel having a Parcel Association, the president of the Parcel Association shall be deemed to be the Member Delegate for its Parcel and all Owners and holders of any interest in its Parcel and any Sub-Units within its Parcel. In the absence of designation of a Member Delegate for a Parcel having multiple owners, (a) notice to any one co-owner shall constitute notice to all co-owners, (b) the actions, instructions and agreements of any one such co-owner shall be binding on all co-owners of the Parcel, and (c) the Association, the Board, the Declarant, the Reviewer and their various officers, directors, members and partners may in their discretion disregard any conflicting votes, demands or instructions that they may receive from such co-owners.

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 from time to time 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 or Sub-Unit in Koa Ridge to a Person other than a Declarant Affiliate or Parcel Developer.

(b) **Annual Meetings.** After the first Association meeting, the Board shall schedule a regular annual meeting to occur within 90 days before or after the close of

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 of the Association. In addition, the President or the Secretary shall call a special meeting (a) if so directed by Board Resolution, or (b) upon written petition of Members representing at least ten percent of the total votes in the Association or (c) if so required by the terms of the Declaration.

(d) *Special Benefited Area Meetings.* In addition to meetings of its Members, the Association may also have meetings of Owners of Parcels and Sub-Units within a Special Benefited Area ("**Benefited Area Owners**") to consider matters pertaining to their Special Benefited Area ("**Benefited Area Meetings**"). The President may call Benefited Area Meetings. In addition, the President or the Secretary shall call a Benefited Area Meeting (a) if so directed by Board Resolution, or (b) upon written petition of Benefited Area Owners representing at least 15 percent of the total votes of the Special Benefited Area, or (c) if so required by the Declaration.

(e) *Open Meetings.* Association meetings shall be open to all members of the Association as defined in the Declaration ("**Member(s)**"). If a Parcel has more than one owner or is represented by a Parcel Association, it may have up to two representatives attend Association meetings in addition to the Parcel's Member Delegate, irrespective of the number of votes allocated to the Parcel. Attendance by such additional representatives shall not affect the number of votes allocated to any parcel or modify, restrict or otherwise affect the exercise of voting rights by any Member Delegate on behalf of its Parcel. The Board may regulate Members' participation in discussions at

meetings; provided that, at any regular or special meeting, Members must be given a reasonable opportunity to make comments during a designated time. If the meeting agenda is limited to specific topics, Members' comments may be limited to those topics.

Benefited Area Meetings shall be open to Owners of all Parcels and Sub-Units within the Special Benefited Area, but the rights and privileges of Sub-Unit Owners within the Special Benefited Area shall be exercised by the Member Delegates of the Parcel Associations to which such Sub-Unit Owners belong. Participation in Benefited Area Meetings may be regulated by the Board in the same manner as meetings of the Members of the Association.

(f) *Record Date for Member Meetings.* For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members, or in order to make a determination of such Members for any other lawful action, the Board may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than 70 days prior to the meeting of Members or the event requiring a determination of Members.

2.4 Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member entitled to vote at such meeting (via Member Delegate, as applicable) a written notice stating the place, day, and hour of the meeting. The notice shall also state the items on the agenda, including the general nature of and rationale for any proposed amendment to the Declaration or these By-Laws, any proposal for a Special Assessment, unless the authority for a Special Assessment is otherwise

provided for in the Governing Documents, and any proposal to remove an Owner Director (as defined in Section 3.3(b)). 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 14 but not more than 60 days before the date of such meeting.

Notices of Benefited Area Meetings shall be given to Benefited Area Owners in the same manner as notices of meetings of Members of the Association, and notices given to a Member Delegate shall constitute notice to each Benefited Area Owner represented by the Member Delegate. No business shall be transacted at any Benefited Area Meeting, except as stated in the notice of meeting.

2.5 Waiver of Notice.

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member (through its Member Delegate) may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed 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.

The provisions of this Section 2.5 shall also apply to Benefited Area Meetings.

2.6 Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, the Members 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. The Board shall provide notice to the Members of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

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

The provisions of this Section 2.6 shall also apply to Benefited Area Meetings.

2.7 Voting.

The voting rights with respect to the Members and Owners, as applicable, shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. Members or Member Delegates, as applicable, 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 in compliance with the Governing Documents and applicable law.

2.8 Proxies.

On any matter to be voted on by the Members, each Member entitled to vote may vote in person (if such Member is an individual) or by its Member Delegate (if such Member is a Parcel Association, corporation, general or limited partnership or limited liability company or if the voting rights pertain to a Parcel which has multiple owners or which has been divided into Sub-Units), or by proxy, subject to the limitations of Hawaii law and subject to any specific provision to the contrary in the Declaration or these By-Laws. On any matter to be voted on by Sub-Unit Owners, each Sub-Unit Owner entitled to vote shall exercise such right through its Parcel Association, which Parcel Association may cast such votes by its Member Delegate, in person or by proxy, subject to the limitations of Hawaii law and subject to any specific provision to the contrary in the Declaration or these By-Laws.

A proxy shall be valid for only a specified meeting of the Association, and any adjournments of such meeting, provided that (a) prior to adjournment the new date, time, or location is announced at such meeting; or (b) the Board determines the new date, time, and location for the adjourned meeting and provides notice to the Members pursuant to Section 2.6.

