



R-991 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 DEC 14, 2004 02:00 PM  
 Doc No(s) 2004-252102



/s/ CARL T. WATANABE  
 REGISTRAR OF CONVEYANCES

21 2/2 22

AFTER RECORDATION RETURN BY:  X  MAIL   PICK-UP

Steven R. Lee, Esq.  
 4473 Pahe'e Street  
 Suite L  
 Lihue, HI 96766

Pages to record: 21

TITLE OF DOCUMENT: BYLAWS OF KŪLANA AND  
 CONDOMINIUM MAP NO.  3902

PARTIES TO THE DOCUMENT:

FEE OWNER: KAPAA 382, LLC, a Hawaii Limited Liability Company

PROPERTY DESCRIPTION: R.P 7373,  
 LCA 8559-B, Apana 42 to Lunalilo, Kapaa,  
 Waipouli, Kawaihau, Island and County of  
 Kauai, State of Hawaii

DOCUMENT NO.: 99-082061

TMK #: (4) 4-3-3: 005, 021, 022, and  
 Remnant 7 (4) 4-3-3-005 (por.)

**BYLAWS OF KŪLANA  
 AND CONDOMINIUM MAP NO.  3902**

These Bylaws apply to the above-named Condominium Project (herein called the "Project") as described in and created by the Declaration of Condominium Property Regime (herein called the "Declaration") to be recorded concurrently herewith, and to all present and future owners, and occupants of all Condominium Units of the Project and persons who shall at any time use the Project.

WHEREAS, KAPAA 382, LLC, a Hawaii Limited Liability Company, is the owner in fee simple of the real property affected by this document, as described in that certain Declaration of

Condominium Property Regime for "KŪLANA" (hereinafter the "Project") being recorded concurrently herewith, which Declaration creates the said condominium project; and

WHEREAS, FEE OWNER is acting as the "Developer," as described in the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, to develop a condominium on the property (FEE OWNER, is sometimes hereinafter referred to as the "Developer").

NOW, THEREFORE, in order to govern the operation of said Project, said Fee Owner and Developer hereby adopt these Bylaws of the Association of Condominium Owners in accordance with Section 514A-81, et seq. of the Hawaii Revised Statutes. These Bylaws apply to all present and future owners, tenants and occupants of all Units of the Project and all other persons who shall at any time use the Project.

## **ARTICLE I ASSOCIATION**

### **SECTION 1.1. Qualification.**

The Owner of each Unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of the Unit ceases for any reason, at which time his membership in the Association shall automatically cease. Provided, however, that to the extent a lease on a Unit so provides, the lessee may exercise rights otherwise reserved to the Owner thereof. This shall apply only if a copy of the lease is filed with the Board of Directors of the Association, herein called the "Board." If a Unit is subject to a recorded agreement of sale, a copy of which has been filed with the Association in accordance with Section 5.7 hereof, the vendee thereunder shall be deemed to be the Owner of the Unit, subject to any vendor's rights preserved pursuant to Section 514A-83 of the Hawaii Revised Statutes.

### **SECTION 1.2. Place of Meetings, Rules.**

Meetings of the Association shall be held at the Developer's offices until such time as there may be improvements located on the Project sufficient to hold meetings there. Thereafter the meetings will be held on the Project or at another suitable place within the State of Hawaii convenient to the Owners, as may be designated by the Board. Meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

### **SECTION 1.3. Annual Meetings.**

The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first apartment conveyance, or as otherwise required by law; provided forty percent (40%) (or such other percentage as required by law) or more of the Project has been sold and recorded. If forty percent (40%) (or other applicable percentage) of the Project is not sold and recorded at the end of one year, an annual meeting shall be called, provided ten percent (10%) of the Owners so request. At such meeting the Owners shall elect a Board. Prior to said first meeting; the Association shall consist solely of the Fee Owner, who

shall have authority to act in all matters as the Association. Thereafter, the Association shall meet at least once every calendar year, or at more often regular intervals as may be established by the Board.

#### SECTION 1.4. Special Meetings.

Special meetings of the Association may be held at any time upon the call of the President of the Association, or upon the written request of at least thirty percent (30%) of the common interest of the Owners presented to the Secretary.

#### SECTION 1.5. Notice of Meetings.

The Secretary shall give written or printed notice of each annual and special meeting to every Owner according to the Association's record of ownership, at least fourteen (14) days prior to the meeting. Said notice shall contain the date, time and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the Association, if any. If notice is given pursuant to the provisions of this Section, the failure of any Owner to receive actual notice of any meeting shall in no way invalidate the meeting or any proceeding thereat. The presence of any Owner in person or by proxy at any meeting shall be a waiver of notice by the Owner unless he shall at the opening thereof object to the holding of the meeting because of the failure to give notice in accordance with the provisions hereof.

