

**BY-LAWS OF THE KIHEI TIMESHARE OWNERS ASSOCIATION**

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Part 1

GENERAL PROVISIONS

- 1.1 Name and Address Of The Association. The name of the corporation is “KIHEI TIMESHARE OWNERS ASSOCIATION” (“KTOA”): c/o RJK, LLC, 2439 S Kihei Rd. 204B, Kihei, Maui, HI 96753 or any other place in the State of Hawaii selected by the Board of Directors from time to time.
- 1.2. Definitions. Unless expressly stated to the contrary, the terms used in these By-Laws have the following meanings:
  - (a) Declaration: means the Declaration of Covenants, Conditions and Restrictions For the Kihei Akahi Vacation Plan (A Resort Vacation Plan located in the Kihei Akahi, a Fee Simple Condominium Project) as it is amended from time to time.
  - (b) Other Terms. All of the terms defined in the declaration have the same meaning when used in these By-Laws.
- 1.3. Purpose Of The Association. The purpose of the Association is to exercise the powers and perform the duties of the Association set forth in these By-Laws, the Articles of Incorporation (the “Articles”), and the declaration.
- 1.4 Conflicts Between The Vacation Plan Documents. In the case any of these By-Laws Conflict with the provisions of Chapter 514B of the Hawaii Revised Statutes, the condominium documents, the declaration or the Articles, the provisions of Chapter 514B or 514E, the condominium documents, the declaration or Articles, as the case may be, control in that order.
- 1.5 Persons Subject To These By-Laws And Other Directions. All owners, lenders, license holders, visitors and exchange users of vacation apartments and their employees, and any other persons who may use any vacation apartment in any manner are subject to these By-Laws, the declaration and the Association Rules. By accepting ownership of a timeshare interest or acquiring a Vacation License/RTU or by occupying a vacation apartment, a person agrees the he accepts, approves and will abide by these By-Laws the Association Rules, and the provisions of the declaration, as they may be revised from time to time.

## PART 2

### MEMBERSHIP AND VOTING RIGHTS

- 2.1 Qualifications For Membership In The Association. Each owner of a timeshare interest, (that is, an interval or a Vacation License/RTU) automatically becomes a member of the Association and continues to be a member of the Association until his ownership of that timeshare interest ends for any reason, at which time his membership in the Association automatically ends. If a timeshare interest is owned by more than one person, all such persons shall be members of the Association. Ownership of a timeshare interest in a vacation apartment in this plan is the sole qualification for membership in the Association.
- 2.2 Your Membership Goes With Your Interest The Association membership of each owner is appurtenant to (which means that it goes with) his timeshare interest. The membership may not be transferred or encumbered in any way except by transferring it and then only to the new owner of that interest. Any attempt to make a prohibited transfer is void and not effective. Any transfer of title to an interest automatically transfers the membership in the Association which goes with that interest to its new owner.
- 2.3 Your Voting Rights As A Member. Except as provided in section 4.3 each member is entitled to one (1) vote for each timeshare interest. The term "timeshare interest" means either (1) the ownership of one interval, or (2) the right to use a vacation apartment for one week under a Vacation License/RTU as defined in the Declaration. When an interest is owned by more than one person, however, the vote for that interest will be exercised as such owners decide among themselves, but in no event may more than one vote be cast for any one interest. Members owning multiple timeshare interests may cast the votes attributable to such timeshare interests together or separately. If, however, at the time such person votes, such person does not expressly specify that such person is casting one vote differently than another, such person shall be conclusively deemed to have cast all of such person's votes in the same manner.
- 2.4 Co-Owner Disputes Over How To Cast Their One (1) Vote The vote for each timeshare interest may be cast only as a unit, and fractional (split) votes are not allowed. If co-owners of a timeshare interest are unable to agree among themselves as to how their vote or votes will be cast, they will be treated as if they decided not to vote on the matter in question. If any owner or owners cast a vote representing a specific timeshare interest, it is conclusively presumed for all purposes that he, she, or they were acting with the authority and consent of all other owners of that timeshare interest.
- 2.5 Members' Right And Duties. Each member has the rights, duties and obligations, contained in these By-Laws, the Articles and the declaration, as those documents may be revised from time to time.