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 Member, Parcel and Parcel Association (as applicable) for which it is given. The proxy also shall contain the signature and printed name of the Member's or Parcel Association's duly authorized attorney-in-fact and must be filed with the Association's Secretary no later than 4:30 p.m. 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 Member or Member Delegate 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 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 a Member 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 Hawaii Planned Community Associations Act, Section 421J-4.

2.9 Quorum.

Except as these By-Laws, the Declaration, or the Articles may otherwise provide, the presence (in person, by Member Delegate or by proxy) of Members representing at least 25% of the total votes in the Association shall constitute a quorum at all Association meetings, and the vote of Members representing a majority of the total eligible votes cast at such meeting shall constitute the action of the Members.

With respect to Benefited Area Meetings, the presence (in person, by Member Delegate, or by proxy) of Benefited Area Owners representing at least 25% of the total votes of the Special Benefited Area shall constitute a quorum for all actions, and the vote by majority of Benefited Area Owners representing a majority of the total votes cast

shall constitute action of such Special Benefited Area.

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 Hawaii Planned Community Associations Act and that all Board Resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

The provisions of this Section 2.10 shall also apply to Benefited Area Meetings.

2.11 Action Without a Meeting.

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

The provisions of this Section 2.11 shall also apply to Benefited Area Meetings, and actions taken by Benefited Area Owners, provided that Sub-Unit Owners within the Special Benefited Area shall act through their respective Parcel Associations.

Chapter 3

Board of Directors: Composition, Selection, Meetings, Powers, Duties

A. Composition and Selection.

3.1 Governing Body; Qualifications.

Except as otherwise provided in the Governing Documents, the Board shall govern the Association's affairs. Each Director shall have one vote. Except in the case of Directors the Declarant Member appoints, each Director shall be a Parcel Owner, an officer of a Parcel Owner if the Parcel Owner is a corporation or an unincorporated association, a general partner of a Parcel Owner if the Parcel Owner is a partnership, or an officer, member or manager of a Parcel Owner if the Parcel Owner is a limited liability company, as the case may be.

No Parcel may have more than one representative on the Board at a time except (a) that in the case of Mixed Use Parcels that have memberships in both the Residential Class of membership ("**Residential Members**") and the Non-Residential Class of membership ("**Non-Residential Members**"), such Mixed Use Parcels may have one representative through the exercise of its rights as a Residential Member and one representative through its rights as a Non-Residential Member, and (b) in the case of Directors that the Declarant Member appoints. Notwithstanding the foregoing, any Parcel Owner owning multiple Parcels may have multiple representatives on the Board, not to exceed one representative per Parcel.

3.2 Number of Directors.

During the Declarant Control Period, the Board shall consist of no less than three and no more than nine Directors, as provided in Sections 3.3(a) and (b). After the

Declarant Control Period, the Board shall consist of up to nine Directors, as provided in Section 3.3(c).

3.3 Selection of Directors; Term of Office.

(a) **Initial Board.** Until the first meeting of the Members, the Board of Directors shall consist of up to five Directors appointed by the Declarant Member. The initial Board of Directors is identified in the Articles of Incorporation. Such Directors shall serve until their successors are appointed as provided in this Section 3.3.

(b) **Directors During the Declarant Control Period.** Except as otherwise provided in this subsection, after the first meeting of the Association, the Declarant Member may appoint, remove, and replace a majority of the members of the Board, up to five Directors at the Declarant Member's sole discretion, until expiration of the Declarant Control Period. During such period, the Members other than the Declarant Member shall be entitled to elect up to four Directors according to the following schedule (Directors elected by the Members other than the Declarant Member are referred to as "**Owner Directors**"):

- During such period as there is one Residential Member, such Residential Member shall appoint one Director. Once the association has at least two Residential Members, two Directors shall be elected by the Residential Members. Directors so appointed or elected by the Residential Members are referred to as "**Residential Directors**".

- During such period as there is one Non-Residential Member, such Non-Residential Member shall appoint one Director. Once the Association has at least two Non-Residential Members, two Directors shall be elected by the Non-Residential Members. Directors so appointed or elected by the Non-Residential Members are referred to as “Non-Residential Directors”.

The number of types and votes assigned to particular Members and their Parcels shall be calculated in accordance with the formula and provisions set forth in the Declaration, as amended from time to time.

During such period as there is one Residential Director and/or one Non-Residential Director on the Board, the single Residential Director and/or the single Non-Residential Director, as applicable, shall serve for one year terms. Once the Board has two Residential Directors and/or two Non-Residential Directors, the terms of the two Residential Directors and/or the two Non-Residential Directors, as applicable, shall be staggered such that the term of one Residential Director and one Non-Residential Director shall expire each year and one Residential Director and one Non-Residential Director shall be elected each year. At the first meeting of the Association at which there are two or more Residential Members, one Residential Director shall be elected for a term of one year, and one Residential Director shall be elected for a term of two years. Thereafter, each Residential Director elected pursuant to this Section shall be elected for a term of two years. At the first meeting of the Association at which there are two or more Non-

Residential Members, one Non-Residential Director shall be elected for a term of one year, and one Non-Residential Director shall be elected for a term of two years. Thereafter, each Non-Residential Director elected pursuant to this Section shall be elected for a term of two years. Each Owner Director shall hold office until his or her successor has been elected as provided in this Section or until the occurrence of the event described in Subsection 3.3(c)(i). Owner Directors may not serve more than three consecutive two-year terms.