For purposes of notice under the Declaration of Condominium Property Regime or these Bylaws, if any Owner designates a foreign address for notice, such Owner may also designate a reasonable alternate form of notice (including instructions on reasonable steps required to use the designated method) other than that provided by these Bylaws. The Owner requesting foreign notice shall pay all costs of providing such notice in excess of the cost of notice required hereby. If the cost exceeds \$5.00 per notification, the foreign owner(s) may be required to deposit reasonable amounts to cover such expense(s) prior to such expense being incurred. The Association shall have no liability for the failure of notice to arrive when the designated method is used.

#### SECTION 1.6. Waiver of Notice.

Before or at any meeting of the Association, any Owner may waive notice of the meeting, and the waiver shall be deemed equivalent to the giving of notice. Attendance by an Owner at any meeting of the Association shall be considered a waiver of notice of said meeting. If all the Owners are present at any meeting of the Association, no notice thereof shall be required, and any business may be transacted at the meeting.

#### SECTION 1.7. Quorum.

The presence at any meeting in person or by proxy of a majority, as defined in Section 1.14 hereof, shall constitute a quorum, and the acts of a majority of the common interests represented by those present shall be considered acts of the Association and binding on all Owners of the Project, except as otherwise provided herein.

#### SECTION 1.8. Voting.

The vote to which each Unit is entitled shall be the percentage of common interests assigned to the Unit in the Declaration. Votes may be cast in person or by proxy by the respective Owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association, and may vote for any Unit owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls the Apartment in such capacity. The vote for any Unit owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-owner shall be entitled only to a share of the vote in proportion to his share of ownership in the Unit. Votes allocated to any area which constitutes a common element under Section 514A-13(h), Hawaii Revised Statutes, shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Except where stated to the contrary herein, or as required by law or other Project documents of record at any meeting or when acting by consent, a simple majority of a quorum of common interests present or consenting shall be required to adopt binding decisions of the Association.

#### SECTION 1.9. Proxies.

A proxy, to be valid, must be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least the following: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Unit or Units for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the Owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit. Proxies may be given to the Board as an entity. No Officer of the Board shall use Association funds to solicit proxies; provided that this shall not prevent an Officer from exercising his right as an Owner under Section 514A-82(b) (4). Nothing in this Section shall affect the holder of any proxy under a first mortgage of record encumbering a Unit or under an agreement of sale affecting a Unit. Any proxy form used shall contain a box which, when checked, will provide that the members of the Board present at the meeting shall each have an equal percentage of the vote of the Unit in question. If the box is not checked, and a proxy is for the Board, the preference of the majority of the Board shall prevail.

#### SECTION 1.10. Solicitation of Proxies.

No Resident Manager or Managing Agent shall solicit, for use by the Resident Manager or Managing Agent, any proxies from any Owner of the Association, nor shall the Resident Manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of Board members

at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Board Directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the Board receives within seven days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall either: (a) mail to all Owners a proxy form containing the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (b) mail to all Owners a proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements. Said statement shall not exceed one hundred words, and shall indicate the Owner's qualifications to serve on the Board and the reasons for wanting to receive proxies.

#### SECTION 1.11. Adjournment.

Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the Owners present, whether or not a quorum is present, without notice other than the announcement at the meeting. 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.

#### SECTION 1.12. Auditor.

If there are less than twenty (20) Units in this Project, the members of the Association may waive the requirement of a yearly audit by a certified public accountant (and the unannounced verification of the Association's cash balance by a public accountant) of the Association's books by majority vote of Owners in a meeting of the Association.

#### SECTION 1.13. Order of Business.

The order of business at annual meetings of the Association shall be as follows:

- (1) Roll call;
- (2) Proof of notice of meeting;
- (3) Reading of minutes of the preceding meeting;
- (4) Reports of Officers;
- (5) Report of Managing Agent;
- (6) Election of Directors;
- (7) Appointment of Auditor;
- (8) Unfinished business;
- (9) New business;
- (10) Whether to have audit/cash balance check.

Except as otherwise provided by Statute or as agreed by unanimous vote of all Owners, business conducted and actions taken at any meeting shall be limited to matters described in the notice of the meeting in question.

#### SECTION 1.14. Calculation of Percentages.

The term "majority of Owners" herein means the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interest as established by the Declaration, and any other specified percentage of Owners means the Owners of Units to which are appurtenant that percentage of the common interest. Notwithstanding anything herein to the contrary, if the Project is comprised of only two Units, the term "majority of Owners" herein requires the agreement of both Owners on any vote, irrespective of their appurtenant common interests.

#### SECTION 1.15. Audits and Budgets.

A majority of the Owners may waive an annual audit and unannounced verification of cash balance requirements. If audits are performed, the proxy form for the Association shall contain a place to request copies of the annual report, or a summary thereof. If audits are incomplete at the annual meeting, an unaudited year-end financial statement shall be provided until audit is complete. Operating budgets shall be prepared in the same fashion as reserve estimations under the Declaration, including the determination of revenues and expenses, a disclosure of cash or accrual basis accounting, replacement reserves on hand as of the date of the budget, estimated required replacement reserves based on a reserve study, an explanation of the method of determining reserves, and the amount the Association must collect to fund the required portions of the reserves in the ensuing year; the percentages required to be collected pursuant to HRS Section 514A-83.6 and related regulations.