2.6 Cumulative Voting In any election of the Board of Directors of the Association (the "Board"), every owner entitled to vote at that election has the right to cumulate his votes; provided that:

(1) The meeting notice or statement accompanying the notice states that cumulative voting shall take place;

(2) A member gives notice of the member's intent to cumulatively vote not less than forty-eight (48) hours before the meeting or such longer period as may be required by the articles or bylaws; and

(3) If one member gives notice of intent to cumulatively vote, all other members participating in the election may cumulate their votes without giving further notice.

This means each owner has the right to give to one candidate, or divide among any number of candidates, a number of votes equal to the otherwise entitled to cast according to the declaration and these By-Laws. Subject to the provisions of section 6.1 of these By-Laws, the candidates receiving the highest number of votes, up to the number of Board members to be elected, are elected. Directors elected by cumulative voting may only be removed as provided in section 6.3 of these By-Laws.

2.7 Guardians And Trustees Guardians and trustees of a member may vote, in person or by proxy. A certified document showing that person is the guardian or trustee of the member must be filed with the Secretary before the record date.

2.8 Minors. A minor shall have a right to vote in person or by proxy and to exercise other rights of a member for each timeshare interest owned in each minor's name; provided, however, that in the event that a guardian of the minor's property has been appointed and such guardianship is documented in a writing filed with the Secretary, such guardian shall have the right to vote on behalf of such minor.

2.9 Corporations, Partnerships and Limited Liability Companies. The vote of a corporate member may be cast in person or by proxy in accordance with such corporation's documents. The vote of a member which is a limited liability company may be cast in person or by proxy in accordance with such limited liability company's organizational documents. The vote of a member which is a partnership may be cast by any partner. Documents establishing such authority may, but need not, be filed prior to any meeting. Votes or proxies purportedly cast or given under any such authority presented at or before the meeting will be presumed to be validly voted or given.

2.10 Interests Owned By the Association. Votes may not be cast or proxies given for any timeshare interest owned by the Association.

## PART 3

### ASSESSMENTS, PERSONAL CHARGES AND LIEN RIGHTS

- 3.1 Assessments and Personal Charges. All assessments and personal charges provided for in the declaration, **must** be paid by the owners and license holders as set forth in the declaration. The Board will fix, levy, collect and enforce those assessments and personal charges as set forth in the declaration.
- 3.2 Enforcement, Lien Rights. For the purpose of enforcing and collecting assessments and personal charges, the Association has the lien rights described in the declaration and section 514E-29 of the Hawaii Revised Statutes, as amended, and those rights may be enforced by the Board in the manner described in the declaration. The Board also has and is entitled to exercise all other rights and remedies set forth in the declaration or otherwise provided for at law or in equity.

## PART 4

### YOUR RIGHTS AND PRIVILEGES

- 4.1 Your Rights And Privileges As An Owner Or License Holder. No owner or license holder has the right, without approval of the Board, to exercise any of the powers or to perform any of the acts delegated to the Association or the Board by these By-Laws, or the declaration. Each owner or license holder has all of the rights and privileges during his vacation week granted to the owners or license holders by these By-Laws, the declaration and the condominium documents subject to any limitations imposed in accordance with these documents.
- 4.2 The Board May Adopt Association Rules. The Board may establish any fair and reasonable rules, regulations and conditions to the use or enjoyment of the vacation apartments and/or the condominium project as the Board, in its sole determination, deems appropriate, so long only as those rules, regulations and conditions do not materially decrease the rights of owners set forth in the declaration. Any rules adopted by the Board may only be overturned by subsequent action of the Board or by vote of the owners of seventy-five percent (75%) of all interests. All association rules adopted under this section 4.2 and under the declaration, are referred to in these By-Laws as the "Association Rules."
- 4.3 The Board May Take Away Your Voting Rights and Fine You For Violations. If any owner or license holder or his visitors violate the condominium documents or vacation plan documents, the Association may exercise the rights stated in part 10 of the Declaration