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

(i) After expiration of the Declarant Control Period, the Board shall consist of Owner Directors elected by the Members as set forth in this Subsection 3.3(c). Within 45 days after expiration of the Declarant Control Period, the President shall call for an election by which the Members shall be entitled to elect nine Owner Directors as follows:

- Five Residential Directors shall be elected by the Residential Members.
- Four Non-Residential Directors shall be elected by the Non-Residential Members.

The number and types of votes assigned to particular Members and their Parcels shall be calculated in accordance with the formula and provisions set forth in the Declaration, as amended from time to time.

(ii) The terms of the Residential Directors and Non-Residential Directors shall be staggered such that the terms of two or three Residential Directors and two Non-Residential Directors shall

expire each year, and two or three Residential Directors and two Non-Residential Directors shall be elected each year. Two of the Residential Directors and two of the Non-Residential Directors elected at the first annual meeting following the expiration of the Declarant Control Period shall serve terms of one year each. Three of the Residential Directors and two of the Non-Residential Directors elected at the first annual meeting following the expiration of the Declarant Control Period shall serve for terms of two years each. Thereafter, upon expiration of the term of office of each Owner Director the Members entitled to elect such Owner Director shall be entitled to elect a successor to serve a term of two years. Each Owner Director shall hold office until his or her successor has been elected as provided in this Section. Owner Directors may not serve more than three consecutive two-year 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 submit a request for nomination to the Board accompanied by a statement for any position to be filled by a vote of the Residential Members or Non-Residential Members. In addition, prior to distributing proxies which include the election of directors, the Board shall post notice of its intent to distribute such proxies in prominent locations within Koa Ridge at least 21 days prior to its distribution of the proxies. The Board shall accept requests for nomination accompanied by a statement received by the Board within seven days of such posted notice of intent to distribute proxies.

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 chairperson, who shall be a Director, and two or more Parcel Owners or representatives of Parcel Owners who may, but need not be, Directors.

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. The Nominating Committee shall nominate separate slates for the directors to be elected from the Residential Class of Members and Non-Residential Class of Members within Koa Ridge. 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 Members 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 Hawaii law. Each Member may cast all votes assigned to its Parcel for each position to be filled from any slate of candidates on which such Member is entitled to vote. Cumulative voting shall be permitted in all elections of Directors.

3.5 Removal of Directors and Vacancies.

Any elected Owner Director may be removed, with or without cause, by a

majority vote of the Member(s) entitled to vote to elect such Owner Director, provided that an Owner Director may not be removed if the number of votes sufficient to elect such Owner Director under cumulative voting is voted against the Owner Director's removal. Any Owner Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of an elected Owner Director, the Member(s) entitled to elect the removed Director shall elect a successor for the remainder of the term of such Owner Director.

In the event of the death, disability, or resignation of an elected Owner Director, the remaining Directors may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Member(s) entitled to fill such directorship shall elect a successor for the remainder of the Owner Director's term.

Any appointed Owner Director may be removed, with or without cause, by the Member(s) entitled to appoint such Owner Director.

In the event of the removal, death, disability, or resignation of an appointed Owner Director, the Member(s) entitled to appoint such Owner Director shall appoint a successor for the remainder of the Owner Director's term.

At any meeting at which a quorum is present, a majority of the Directors (excluding the Owner Director under consideration) may to the extent permitted by applicable law remove any Owner Director who has two consecutive unexcused absences from Board meetings. The remaining Directors may appoint a successor to fill the removed Owner Director's vacancy until the next annual meeting of the Association, at which time the Member(s) entitled to fill such

directorship shall elect a successor for the remainder of the Owner Director's term.

In the event that any Director is determined to have breached the Standard of Care set forth in Section 6.1 of these By-Laws, a majority of the remaining Directors may to the extent permitted by applicable law and subject to the procedures set forth in Section 8.4, declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Member(s) entitled to fill such directorship shall elect a successor for the remainder of the Owner Director's term.

The foregoing removal and filling of vacancy process of this Section shall not apply to Directors the Declarant Member appoints. The Declarant Member may remove and replace any Director appointed by the Declarant Member at any time, with or without cause, and shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a Director appointed by the Declarant Member.

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.

Special meetings of the Board may be called by the President or Secretary on three business days' notice to each Director, delivered personally or by mail, facsimile, or electronic mail transmission. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice, if practicable, on written request of at least two Directors. Notwithstanding the foregoing, in the case of an emergency, as determined by the President, a special meeting of the Board may be called by the President on eight hours' notice to each Director.

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 telephone 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 method at least 72 hours before the time set for the meeting, except in the case of

an emergency special meeting as provided in Section 3.8.

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, or (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 may participate in a Board 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 during the Declarant Control Period, a majority of the then total number of Directors, excluding any vacant Board positions at the time of the meeting, 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 Hawaii law, the Declaration, the Articles or these By-Laws specifically provide otherwise. After the Declarant Control Period, a majority of the then total number of Directors (excluding any vacant Board positions at the time of the meeting) shall constitute a quorum for the

transaction of business; provided, however, that at least one Residential Director and at least one Non-Residential Director must be present for a quorum. 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 Hawaii law, the Declaration, the Articles or these By-Laws specifically provide otherwise.

A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure 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 Board Resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all Board 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 Members entitled to vote on Association matters, through their Member Delegates, as applicable. Members (acting through their Member Delegates, as applicable) 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 length of 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 Hawaii law. Notwithstanding the above, the Board may adjourn and reconvene in executive session 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, or as otherwise provided in the Governing Documents.