### **ARTICLE II BOARD OF DIRECTORS**

#### SECTION 2.1. Number and Qualifications.

The affairs of the Association shall be governed by a Board composed of not fewer than two (2) persons, each of whom shall be an Owner of record or a vendee under an Agreement of Sale of a Unit (as defined in Section 1.1 above). A change in the number of directors may occur at the annual meeting of the Association. If a corporation is an Owner, any officer of the corporation shall be eligible to serve as Director so long as he remains an officer of the corporation. If a partnership is an Owner, every general partner of the partnership shall be deemed to be an Owner for this purpose.

There shall not be more than one representative on the Board from any one Unit. No Resident Manager of the Condominium shall be a Director. The Directors shall serve without compensation.

#### SECTION 2.2. Powers.

The Board shall have all powers necessary for the administration of the affairs of the Association and may do all acts and things therefor as are not, by law, the Declaration or these

Bylaws directed to be exercised or done only by the Owners. The members of the Board shall owe a fiduciary duty to the Association in the performance of the duties of the office.

### SECTION 2.3. Election and Term.

Election of Directors shall be by cumulative voting by secret ballot at each annual meeting and any special meeting called for the purpose. Directors shall hold office for a period of one year or until their respective successors have been elected, subject to removal as herein provided.

### SECTION 2.4. Vacancies.

Vacancies in the Board caused by any reason other than removal of a Director by the Association shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until his successor is elected at a meeting of the Association. Death, incapacity or resignation of any Director, or his absence from more than three regular meetings, or his ceasing to be an Owner of a Unit, shall cause his office to become vacant.

### SECTION 2.5. Removal of Members of the Board of Directors.

At any regular or special meeting of the Owners, any one or more of the members of the Board may be removed with cause by more than fifty percent (50%) of the common interests and a successor may then and there or thereafter be elected for the remainder of the term to fill the vacancy thus created. Any member of the Board whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. A meeting for such purposes shall be scheduled, noticed and held as provided in Section 1.4 of these Bylaws. The President or Owners of 25% of the common interests in the Project may call a special meeting for this purpose by petition to the Secretary. If the Managing Agent or Secretary does not mail notice within 14 days of receipt of a petition, the petitioners may themselves set the time, date and place of the meeting and mail notice as required by these Bylaws.

### SECTION 2.6. Annual Meeting.

An organizational meeting of the Board shall be held at the place of and immediately following each annual meeting of the Association, and no further notice shall be necessary to any Directors to constitute the meeting, provided that a majority of the Board shall be present. At said meeting, the Board shall elect the officers of the Association for the ensuing year.

### SECTION 2.7. 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, but at least one such meeting shall be held during each year. Whenever practical, notice of regular meetings of the Board shall be given to each Director, either personally or by mail or telephone, and the manager or a Board member shall post notice in prominent locations within the Project at least 72 hours prior to the meeting.

#### SECTION 2.8. Special Meetings.

Special meetings of the Board may be called by the President on at least eight (8) hours' notice to each Director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Time permitting, special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least one Director. With the concurrence of a majority of the Board, special meetings duly noticed may be held by telephone conference call.

#### SECTION 2.9. Waiver of Notice.

Before or at any meeting of the Board, any Director may in writing waive notice of the meeting, and the waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at any meeting of the Board shall be considered a waiver of notice of said meeting. If all the Directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at the meeting.

#### SECTION 2.10. Quorum of Board.

At all properly noticed meetings of the Board, a numerical majority of the total number of Directors shall constitute a quorum for the transaction of business, and the acts of such majority of the Directors present at any meeting at which a quorum is present shall be deemed the acts of the Board. 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 that might have been transacted at the meeting as originally called may be transacted without notice.

#### SECTION 2.11. Conduct of Meetings/Roberts Rules of Order.

A Director who has a conflict of interest on any issue before the Board shall disclose the conflict before the vote is taken, shall not vote on that issue at the Board meeting and a record of the disclosure shall be placed in the minutes of the meeting. A Director shall not cast any proxy vote at any Board meeting. All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order.

All meetings of the Board shall be open to all members of the Association, except when the Board is in executive session. Except in executive session, any Association member may participate in the deliberations of the Board, unless a majority votes to the contrary.

Executive session may be commenced for discussing litigation, potential litigation or personnel matters. A separate meeting may be set, or any regularly set meeting may be adjourned to commence the executive session by the vote of a majority of the Board. However, the nature of the business to be discussed in executive session will be announced prior to the adjournment, and shall be made a matter of record in the minutes of the meeting to be adjourned.

SECTION 2.12. Fidelity Bonds.