## PART 5

### MEETINGS OF MEMBERS

- 5.1 Meeting Place. All meetings of the members must be held at a place selected by the Board.
- 5.2 Annual Meetings Of Members. The annual meetings of members will be held as set by the Board. At annual meetings, there will be elected, by secret written ballot of the members, a Board of Directors in accordance with the requirements of these By-Laws. The members may also transact any other business of the Association which properly comes before them at the organization or annual meeting.
- 5.3 Special Meetings Of The Members. Special meetings of members, for any purpose or purposes at all, may be called at any time by a majority of the Board or by members representing fifteen percent (15%) or more of the total voting power of all members; provided that no special meeting may be held or called before the organization meeting. Upon receipt of a request or petition for a special meeting, the Secretary will send written notice of the meeting to all owners. The meeting will be held at the time stated in the request or petition. If no meeting date is stated, the meeting will be held on a date which is not less than thirty (30) nor more than ninety (90) days after the receipt of the request or petition at any reasonable time or day. If notice is not given within thirty (30) days after receipt of the request or petition, the persons requesting the meeting may give the notice.
- 5.4 How To Give Notice Of Meetings And Other Notices. The written notice of all meetings of the members (whether organizational, annual or special meeting) must state the place, date and hour of the meeting and whether it is an annual or special meeting and must also list the items on the agenda for that meeting. If the notice is for a special meeting, it must include a description of the matter or matters for which the meeting is called and only the matter or matters described in the notice may be conducted at the meeting. The notice may contain a standard proxy form authorized by the Association, if any. The notice and any other notices permitted or required to be delivered by these By-Laws must be given by personally delivering or by mailing the notice, by first-class mail, postage prepaid, at least thirty-five (35) days but not more than ninety (90) days before the date of the meeting, to all timeshare interest holders in the manner provided in the declaration for giving notice to timeshare interest holders. Upon delivering to the Board a written request for copies of all notices, any lender having a recorded mortgage on an interest may obtain a copy of any and all notices permitted or required to be given to the owner whose interest is covered by that mortgage. If notice is given in accordance with the provisions of this paragraph, the failure of any owner or lender to receive actual notice of the meeting will not in any way make the meeting or proceedings at the meeting invalid. The presence of any owner or lender in person or by proxy at any meeting is deemed a release of the



right to receive any required notice by that owner unless at the beginning of the meeting that owner objects to holding that meeting because of the failure to give proper notice. Each member must keep the Board informed of any change in the member's address.

5.5 Adjourned Meetings And Notices For Them.

(a) Any meeting of the members whether or not a quorum is present, may be "adjourned" (temporarily ended and then continued later) from time to time by the vote of a majority of the owners entitled to vote and who are present at that meeting in person or by proxy. If there is not a quorum, no other business may be handled at that meeting unless these By-Laws or the declaration provide otherwise.

(b) If any meeting cannot be held because a quorum is not present, a majority of the members present either in person or by proxy and entitled to vote, may, without further notice, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, by announcing that adjournment at the meeting.

(c) When any meeting of the members is adjourned for thirty (30) days or more, notice that the meeting is starting up again must be given in the same way as it was given for the original meeting. In all other cases, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting, other than by an announcement at the meeting which is being adjourned to a later date.

5.6 Quorum. At any meeting of the members, the presence either in person or by proxy of members entitled to cast at least fifteen percent (15%) of that number of votes which is equal to the difference between (1) the total number of votes in the Association, and (2) the number of votes held by members whose voting rights are suspended at the time of the meeting in accordance with these By-Laws, will be quorum for any action by the members, unless a different requirement is imposed by law, the Articles, these By-Laws, or the declaration. A majority of the votes held by all members entitled to vote present at a meeting at which a quorum is present prevails (is the deciding vote) at those meetings unless a different percentage is required by law, the Articles, these By-Laws or the declaration. Subject to the provisions of section 4 of this Part 5 and unless otherwise expressly authorized by these By-Laws or the declaration, all action required, or permitted to be taken by the members may be taken only at a legally called organization, annual or special meeting at which a quorum is present and for which proper notice was given.

5.7 Consent of Owners Who Are Absent The actions of any meeting of members however called and no matter what notice was given, will be as valid as though a meeting had been properly held, if:

(a) a quorum is present either in person or by proxy; and (b) either before or after the meeting, each of the members entitled to vote and not present in person or by proxy, signs a written release of his right to receive notice, or a consent to the

holding of that meeting, or an approval of the minutes of it. All such waivers, consents or approvals must be filed with the Association records or made a part of the minutes of the meeting.

5.8 Action Without Meeting. Any action required or permitted to be taken at any meeting of the membership may be taken without a meeting if all the members entitled to vote sign a written consent setting forth the corporate action being taken.

5.9 Record Date For Determining Who May Receive Notice And Vote. For each meeting of the members, the Board of Directors may pick a date in the future as the "record date" for the purpose of determining which members are entitled to notice of and to vote at the meeting. The record date may not be more than sixty (60) days before the meeting date. When a record date is picked, only members who are shown as owners on the Association's records on that date will be entitled to notice of and to vote at the meeting, despite any changes on the books of the Association after the record date.