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 all of the Directors sign a written consent, setting forth the action so taken and such consent is included in the minutes filed with the corporate records reflecting the action taken. Such consent shall have the same force and effect as a unanimous vote.

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 Hawaii law either (i) do not allow the Board to do or cause to be done on the Association's behalf, or (ii) require to be done and exercised by the membership.

Without limiting the generality of the foregoing, the Board shall have the authority and power to monitor the activities of each Association Committee and to take such actions as the Board deems necessary or appropriate to ensure each Association Committee performs its duties and responsibilities as set forth in the Governing Documents.

3.16 Duties.

The Board's duties shall include all actions necessary or advisable to carry out the responsibilities of the Board in accordance with the Governing Documents and applicable law, including, without limitation:

(a) preparing and adopting, in accordance with the Declaration, the annual General Common Expense Budget and establishing each Owner's share of the estimated General Common Expenses for the coming year;

(b) levying and collecting assessments from the Owners, Parcel Associations, and other Persons responsible for paying or collecting a share of expenses pursuant to the Declaration or any agreement or recorded covenant;

(c) providing for the operation, use, care, up-keep, improvement, and maintenance of the Area of Common Responsibility consistent with the Koa Ridge Standard;

(d) making and amending Rules in accordance with the Declaration;

(e) 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;

(f) 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;

(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 and Area of Common Responsibility 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 Members concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(j) monitoring the activities of each Association Committee and taking such actions as the Board deems necessary or appropriate to ensure each Association Committee performs its duties and responsibilities as set forth in the Governing Documents;

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

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

(m) keeping a detailed accounting of the Association's receipts, expenditures and activities;

(n) making available to any prospective purchaser of a Parcel or Sub-Unit, any Parcel Owner, any Sub-Unit Owner, and officers and directors of the Parcel Associations 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, upon payment of a reasonable fee to cover reproduction costs;

(o) providing timely written notice of delinquencies or proposed sanctions to Eligible Holders in accordance with Chapter 16 of the Declaration;

(p) permitting utility suppliers to use portions of the Common Area and other areas within the Association's control as reasonably necessary to the ongoing development or operation of the Community; and

(q) indemnifying a Director, officer or Association Committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Hawaii law or the Governing Documents.

This section 3.16 shall not preclude the Board from providing broader indemnification than required by law, to the extent that such broader indemnification is permitted by Hawaii law and the Governing Documents.

3.17 Conflicts of Interest; Code of Ethics.

Unless otherwise approved by a majority of the other Directors under the provisions of this Section, 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 his or her term expires. For the purposes of this Section, "transact business" shall include any transaction with the Association in which (a) an Owner Director has an interest in his or her individual capacity; (b) another entity in which the Owner Director has a material interest (or in which the Owner Director is a general partner) is a party to the transaction; or (c) another entity of which the Owner Director is a director, officer, or trustee is a party to the transaction.

An Owner Director shall promptly disclose in writing to the Board any actual or potential conflict of interest relative to his or her performance as a Director. An Owner Director's failure to make such disclosure shall be grounds for censure, removal from committees, or other appropriate sanction as determined by majority vote of the other Directors.

An Owner Director may transact business with the Association or an Association contractor if the transaction receives the affirmative vote of a majority of the Directors on the Board who have no direct or indirect interest in the transaction, provided that a transaction may not be authorized, approved or ratified by a single Director.

Notwithstanding the above, Directors appointed by the Declarant Member may be employed by or otherwise transact business with the Declarant and its affiliates, and the Declarant and its affiliates may transact

business with the Association and its contractors.

The Board shall create and adopt a written “**Code of Ethics**” applicable to all Directors, officers, and Association Committee members. 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 Director, officer, and Association Committee member to conduct himself or herself in a manner consistent with the Board standards described in Section 6.1.

Chapter 4

Officers

4.1 Officers.

The Association's officers shall include a President, Vice President, Secretary, and Treasurer. The President, Vice President and Secretary shall be elected from among the Directors; the Treasurer may, but need not, be a Director. The Board may appoint such additional officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such additional officers to have such authority and perform such duties as the Board prescribes. If appointed, such additional officers may, but need not, be Directors. 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 Members, 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.

In the event that any officer breaches the Standard of Care, the Board may to the extent permitted by applicable law and subject to the procedures set forth in Section 8.4 of these By-Laws, declare a vacancy in office and appoint a successor to fill the vacancy for the unexpired portion of the officer's 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 Hawaii; (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) ***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 member of the Board to do so on an interim basis. The Vice President shall also have all of the general powers and duties (i) which are incident to the office of Vice President of a corporation organized under the laws of the State of Hawaii; and (ii) as may be assigned from time to time by the Board or by the President.

(c) ***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 as provided to the Board by Parcel Owners and Parcel Associations pursuant to the Declaration, which records the Association is entitled to rely upon to fulfill its notice obligations under these By-Laws or the Declaration; and (iv) in general, performs all duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The Secretary may delegate all or part of the forgoing duties to a management agent.

(d) *Treasurer.* The Treasurer shall have primary responsibility for preparing the budget as provided for in the Declaration 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) oversees the preparation of 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 of a corporation organized under the laws of the State of Hawaii.

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 Association's committees will include, as and to the extent provided in the Declaration, an Architectural Review Committee, a Residential Committee, a Non-Residential Committee, Special Benefited Area Committees, and may include such additional committees as may be created and appointed in accordance with Section 5.8, as and to the extent set forth in the Declaration (each an "**Association Committee**" and collectively the "**Association Committees**").