If required by law, the Board shall require that all officers, employees and agents of the Association handling or responsible for its funds shall furnish adequate fidelity bonds or the Board may elect to obtain such bonding by majority vote even if not required by law; in such case, the bond premium shall be paid by the Association.

**ARTICLE III  
OFFICERS**

SECTION 3.1. Designation.

The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board. The President and Vice-President shall be members of the Board. The Secretary and Treasurer may be any person, firm or corporation capable of performing the duties of the office. One person may hold two offices, but the same person may not be President and Secretary.

SECTION 3.2. Election and Term.

The officers of the Association shall be elected annually by the Board at its annual meeting and shall hold office at the pleasure of the Board.

SECTION 3.3. Removal.

Any Officer may be removed either with or without cause by vote of a majority of the members of the Board, and his successor elected at any regular meeting of the Board or any special meeting called for that purpose.

SECTION 3.4. President.

The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board. Subject to the control of the Board, he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. To the extent the owners of individual units are not authorized to do so, she or he (or an officer or agent designated by the President or Board of Directors) shall execute all building permit applications for the Project which require an Owner's signature. He or she may authorize individual Owners to sign their own applications as well. The President is hereby granted power-of-attorney on behalf of all Owners to execute any documents requiring an owner's signature in relation to the Project with the State of Hawaii or the County in which the Project is located, other than amendments to the Declaration, Bylaws, Protective Covenants and House Rules, if any, or any transfer of an interest in any Unit or the common elements. She or he shall also have other powers and duties as may be provided by these Bylaws or assigned to him from time to time by the Board. The President must be a member of the Board.

SECTION 3.5. 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 the President is vacant. He shall also have such other powers and duties as may be assigned from time to time by the Board.

SECTION 3.6. Secretary.

The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all Units, have charge of the books, documents and records of the Association as the Board may direct and, in general, perform all the duties incident to the office of Secretary.

SECTION 3.7. Treasurer.

The Treasurer shall keep all financial records of the Association and financial activities conducted for the Association, including maintenance of accounts and records thereof, and preparation of financial reports thereof.

**ARTICLE IV  
ADMINISTRATION OF PROJECT**

SECTION 4.1. Management.

The Board shall at all times manage and operate the Project and have such powers and duties as may be necessary or proper therefor, including, without limitation, the following:

- (1) Supervision of its immediate management and operation;
- (2) Hiring and firing of personnel for the maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;
- (3) Purchase, maintenance and replacement of any equipment and provision of all water and other utility services required for the common elements;
- (4) Provision of such common water, sewer, electricity and other utility service as the Board shall deem necessary either at the expense of the Unit or as a common expense as determined by the Board;
- (5) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project;
- (6) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments by the Board;

(7) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

(8) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the Declaration, and such other insurance and bonds as may be required or authorized by the Declaration or the Board; the Board shall provide each Owner with information about the insurance coverage as provided in Hawaii Revised Statutes, Section 514A-86, as more fully described in Article VI hereof;

(9) Custody and control of all funds of the Association, keeping in full, detailed and accurate books of account and records of such funds, and the preparation of regular financial reports;

(a) Association Funds. Association general funds shall not be mingled with funds deriving from special assessments, lease rent collections, rental operations or other Association funds. The Managing Agent's personal funds shall not be so mingled either.

As permitted by Chapter 514A-97(b), proceeds of rental of common elements and recreational amenities approved by the Board or President may be deposited in the general account(s) of the Association or a trust account of any Association managing agent.

All Association funds shall be deposited in a financial institution in the State of Hawaii, which shall have deposit insurance issued by an agency of the United States government, or such funds may be invested in obligations of the United States government. No telephone transfer of Association funds shall ever be permitted. The Managing Agent, if any, shall keep and disburse funds consistent with the Project documents, any agreements with the Association, Chapter 467, Hawaii Revised Statutes, the rules and regulations of the Hawaii Real Estate Commission and any other applicable laws. Violations of these provisions constituting embezzlement or intentional misapplication of funds shall be punishable under Hawaii Law as a Class C felony.

(b) Borrowing of Money by Association. The Board may authorize the borrowing of money for repair, replacement, maintenance, operation or administration of the common elements, or to make additions, alterations and improvements thereto, subject to the provisions of the Declaration. Notice to Owners must be given pursuant to the terms of these Bylaws prior to borrowing, and more than 50% of the Owner must concur in the borrowing. All costs, fees, interest, principal and other expenses of the borrowing duly made shall be common expenses of the Association.

(10) Notification of all persons having any interest in any Unit, according to the Association's records, of delinquency in the payment of any assessment against the Unit.

#### SECTION 4.2. Managing Agent.

The Board may, at its discretion, employ a responsible Managing Agent to manage and control the Project, subject at all times to direction by the Board, with all the administrative

functions set forth specifically in Section 4.1 herein, and at such compensation as the Board shall establish and/or approve. The Board may, in its discretion, limit any of the powers herein granted to the Managing Agent and may grant additional or other powers to the Managing Agent.