If no record date is set the record date for determining those members entitled to receive notice of, or to vote at, a meeting of members will be the last business day before the day on which notice is given, or, if notice is waived, the last business day before the day on which the meeting is held. The record date for deciding which members are entitled to vote by ballot on corporate action without a meeting, when no previous action by the Board has been taken, will be the day on which the first written consent is given. When previous action of the Board has been taken, it will be the date on which the Board adopts a resolution relating to that action.

5.10 Proxies and Pledges The authority given by any member to another person to represent him at meetings of the Association is called a "proxy." To be effective, the proxy must be in writing, signed by that member and filed with the Secretary or other officer or agent authorized to tabulate votes. Unless limited by its terms, the proxy shall specify that it will continue to be effective for 11 months or until it is sooner revoked (cancelled) by a written document filed with the Secretary or by the death or incapacity of that member. Any proxy distributed to members of the Association must state the name of the person picked as the proxy representative.

Voting rights transferred by a mortgage or agreement of sale covering any interest, a true copy of which is filed with the managing agent, may be exercised only by the person designated in the mortgage or agreement of sale until the written release or other termination of the mortgage or agreement of sale is filed with the managing agent.

5.11 Rules for Conducting The Meetings And The Order Of Business. All meetings of the Association must be conducted in accordance with the latest available revision of Roberts Rules of Order, or other generally accepted rules for conducting

meetings. Business will be discussed at all meetings of the Association in this order (subject to the limits on special meetings stated in section 5.3 of these Bylaws):

- (a) Roll Call;
- (b) Proof of notice of the meeting;
- (c) Approval of the minutes of the previous meeting;
- (d) Reports of the Officers (when necessary);
- (e) Report of the Board (when necessary);
- (f) Reports of any committees (when necessary);
- (g) Appointment of inspectors of election to conduct the election (when necessary)
- (h) Election of Directors (when necessary);
- (i) Unfinished business; and
- (j) New business.

- 5.12 List of Members. The managing agent or the Board will keep an accurate and current list of members of the Association and their current addresses. The list will be kept at the Managing Agent's principal office, or such other location as the Board shall designate. A member must pay to the Association or the managing agent on demand a reasonable service charge, in an amount fixed from time to time by the Board, for registering on the records of the Association any change of ownership of that member's interest.

## PART 6

### DIRECTORS

- 6.1 Number, Qualifications, Term Of Office. The affairs of the Association will be managed by a Board of Directors composed of 7 persons. At each annual meeting of the members after the organization meeting, the members will elect a new director to fill each vacancy. The new directors will serve for a term of two (2) years or until the later election and qualification of their replacements.
- 6.2 Nominating Committee. For every election of directors, the Board of Directors may appoint a committee, at least sixty (60) days before the date of the election, to select qualified candidates for election to the Board. The Secretary will send to each member, with the notice of meeting required by section 5.4, a list of the persons nominated. Members may also nominate candidate(s) or themselves, at any time before the forty (40th) day preceding the election. On timely receipt of the nomination, along with a brief resume, the Secretary will place the names of the candidates on the ballot along with those candidates named by the nominating committee. At the meeting when directors will be elected, any member present in person or by proxy, may nominate any other qualified person for election as a

director, and the person so nominated shall be added to the ballot.

- 6.3 Removal Of Directors And How To Fill Vacancies. The entire Board or any individual director may be removed from office, with or without cause, at any properly called meeting of the members, at which a quorum is present. A decision to remove a director will be made by members having a majority of the total votes present at that meeting either in person or by proxy, and entitled to vote; provided, however, that unless the entire Board is removed from office by the vote of the members of the association, no individual director may be removed before the end of his term of office if the votes cast against removal or not consenting in writing to his removal would be sufficient to elect a director if voted cumulatively at an election at which the same number of votes were cast and the entire number of directors authorized to be elected at the time of the most recent election of the directors were then being elected.