Except in the case of Association Committee members the Declarant Member appoints, and except for the Architectural Review Committee, each Association Committee member shall be a Parcel Owner, an officer of a Parcel Owner if the Parcel Owner is a corporation or an unincorporated association, a general partner of a Parcel Owner if the Parcel Owner is a partnership, or an officer, member or manager of a Parcel Owner if the Parcel Owner is a limited liability company, as the case may be.

No Parcel may have more than one representative on any single Association Committee at a time except (a) that in the case of Mixed Use Parcels that have both Residential and Non-Residential uses, such Mixed Use Parcels may have one representative through the exercise of its rights as a Residential Member and one representative through its rights as a Non-Residential Member on any Association Committee at a time, and (b) in the case of Association Committee members the Declarant Member appoints. Notwithstanding the foregoing, any Parcel Owner owning multiple Parcels may have multiple representatives on any Association

Committee, not to exceed one representative per Parcel.

5.2 Quorum of Association Committees.

In the conduct of its duties and responsibilities, each Association Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3.9, 3.10, and 3.11.

5.3 Removal of Association Committee Members.

(a) *Association Committee Members Elected by Vote of the Members or a Class or Subclass of Members.* At any meeting of the Board at which a quorum is present, a majority of the Board (excluding the Association Committee member under consideration) may remove any member of an Association Committee who was elected by a vote of the Members or a Class or Subclass of Members and who (a) has two consecutive unexcused absences from Association Committee 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 which he or she represents 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 on any Association Committee until the next annual meeting of the Members, at which time to the extent applicable the Members or Class or Subclass of Members entitled to fill such Association Committee membership shall

elect a successor for the remainder of the term.

In addition, any Association Committee member elected by vote of the Members or a Class or Subclass of Members may be removed, with or without cause, either by a majority of the Directors or by majority vote of the Members or Class or Subclass of Members entitled to vote to elect such Association Committee member, as applicable, provided that an Association Committee member may not be removed if the number of votes sufficient to elect such Association Committee member under cumulative voting is voted against the Association Committee member's removal. Any Association Committee member whose removal is sought by a vote of the Board or of the Members or a Class or Subclass of Members shall be given notice prior to any meeting called for that purpose. Upon such removal of an Association Committee member, to the extent applicable the Members, Class or Subclass of Members entitled to elect the removed Association Committee member shall elect a successor for the remainder of the term of such Association Committee member, and in all other instances the Directors shall appoint a successor for the remainder of the term of the removed Association Committee member.

In the event of the death, disability, or resignation of an Association Committee member who was elected to an Association Committee by the Members or a Class or Subclass of Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time to the extent applicable the Members or Class or Subclass of Members entitled to fill such Association Committee membership shall elect a successor for the remainder of the term, and in all other instances the Directors shall appoint a successor for the remainder of the term.

In the event that any Association Committee member breaches the Standard of Care, the Board may to the extent permitted by applicable law and subject to the procedures set forth in Section 8.4 of these By-Laws, declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time to the extent applicable the Members or Class or Subclass of Members entitled to fill such Association Committee membership shall elect a successor for the remainder of the term, and in all other instances the Directors shall appoint a successor for the remainder of the term.

(b) Association Committee Members Serving on an Association Committee Due to Their Position on the Board of Directors. Ex Officio Association Committee members serving on an Association Committee due to their position on the Board of Directors shall automatically be removed from the Association Committee, and replaced by their successor on the Board of Directors, if removed as a Director on the Board of Directors under Section 3.5.

(c) Association Committee Members Appointed by the Declarant Member. The Declarant Member shall appoint a successor to fill any vacancy on any Association Committee resulting from the death, disability, resignation, or removal of an Association Committee member appointed by the Declarant Member.

5.4 Residential Committee.

As set forth in the Declaration, a Residential Committee of the Board, consisting of up to five members, shall annually prepare the Residential Common Expense Budget and assist in the administration, operation and management of the Residential Area of Common Responsibility and in the regulation and use

of the Residential Parcels, Restricted Residential Parcels, and the residential units and apartments within the Mixed Use Parcels.

(a) Residential Committee During the Declarant Control Period. During the Declarant Control period, the Residential Directors elected by the Residential Members, if any, shall sit on the Residential Committee. The Declarant Member may appoint, remove, and replace up to three additional members of the Residential Committee, at the Declarant Member's sole discretion, until the expiration of the Declarant Control Period.

(b) Residential Committee After the Declarant Control Period. After the expiration of the Declarant Control Period, the Residential Directors shall comprise the Residential Committee.

5.5 Non-Residential Committee.

As set forth in the Declaration, a Non-Residential Committee of the Board, consisting of up to seven members, shall annually prepare the Non-Residential Common Expense Budget and assist in the administration, operation and management of the Non-Residential Area of Common Responsibility and in the regulation and use of the Non-Residential Parcels and the non-residential units and spaces within the Mixed Use Parcels.