The Association's employees and/or the employees of the Managing Agent shall not engage in selling or renting apartments of this Project except for Association-owned Units, if any, unless such activity is approved by an affirmative vote of sixty-five (65%) percent of the membership.

#### SECTION 4.3. Owner shall not be Manager.

An Owner shall not act both as a Officer of the Association and as the separately employed manager or an employee of the Managing Agent employed by the Association.

#### SECTION 4.4. Representation.

President or Managing Agent, subject to the direction of the Board, shall represent the Association in any action, suit, hearing or other proceeding concerning the Association, the common elements, or more than one Unit, and on its or their behalf may institute, defend, intervene in, prosecute and settle any actions, suits and proceedings, without prejudice to the rights of any Owners, individually, to appear, sue or be sued. Service of process in any such action, suit or proceeding may be made on the President or Managing Agent.

#### SECTION 4.5. Execution of Instruments.

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

#### SECTION 4.6. List of Members.

The Resident Manager or Managing Agent or the Board shall keep an accurate and current list of members of the Association and their current or last known addresses and the names and addresses of the vendees under Agreements of Sale, if any. The list shall be maintained at a place designated by the Board.

#### SECTION 4.7. Project Documents.

Each Director of the Association shall be provided, at Association expense, with copies of the current Declaration of Condominium Property Regime, Bylaws, and Protective Covenants and House Rules plus, annually, a current copy of Chapter 514, Hawaii Revised Statutes.

The listed Project documents, plus a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office or at some other accessible place on the Island of Kauai. Upon payment of a reasonable fee, copies of any of

the foregoing shall be available to Owners, prospective purchasers and their prospective agents, during normal business hours of the Managing Agent or upon reasonable notice if there is no Managing Agent. If there is no Managing Agent, the Board shall designate someone to fulfill this role and purpose.

#### SECTION 4.8. Project Records Accessibility.

Minutes of all meetings of the Association shall be maintained and copies for the current and one prior year shall be available for examination by any member of the Association in a reasonable place and on reasonable notice. Minutes of the meetings shall record the votes of each Board member on all motions except those taken in executive session. Copies of minutes and any other Project documents allowed by Section 514A-84.5 shall be made available on written request at reasonable cost (copying, postage, paper and actual administrative costs), by mail, to any member of the Association.

Any request found to be unreasonable or unacceptable shall be explained, in writing, together with explanation of the Association's actions within 30 days of receipt of the request for copies.

As to financial matters, the Association's most current financial statement and minutes of the most recent meeting of the Board, once approved, shall be available to any Owner at no cost or on twenty-four hour loan, at a reasonably convenient location in the County of Kauai.

Financial statements, general ledgers, policies, contracts and invoices of the Association for the current and one prior year, plus delinquencies of 90 days or more, shall be made available for inspection on the Island of Kauai, but only if:

- (1) The requesting Owner provides an affidavit stating the information sought is requested in good faith and is for the protection of the Association or its members or both;
- (2) The Owners, on at least an annual basis, as a common expense, shall pay for all administrative costs attributable to such requests consuming more than eight hours of time per year. The requesting Owner may be required to pay a reasonable fee for the actual administrative cost of handling any request.

On the same basis as provided immediately above, Owners may view proxies, tally sheets, ballots, Owner check-in lists, and certificates of election prepared after the election of Officers and Directors of the Association. However, 30 days after any meeting, proxies and ballots may be destroyed. During the 30-day period, copies of all of the documents identified in this paragraph may be obtained by any Owner upon paying the administrative costs of producing them as stated above in relation to minutes and financial statements.

The Board or Managing Agent shall keep detailed and accurate records, in chronological order, of the receipts and expenditures of the Association, including vouchers and statements relating to or authorizing payment, as proof of the required expenditures, including specifically all repair and maintenance expenses. The same person(s) shall maintain a list of all Units with

delinquent common expense payments, indicating the dollar amount of such delinquencies. Such records shall also include copies of all payment authorizations and statements for payment, and such records shall be maintained at a designated location within the State of Hawaii.

No person shall knowingly make any false entry, certificate memorandum or notation on the books and records of any Managing Agent or of the Association. No person shall knowingly alter, destroy, mutilate or conceal any books or records of the Managing Agent or the Association. A Managing Agent may not destroy any records of the Association without consent of the Board of Directors and provided that the records are more than ten (10) years old. With consent the records may be destroyed without liability, if at least 60 days' prior notice thereof (which notice shall include an itemized list of the records intended to be destroyed or disposed of) has been given to the Association members and no request for the return thereof has been received by the Managing Agent.