Vacancies in the Board may be filled by the vote of a majority of the remaining directors, or may be elected by the members at a properly called meeting, and each director elected in either of those ways will hold his office as director for the rest of the term of the person he replaced. A vacancy is deemed to exist:

- (a) Upon the resignation, death or incapacity of a director. Unless required by its terms, a resignation need not be accepted by the Board, but will be effective as of the date and time stated, or if no date and time is stated, upon receipt by the Board;
- (b) If a director ceases to be an owner or co-owner or the agent of any owner (or in case of an owner or co-owner that is a partnership, a corporation or a limited liability company), the director ceases to be a general partner, corporate officer or member;
- (c) If the members remove a director pursuant to the authority set forth herein, but do not concurrently elect a replacement;
- (d) If a director is removed by the Board pursuant to the authority set forth herein;
- (e) If the members fail to elect a director to succeed a director whose term of office expires at an annual meeting;
- (f) If the members increase the authorized number of directors, but do not concurrently elect a director or directors to fill the new position or positions created; or
- (g) If an authorized position is not filled for any other reason by a duly elected director.

If the authorized number of directors is increased, no more than one director may be appointed, rather than elected, to fill a vacancy created by increasing the number of directors. If the Board accepts the resignation of a director which will take effect at a future time, the Board has the power to elect a replacement to take office when the resignation takes effect.

- 6.4 Meeting Place For Directors' Meetings. All meetings of the Board will be held at

or near the condominium project if reasonably possible. But, if the Board decides that meeting at another place would significantly reduce the costs to the Association and/or the inconvenience of directors, the meetings may be held elsewhere as designated at any time by resolution of the Board or by the unanimous written consent of the directors.

- 6.5 Organization Meeting Of The Board. Immediately after the annual meeting of the members, the Board must hold a regular meeting at the same place to organize the Board, elect officers and transact any other business.
- 6.6 Other Regular Meetings Of The Board. Other regular meetings of the Board will be held at the times picked by the Board. Regular meetings of the Board will be held at least four times each year. Written notice of the time and place of regular meetings of the Board and the nature of any business to be considered must be given to each director in person or by mail, email, telephone, or telegraph, charges prepaid, addressed to him at his address as it is shown on the records of the Association, at least thirty (30) business days before the day named for the meeting. If the notice is mailed or telegraphed, it will be deemed given and received ninety-six (96) hours after being put in the United States mail or twenty-four (24) hours after being delivered to the telegraph company
- 6.7 Special Meetings Of the Board. Special meetings of the Board for any purposes may be called by written notice at any time by the President or by any two directors. Notice of the time and place of special meetings and of the nature of any special business to be considered must be given to each director either (a) by written notice or email given at least fifteen (15) days before the time picked for that meeting, or (b) by telephone notice or written notice delivered personally or by telegraph at least two (2) days before the meeting. Any notice by mail or telegraph must be sent to the director, charges prepaid, addressed to him at his address as it is shown in the records of the Association. If that notice is telegraphed, it will be deemed given and received twenty-four (24) hours after it is delivered to the telegraph company. If any director is absent from any meeting of the Board and notice of that meeting was properly given to that director, an entry will be made in the minutes stating that notice was properly given.
- 6.8 Meetings By Telephone. Meetings may be held by telephone conference call or similar communications equipment, so long as all directors participating in the meeting can hear one another at the same time. All directors participating will be deemed to be present in person at that meeting
- 6.9 Quorum Requirement, Waiver Of Notice. The transaction of any business at any meeting of the Board will be as valid as though made at a meeting properly held after regular call and notice, if a quorum is present (unless a quorum is expressly not required according to these By-Laws) and if, either before or after the meeting, each of the directors not present signs a written release of his right to receive notice, or a consent to the holding of that meeting, or an approval of the

minutes of it. All of those releases, consents and approvals must be filed with the Association records and made a part of the minutes of the meeting. Attendance by a director at any meeting of the Board releases his right to receive notice of the time and place of the meeting, unless at the outset of the meeting, he objects to the lack of notice and he does not give up that objection later. In that event, the meeting cannot be held until proper notice is given.