(a) Non-Residential Committee During the Declarant Control Period. Except as otherwise provided in this Subsection, the Declarant Member may appoint, remove, and replace four members of the Non-Residential Committee until expiration of the Declarant Control Period. During such period, the Non-Residential Class of Members shall be entitled to

annually elect up to three members of the Non-Residential Committee as follows:

- Provided that there is at least one Member in such Subclass, one member of the Non-Residential Committee shall be elected by Members belonging to the Industrial Subclass, as defined in the Declaration.
- Provided that there is at least one Member in such Subclass, one member of the Non-Residential Committee shall be elected by Members belonging to the Commercial Subclass, as defined in the Declaration.
- Provided that there is at least one Member in such Subclass, one member of the Non-Residential Committee shall be elected by Members belonging to the Health Care Subclass, as defined in the Declaration.

The Non-Residential Committee members elected by any Non-Residential Subclass of Members shall be elected for one-year terms, and no such Non-Residential Committee member shall serve more than six consecutive one-year terms.

(b) Non-Residential Committee After the Declarant Control Period. After the expiration of the Declarant Control Period, the Non-Residential Committee members shall consist of up to five members. Two Non-Residential Committee members shall be annually appointed by the Non-Residential Directors from among the then-serving Non-Residential Directors. Up to three members of the Non-Residential

Committee shall be elected annually by the Non-Residential Class of Members as follows:

- Provided that there is at least one Member in such Subclass, one member of the Non-Residential Committee shall be elected by Members belonging to the Industrial Subclass, as defined in the Declaration.
- Provided that there is at least one Member in such Subclass, one member of the Non-Residential Committee shall be elected by Members belonging to the Commercial Subclass, as defined in the Declaration.
- Provided that there is at least one Member in such Subclass, one member of the Non-Residential Committee shall be elected by Members belonging to the Health Care Subclass, as defined in the Declaration.

The Non-Residential Committee members elected by any Non-Residential Subclass of Members shall be elected for one-year terms, and no such Non-Residential Committee member shall serve more than six consecutive one-year terms.

5.6 Architectural Review Committee.

Upon Declarant's delegation of authority to the Association or upon expiration or termination of Declarant's rights under Subsection 5.2(a) of the Declaration, the Board shall appoint an Architectural Review Committee to assume jurisdiction over matters within the scope of

the delegated authority or Chapter 5 of the Declaration, respectively, as provided in the Declaration.

5.7 Special Benefited Area Committees.

Special Benefited Area Committees shall be designated as provided in the Declaration and Supplements. Each designated Special Benefited Area Committee shall (i) annually prepare a Special Benefited Area Expense Budget, (ii) assist in the administration, operation, management, regulation and use of services to its Special Benefited Area as provided in the Declaration, and (iii) assist with the maintenance and operation of the Special Use Area, if any, assigned to its Special Benefited Area.

(a) *Special Benefited Area Committees During the Declarant Control Period.* During the Declarant Control Period, the Declarant Member shall determine the size of and may appoint the members of each Special Benefited Area Committee to represent and act on behalf of its respective Special Benefited Area.

(b) *Special Benefited Area Committees After the Declarant Control Period.* After the expiration of the Declarant Control Period, for all Special Benefited Area Committees the Parcel Owners and Sub-Unit Owners (acting through their respective Parcel Association(s)) within each Special Benefited Area shall determine the size of and shall elect their respective Special Benefited Area Committees; provided that each Special Benefited Area Committee shall include a representative appointed by the Declarant until the expiration of the Development and Sale Period.

The election of Special Benefited Area Committee members (other than

committee members appointed by Declarant) may be held by written ballot sent to all Parcel Owners and Sub-Unit Owners (through their respective Member Delegates or Parcel Associations, as applicable) entitled to vote on matters relating to the Special Benefited Area, or at a meeting of all such Parcel Owners and Sub-Unit Owners (acting through their Parcel Associations) within the Special Benefited Area, as the Board determines. The Board or any Owner entitled to vote on matters relating to a Special Benefited Area may nominate candidates for election to the respective Special Benefited Area Committee. The candidates receiving the most votes shall be elected to fill the open positions in descending order of received votes until all of the open positions are filled. Cumulative voting shall be permitted in all elections of committee members.

Special Benefited Area Committee members (excluding committee members appointed by Declarant) shall be elected for staggered terms of two years, or until their successors are elected, with one-half of the committee members elected each year. At the first election of Special Benefited Area Committee members, half of the Special Benefited Area Committee members shall be elected for a term of one year, and half of the Special Benefited Area Committee members shall be elected for a term of two years. Thereafter, each Special Benefited Area Committee member elected pursuant to this Section shall be elected for a term of two years. No Special Benefited Area Committee member, other than committee members appointed by the Declarant, may serve more than three consecutive two-year terms, provided that a Special Benefited Area Committee member who has served three consecutive two-year terms shall become re-eligible for service after a break in service of one year or more. The members of each Special Benefited Area 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 Special Benefited Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.8, 3.9, 3.10, and 3.11. Meetings of a Special Benefited Area Committee shall be open to all Special Benefited Area Owners, acting through their respective Member Delegates, as applicable.

5.8 Other Committees.

The Board may, in the manner provided in the Hawaii Planned Community Associations Act, appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by Board Resolution. Each such committee shall operate in accordance with the terms of such Board Resolution and this Chapter 5.

5.9 Committee Rules.

Any Association Committee may adopt rules, internal policies and/or procedures regarding such committee's governance and operations, provided that such rules, internal policies and/or procedures are not inconsistent with any of the Declaration, Supplements, the Articles of Incorporation, these By-Laws, the Design Guidelines the Rules, or Board Resolutions.