## **ARTICLE V OBLIGATIONS OF CONDOMINIUM OWNERS**

### **SECTION 5.1. Collection and Payment of Common Expenses.**

Each Owner shall pay to the Treasurer in advance on the date established by the Association, any installment of assessments for their respective Unit's share of the common expenses and any other assessments of the Project, in accordance with the Declaration and the Declaration of Covenants, Conditions and Restrictions for the Project ("CC&R's). All Owners shall also be severally liable in proportion to their respective common interests for any special assessments authorized and levied by the Board; payment of said assessments shall be made in the manner designated by the Board. In accordance with Section 514A-90, Hawaii Revised Statutes, as amended, all sums assessed by the Association, but unpaid, for the share of the common expenses chargeable to any Unit constitute a lien on the Unit prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against the Condominium interest, and (2) all sums unpaid on mortgages of record, and costs and expenses, including attorney's fees, provided in such mortgages.

### **SECTION 5.2. Maintenance of Condominium Units.**

Subject to specific provisions of the CC&R's, every Owner, at his own expense and at all times, shall well and substantially repair, maintain, amend and keep his Apartment, including, without limitation, all external and internal installations therein such as buildings, roof, walls, water, electricity, gas, telephone, sewer, sanitation, air-conditioning, lights and all other fixtures and accessories belonging to the Unit with all necessary reparation and amendments whatsoever, in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in the case of such failure after reasonable notice to perform, shall reimburse the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board or the Managing Agent. Every Owner and occupant shall reimburse the Association promptly on demand for all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment

thereof caused by the Owner or occupant or any person under either of them, and shall give prompt notice to the Board or Managing Agent of any such loss or damage or other defect in the Project when discovered.

### SECTION 5.3. Use of Project.

(1) All Units of the Project shall be used only for such purposes as permitted by Kauai County Zoning Ordinances by the respective Owners thereof, their families, permittees and licencees. In all cases the Declaration of Covenants, Conditions and Restrictions for the KŪLANA Subdivision (the "CC&R's") shall provide the primary restrictions on the Project, and to the extent of inconsistency with this document, shall control for all purposes allowed by law.

(2) All common elements of the Project shall be used only for their respective purposes, as designed.

(3) No Owner or occupant shall place, store or maintain in the common elements or easements any personal property or fixtures of any kind or otherwise obstruct transit through such common elements and easements for their intended purposes.

(4) Every Owner and occupant shall at all times keep his Unit in a clean and sanitary condition, free from pests and accumulations of waste and debris and observe and perform all laws, ordinances, rules and regulations, now or hereafter made by any governmental authority or by the Association, for the time being applicable to the use of the Project.

(5) No Owner or occupant shall make or suffer any strip or waste of unlawful, improper or offensive use of his Unit or the Project.

(6) No Owner or occupant shall make any additions or alterations to any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including detailed plot plan, approved in writing by the project Design Review Committee ("DRC"), the Board and by all Owners of Units thereby directly affected. All posted signs shall be in compliance with all State of Hawaii and County of Kauai statutes, ordinances, rules and procedures applicable thereto.

(7) All occupants shall exercise care in conducting noisy activities, except in the normal, ordinary and seasonal agricultural activities permitted on the Project. Consideration and care shall be observed in the use of noisy and/or heavy equipment, musical instruments, radios, televisions and amplifiers during evening, night and early morning hours, and the occupants shall otherwise avoid making noises that may unreasonably disturb other occupants.

(8) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the disposal facilities provided for such purpose, if any.

(9) Condominium Owners and their tenants may keep household pets consistent with any applicable law and restrictive covenants applicable to the Project as long as the animals do

not become a nuisance to the other Owners. Where present and future House Rules and subdivision covenants of record do not prohibit typical household pets, they shall be allowed. However, pests, as defined in HRS Section 150A-2 or those prohibited from importation under HRS Sections 141-2 or 150A-5 and 150A-6 shall be prohibited in this Project. This shall apply equally to Owners and tenants permitted pets under the terms of their individual leases. Seeing eye or handicapped-assistance trained animals shall not be precluded from the Project.

#### SECTION 5.4. Condominium Rules/House Rules.

The Board, upon giving notice to all Owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal House Rules or other supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these Bylaws.

#### SECTION 5.5. Emergency Repairs.

The Association shall have the irrevocable right, to be exercised by the Board, to have access to each Unit from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to the common elements or to another Unit or Units.

#### SECTION 5.6. Compliance With Declaration and Bylaws.

Each Owner, tenants and employees of an Owner, and other persons using the property shall comply strictly with these Bylaws, any House Rules and other administrative rules or regulations adopted pursuant thereto, and the covenants, conditions and restrictions set forth in the Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or Board on behalf of the Association or, in a proper case, by an aggrieved Owner. Every Owner shall pay to the Association promptly on demand all costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the Association in collecting any delinquent assessments against his Unit, foreclosing its lien therefor, or enforcing any provision of the Declaration, these Bylaws, or any rules and regulations adopted pursuant thereto, against the Owner or occupant of a Unit; all monies so advanced by the Association shall bear interest at the rate of twelve percent (12%) per annum.