Chapter 6

Standards of Conduct, Liability and Indemnification

6.1 Standards for Directors and Officers.

The Directors and officers shall exercise their powers in accordance with the Standard of Care described below, and shall adhere to the procedures established in the Governing Documents.

In performing their duties, Directors and officers shall be insulated from liability to the maximum extent provided for directors and officers of corporations under Hawaii 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 Association Committee to which they are appointed or elected, in accordance with the Code of Ethics, with the standard of care required by the other Governing Documents and applicable Law, in good faith and in a manner that is consistent with the Director or officer's duty of loyalty to the Association, in a reasonable, fair, nondiscriminatory manner, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director or officer reasonably believes to be in the best interests of the Association (the "**Standard of Care**"). A Director or officer 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 Hawaii law.

6.2 Liability.

(a) A Director or officer shall not be personally liable to the Association, any Member, any Parcel Owner, any Sub-Unit Owner, or any other Person for any action taken or not taken as a Director or officer if

the Director or officer has acted in accordance with Section 6.1.

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

(i) complies with the Code of Ethics and the Standard of Care;

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

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

(iv) 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 such directors or officers have by virtue of their ownership or occupancy of property within Koa Ridge, and except for Directors appointed by the Declarant Member with respect to the transaction of business between the Declarant and the Association); and

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

(c) The Association's officers and Directors 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 accordance with the Standard of Care and in good faith on the Association's behalf.

6.3 Indemnification.

Subject to the limitations of Hawaii law, the Association shall indemnify, defend, and hold harmless Declarant 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 Declarant may be a party by reason of having appointed or elected any officer or Director of the Association.

Subject to the limitations of Hawaii law, the Association shall indemnify, defend, and hold harmless every officer and director 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 having been appointed or elected, or being or having been an officer or director, 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 Hawaii law or the standard set forth in Section 6.2; 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 any other Person; or

(iv) receipt of an improper personal benefit.

These rights to indemnification shall not be exclusive of any other rights to which Declarant or any present or former officer or Director 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 Committee Members.

Members of the Association Committees who are not officers or Directors shall adhere to the same standards of conduct, shall enjoy and be entitled to the same benefits, including limits on liability, and shall be entitled to the same rights of indemnification and defense, protection by liability insurance, and reimbursement of expenses, as the officers and Directors as set forth in Sections 6.1 to 6.3 above.

Chapter 7

Management and Accounting

7.1 Compensation of Directors and Officers.

The Association shall not compensate Directors, officers or Association Committee members for acting as such unless Members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any Director, officer or Association Committee member for expenses he or she incurs on behalf of the Association upon approval of a majority of the Board (excluding the individual being reimbursed). Nothing herein shall prohibit the Association from compensating a director, officer or Association Committee member, or any entity with which a Director, officer or Association Committee member is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a Director, officer or Association Committee member pursuant to a contract or agreement with the Association. However, such Director, officer or Association Committee member 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 individual, must approve such contract.

Notwithstanding the foregoing, members of the Architectural Review Committee may be compensated by the Association in such manner and amount as the Board may deem appropriate under Subsection 5.2(b) of the Declaration.

7.2 Advancement of Expenses for Directors and Officers.

In accordance with the procedures and subject to the conditions and limitations set forth by Hawaii 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 Association 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 Association Committee member of the Association.

7.3 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 these By-Laws. The Board may employ the Declarant or any Declarant Affiliate as managing agent or manager.

The Board may delegate to one of the Directors 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; anything 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.

7.4 Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by Board 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 month following the year in which the first Parcel or Sub-Unit is sold and closed to a Person other than the Declarant or a Declarant Affiliate, financial reports shall be prepared for the Association at least monthly containing:

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

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

(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 month; and

(v) a delinquency report listing all Owners 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 such dates as the Board may establish).

(c) Association financial reports shall be made available for review as and in

the manner provided in the Hawaii Planned Community Associations Act.

7.5 Borrowing.

The Association shall have the power to borrow money for any legal purpose.

However, 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: (a) if said discretionary capital improvements are a Universal Residential Common Expense or a Standard Residential Common Expense, Residential Committee consent shall be required; (b) if said discretionary capital improvements are a Non-Residential Common Expense, Non-Residential Committee consent shall be required; (c) if said discretionary capital improvements are a General Common Expense, Board consent shall be required. In addition, any such borrowing during the Declarant Control Period shall be subject to Declarant's written consent.

7.6 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 Koa Ridge. The Board's consent shall be required for any common management agreement.

7.7 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 Board Resolution.

Chapter 8

Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents, and to impose Specific Assessments against Parcel Owner(s) and their Parcel(s), or Sub-Unit Owner(s) and their Sub-Unit(s), for any purpose described in Sections 12.4(d), (e), (f) or (g) of the Declaration. The Board shall comply with the following procedures prior to imposition of sanctions or a Specific Assessment due to any violation of the Governing Documents or for any Specific Assessments imposed pursuant to Sections 12.4(d), (e), (f) or (g) of the Declaration.

8.1 Notice and Response.

The Board or its delegate shall serve the alleged violator or responsible party (such alleged violator or alleged responsible party being referred to herein as the “**Responding Party**”) with written notice (a) describing the nature of the alleged violation or circumstances supporting the proposed Specific Assessment, (b) specifying the proposed sanction or amount of proposed Specific Assessment, (c) notifying the Responding Party that it has 20 days to present a written request for a hearing to the Board, and (d) containing a statement that the proposed sanction may be imposed or Specific Assessment may be assessed as contained in the notice unless the Responding Party requests a hearing within 20 days of the notice.