#### SECTION 5.7. Record of Ownership.

Every Owner shall promptly cause to be duly recorded or filed of record any deed, lease, assignment, agreement of sale or other conveyance to him of his respective Apartment or other evidence of his title thereto and shall transmit said conveyance or other evidence of the title to the Board. The Secretary or Managing Agent shall maintain all such information in the record of ownership of the Association. Every Owner shall similarly provide the Board with his current mailing address at all times.

## SECTION 5.8. Mortgages and Liens.

(1) Mortgages. Any Owner who mortgages his Apartment or any interest therein shall notify the Board of the name and address of his mortgagee, and the Secretary or Managing Agent shall maintain all such information in the record of ownership of the Association. The Board or Managing Agent, at the request of any mortgagee or prospective purchaser of any Unit or interest therein, shall report to such person the amount of any assessments against the Unit then due and unpaid.

(2) Assessments and Liens. Unpaid assessments for common expenses shall be a lien superior in priority to all others except government tax liens and mortgage liens recorded prior to the lien of the Association. The Association or the Managing Agent (acting for the Association) may foreclose such lien or may sue for money damages without foreclosure. Any purchaser of a Unit upon foreclosure of a prior mortgage shall have no liability for the liens of the Association against the Unit. Unpaid assessments may be then assessed against all Units ratably, including the Unit not otherwise assessable hereunder. No Owner may withhold assessment duly enacted for any reason. In the event of a dispute, the Owner must request from the Association, in writing: the amount of the assessment of common expenses, including the due date of each component assessment; the amount of any penalty or late fee or filing fee or other charge included in the amount claimed; the amount of attorney's fees or costs, if any, in the assessment; notice that Hawaii law precludes withholding of assessments; the right of the Owner to demand mediation or arbitration to resolve the dispute(s) if the Owner immediately pays the assessment in full and keeps assessments current; and, that payment in full does not prevent the Owner from contesting the assessment or receiving a refund of amounts shown not to be owed. An aggrieved Owner may, upon paying in full, file an action in Small Claims Court to recover allegedly inappropriate assessments.

In a voluntary conveyance of a Unit subject to lien or unpaid assessments, the grantee shall be jointly and severally liable for any unpaid assessments. A statement of such assessments shall be provided by the Association, and the grantee shall be liable for no amount in excess of the amount shown on the statement, with the exception of amounts arising as a result of dishonored checks for assessments received by the Association within 30 days preceding the date of the statement. No Owner may exempt himself from liability for common expenses by disclaiming use of common elements or by abandoning the Apartment or Unit owned.

## SECTION 5.9. Collection from Tenant.

If an Owner shall at any time default for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board, at its option, so long as default shall continue, may demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of his Unit, the rent due or becoming due from the lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, if any. Any such payment of rent to the Board by the lessee shall be sufficient discharge of the lessee, and any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease or a release or discharge of any of the obligations of the Owner or any acknowledgment of surrender of any rights or duties of the Owner. In the event that the Board

makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make the demand, but shall be obligated to make the payments to the Board as demanded by the Board.

## **ARTICLE VI INSURANCE**

### **SECTION 6.1. Casualty and Liability Insurance.**

To the extent required by law the Association shall at all times keep all common improvements of the Project insured against loss or damage by fire, in an amount sufficient to provide for the full repair or replacement thereof in the event of such loss or damage. Flood insurance shall also be provided under the Federal Flood Disaster Protection Act if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development. The Association may purchase and maintain comprehensive general liability insurance and Directors' and officers' liability insurance in such amounts as shall be determined by the Board. All insurance premiums incurred pursuant to this subsection shall be common expenses. Insurance as provided in this Article VI shall include insurance on all walls, floors and ceilings as shown by the Project file plan. Insurance shall, to the extent available, be in the name of the Association, and for full replacement value, or if not available, for full repair. Insurance shall, to the extent commercially available, cover fire, malicious mischief, hurricane and all other usual extended coverage causes of damage. Premiums shall be a common expense. Nothing herein shall limit the individual's rights to buy their own separate insurance. If the Board so elects, insurance covering Directors' and officers' liability, as a common expense.

Policies shall require the carrier to provide an annual summary of coverage in layman's terms, including type of policy, coverage and limits, premium cost and renewal dates. Each Owner shall be provided with a copy annually.

### **SECTION 6.2. General Insurance Provisions.**

All insurance required under this Section shall be written on the property in the name of the Association and shall be purchased from an insurance company authorized to do business in the State of Hawaii. All provisions for insurance contained herein are without prejudice to the right of each Owner to insure his own Unit for his own benefit.

### **SECTION 6.3. Individual Insurance.**

To the extent permitted by the Real Estate Commission of the State of Hawaii, in the event that none of the structures comprising the improvements of the Project serve more than one Unit, but rather each of the individual Units of the Project is comprised of a separate single-family dwelling and associated improvements, the Association may, at its option, elect to exempt such Units within the Project from the provisions of the foregoing subsection 6.1 and allow individual Owners to provide for their own casualty and liability insurance;

PROVIDED, HOWEVER, that any such decision to allow individual Owners to insure themselves must be by unanimous agreement of all the Owners of the Project. Payment of any premiums pursuant to this subsection shall not be a common expense, but shall be the responsibility of each individual Owner. The provisions of this subsection shall not apply to any portion of the Project comprised of improvements deemed common elements under the Declaration; said common elements shall be insured by the Association at its common expense.