The Responding Party shall have 20 days to respond to the notice of the proposed sanction or Specific Assessment in writing, stating (i) whether the alleged violation has been cured, and (ii) whether the Responding Party requests a hearing regarding the proposed sanction or Special

Assessment, or agrees to the imposition of the proposed sanction or Specific Assessment without a hearing.

A written appeal or request for a hearing that has not been received by the Board within 20 days of the effective date of the notice under Subsection 9.5(c) shall not be considered by the Board.

8.2 Hearing.

If the Responding Party requests a hearing within the allotted 20-day period, the hearing shall be held before the Board in executive session. The Responding Party shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board shall contain a written statement of the results of the hearing (i.e., the Board’s decision) and the sanction or Specific Assessment, if any, to be imposed.

If a timely request for a hearing is not made, the sanction or Specific Assessment stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed sanction or Specific Assessment if the violation or damage is cured and loss is repaid within the 20-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 or to assess a future Specific Assessment.

8.3 Parcel Owners and Sub-Unit Owners.

Parcel Owners and Sub-Unit Owners are jointly and severally liable for the actions of violators as provided in Chapter 8 of the Declaration. To the extent that the Board seeks to hold any Parcel Owner liable for the

actions of its Occupants or Sub-Unit Owners or any Sub-Unit Owner for the actions of its Occupants, the Board shall follow the same procedures for notice, response, hearing and appeal, and the Parcel Owner or Sub-Unit Owner shall be entitled to the same rights as the Responding Party set forth in Sections 8.1 and 8.2.

8.4 Breaches of Standard of Care.

To the extent that the Board or remaining Directors, as applicable, seek to remove any Director, officer, or Association Committee member from office because of a breach or alleged breach of the Standard of Care, the Board or remaining Directors, as applicable, shall follow the same procedures for notice, response, hearing and appeal in this Chapter 8, and the Director, officer, or Association Committee member shall be entitled to the same rights as the Responding Party set forth in Sections 8.1 and 8.2.

Chapter 9

Miscellaneous

9.1 Right of Declarant Member to Disapprove Actions.

During the Declarant Control Period, the Declarant Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any Association Committee which, in the Declarant Member's sole judgment, would tend to impair rights of the Declarant or Parcel Developers under the Declaration or these By-Laws, interfere with development or construction of any portion of the Community, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

(a) **Notice.** The Association shall give the Declarant Member written notice of all meetings of the membership, the Board, and Association Committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Declarant Member has registered with the Association. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Declarant Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval

set forth herein. The Declarant Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Declarant Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Declarant Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Declarant Member shall not use its right to disapprove to reduce the level of services below that which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

9.2 Fiscal Year.

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

9.3 Parliamentary Rules.

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

9.4 Books and Records.

(a) ***Inspection by Members.*** The Board shall make available on 24-hour loan or for inspection and copying by any Parcel Owner entitled to vote on Association matters, or the duly appointed representative of the Parcel Owner, 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 including the most current financial statement of the Association, the minutes of meetings of the Members, the Board, and Association Committees, Association insurance policies, and any other records as required by Hawaii law. The Board shall provide for such inspection to take place if the Parcel Owner gives the Association written notice or a written demand at least 5 business days before the date on which the Parcel Owner wishes to inspect and copy the documents at the Association's office or at such other place within Koa Ridge as the Board shall designate or as otherwise required pursuant to the Hawaii Planned Community Associations Act. The Association may charge a reasonable fee to cover its administrative and reproduction costs.

(b) ***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 and any related administrative services.

(c) ***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 at the Association's expense. 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 Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Declaration 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 a Parcel Owner other than a Parcel Association, at the address, telephone facsimile number, or e-mail address which the Parcel Owner has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Parcel of such Parcel Owner, provided that in the case of multiple co-Owners of a Parcel, notice to any one such co-Owner shall constitute notice to all co-Owners;

(ii) if to a Parcel Association, the Sub-Unit Owners who are members of, or subject to the jurisdiction of, a Parcel Association, the board of directors of a Parcel Association, or a committee or officer of a Parcel Association, at the address, facsimile number, or e-mail address of the principal office of the Parcel Association or

its managing agent, or at such other address as the Parcel 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 Members pursuant to this Section; or

(iv) if to the Declarant or the Declarant Member, at the Declarant's or Declarant Member's principal address as it appears on the records of the State of Hawaii Department of Commerce and Consumer Affairs, or at such other address as the Declarant 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 the Board.** The Board may amend these By-Laws by majority vote of all members of the Board or by written

consent, or any combination thereof, except that any amendment which would terminate all members or a class or subclass of members or redeem or cancel all memberships or any class or subclass of membership shall require the vote of two-thirds of each class or subclass of members present at a duly noticed meeting of the members at which the amendment is voted upon. In addition, during the Declarant Control Period, any such amendment shall also require the prior written consent of the Declarant Member.


(b) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon the later of (i) approval by the Board, or (ii) consent of the Declarant Member if during the Declarant Control Period, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its effective date, 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.

CERTIFICATE OF SECRETARY

I certify that:

1. I am the Secretary of the Koa Ridge Owners Association.
2. The attached By-Laws are the By-Laws of Koa Ridge Owners Association adopted by the Board of Directors on July 21, 2020.

DATED: July 21, 2020


Name: Austin Hirayama

Secretary