## **ARTICLE VII MISCELLANEOUS**

### **SECTION 7.1. Amendment.**

The provisions of these Bylaws may be amended by the vote or written consent of Owners, as provided in Hawaii Revised Statutes Section 514A-82(b)(2) or subsequently enacted amendments or replacements thereto, and may occur at a meeting called by the Board or a duly-constituted Unit Owner's committee or sufficient group of Owners, the proposed amendment(s) being accompanied by a written rationale for the proposed amendment(s). Any Owner committee proposal shall be accompanied by petition signed by twenty-five percent (25%) of the common interests. The Amendment must be passed by vote or written consent of at least sixty-five percent (65%) of the common interests in the Project. The Board shall mail, at Association expense, the proposed amendment(s), rationale and ballot to all Owners within thirty (30) days of receipt of the petition by the Board, or from the date of Board action. Votes or consents shall be received within 120 days after mailing or shall have no effect. If a proposed change is presented by a volunteer committee for consideration at a special meeting by consent and does not pass, or one substantially similar to it does not pass, the proposed change shall not be presented at a special meeting or for by consent for a period of one year from the date of mailing of original notice to Owners. However, such amendment(s) may be presented at any annual meeting of the Association. An amendment shall be evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association, and shall be effective upon filing in the Office of the Assistant Registrar of the Land Court or the Bureau of Conveyances, as the case may be.

### **SECTION 7.2. Arbitration.**

At the request of any party, any dispute concerning or involving one or more Owners and the Association, its Board, Managing Agent, or one or more other Owners relating to the interpretation, application or enforcement of Chapter 514A, Hawaii Revised Statutes, or the Association's Declaration, these Bylaws, or House Rules adopted in accordance with these Bylaws, shall be submitted to arbitration.

All arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the provision of Chapter 514A, Part VII (Sections 514A-121 et seq.), of the Hawaii Revised Statutes. The arbitrator may order action where it is determined one owner acted or voted unreasonably and without adequate cause to do so.

### SECTION 7.3. Indemnification.

The Association shall indemnify every Director and Officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be a party by reason of being or having been a Director or Officer of the Association, except in relation to matters as to which he shall be finally adjudged in the action, suit or proceeding to be liable for misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

### SECTION 7.4. Controlling Law and Effect of Project Documents.

These Bylaws are subordinate and subject to all provisions of the Declaration, any amendments thereto, and the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act. These Bylaws and the Declaration will be automatically deemed amended pursuant to mandatory changes in law applicable to Condominium Property Regimes.

New laws permitting but not mandating change will not be deemed incorporated herein unless directed by duly-enacted amendments adopted by the Association or the Board as required by law, these Bylaws or Declaration.

### SECTION 7.5. Interpretation and Validity of Project Documents.

In case any provision of these Bylaws shall be held invalid, such invalidity shall not render any other provision hereof which can be given effect. Nothing in these Bylaws shall be deemed or construed to authorize the Association or Board to conduct or engage in any active business for profit on behalf of any or all of the Owners.

### SECTION 7.6. Fine System/Penalties.

The Association may, by sixty-five percent (65%) vote, institute a means of enforcing the provisions of the Declaration, Bylaws or any protective covenants of record governing the Project, including the imposition of fines and institution of a method of collection. Any fines so imposed shall constitute liens on the respective Apartment Units.

### SECTION 7.7. Directors' Expenses.

Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless all Owners are informed in advance, and a majority (over 50 percent) of the common interests approve of these expenses.

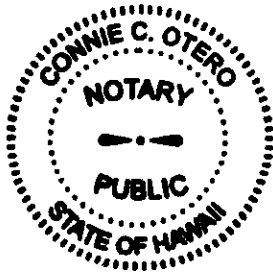
IN WITNESS WHEREOF, Fee Owner and Developer have executed these Bylaws of the Association of Condominium Owners of KULANA this 24<sup>th</sup> day of November, 2004.

FEE OWNER AND DEVELOPER:  
KAPAA 382, LLC  
By Kauai Lease and Loan, Ltd., Member

By *William R. Hancock*  
William R. Hancock, President

STATE OF HAWAII            )  
  ) SS:  
COUNTY OF KAUAI        )

On this 24<sup>th</sup> day of November, 2004, before me appeared William R. Hancock, to me personally known, who, being by me duly sworn did say that he acknowledged the instrument to be his free act and deed in the capacity stated, being thereunto duly authorized.



*Connie C. Otero*  
NOTARY PUBLIC, State of Hawaii  
CONNIE C. OTERO  
Print Notary Name Above  
My commission expires: 12/28/2009