- 6.10 Taking Action Without A Board Meeting. Any action required or permitted to be taken by the Board by law or according to the Articles or these By-Laws or the declaration may be taken without a meeting, if a quorum of the directors separately or together consent verbally or in writing to that action. A record of consent or consents must be filed with the minutes of the meetings of the Board, and have the same force and effect as a unanimous vote of the directors.
- 6.11 Quorum. A majority of the Board is a quorum. Every act or decision done or made by a majority of the directors present at a meeting properly held at which a quorum is present, in person or by telephone will be regarded as the act or decision of the Board, unless the provisions of these By-Laws, the Articles or the declaration require or permit the particular action involved to be taken by the Board under other circumstances
- 6.12 Adjournment. A quorum of the directors may adjourn (temporarily end, to be continued later) any Board meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at any Board meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board. At any continuation of a Board meeting at which a quorum is present, any business which could have been transacted at the meeting originally called may be transacted at the continuation of the meeting.
- 6.13 Notice of Adjournment. Notice of adjournment of any Board meeting need not be given to absent directors, if the time and place are selected at the meeting which is adjourned until later. If the meeting is adjourned for more than five (5) days, however, notice of the time and place of the continuation of the Board meeting must be given to the directors who were not present at the time of the adjournment.
- 6.14 Members May Attend Most Board Meetings.
- (a) Regular and special meetings of the Board are open to all members of the Association, but members who are not on the Board may not participate in any discussion unless expressly permitted to do so by the vote of a majority of a quorum of the board. Any member may ask to be and will be connected to any meeting being held by telephone conference call or similar communications equipment. If the number of members asking to be connected makes the telephone conference call impractical or impossible, that meeting may not be held

by a conference call, except in the event of an emergency.

(b) upon the approval of a majority of a quorum of its members, the board may adjourn a meeting and reconvene in the "executive session" (which means that only Board members and persons invited by the Board may attend) to discuss and vote upon personnel matters, lawsuits and other legal proceedings in which the Association is or may become involved, any matters necessary to protect the interests of the Association while negotiating contracts, leases, and commercial transactions and other matters of a similar nature. The nature of any and all business to be considered in executive session must first be announced in open session.

6.15 Payments To Directors And Officers. No one will receive any salary or other compensation for services rendered as a director or officer of the Association. However, directors and officers will be reimbursed for transportation expenses incurred and reasonable per diem payments for expenses incurred in connection with their attendance at regular and special meetings of the Board. Nothing in these By-Laws prevents any director from serving the Association in any capacity other than as an officer or a director and being paid for those services as authorized and approved by the Board. Any director being paid by the Association for services in any capacity other than as an officer or director will be excluded from the discussions and voting by the Board on whether to hire him and how much to pay him for serving in that other capacity.

6.16 Executive And Other Committees. The Board, by resolution adopted by a majority of the directors in office, may appoint an Executive Committee and other committees and may delegate to those committees any of the powers and authority of the Board in the management of the business and affairs of the Association except the authority to:

- (a) adopt, amend or repeal the Articles or By-Laws;
- (b) fill vacancies on the Board or on any committee;
- (c) change or repeal any resolution of the Board which says that it cannot be so changed or repealed;
- (d) appoint any other committees of the Board or the members of these committees;
- (e) approve any transaction (1) to which the Association is a party and in which one or more directors have a material financial interest or (2) between the Association and one or more of its directors or (3) between the Association and any company in which one or more of its directors have material financial interest;
- (f) perform those acts which are prohibited by Section 414D-148, Hawaii Revised Statutes, as amended

Each Committee will be composed of two (2) or more directors (one member of the Executive Committee will be the President) and will keep regular written minutes of its actions and report its activities to the Board.

6.17 Powers And Duties Of The Board. Subject to the limitations contained in the

Articles, these By-Laws, the declaration and the Hawaii Revised Statutes as to action required to be taken, authorized or approved by the members of the Association, or a part or percentage of them, all Association powers and duties including those contained in the declaration are exercised by, or under the authority of the Board, and the business and affairs of the Association are controlled by the Board.

- 6.18 Minutes Of Meetings Of The Board. A copy of the written minutes of any meeting of the Board will be available, if requested, within 120 days after the end of that meeting after approval at the next meeting.

## PART 7

### OFFICERS

- 7.1 List Of Officers. The officers of the Association are the President, Vice President, Secretary, Treasurer, Executive-Vice President, if appointed by the Board, and any other officers the Board deems necessary. Any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The President, Vice President and Secretary must be directors. The Treasurer may, but need not, be a director. Each officer, except the Executive Vice President, must be a member of the Association.
- 7.2 The Board May Appoint Other Offices. The Board may appoint, and may authorize the President to appoint, any other officers needed for the business of the Association. Each of them will have the title, hold office for the period, have the authority, and perform the duties specified in these By-Laws or determined from time to time by the Board.
- 7.3 Election and Removal Of Officers. Officers will be picked by a majority vote of the directors at the organization meeting of the Board (per section 6.5, above). After that time, officers may be removed or chosen at any later meeting of the Board by a majority vote of the total number of directors on the Board.
- 7.4 Term Of Officers. The terms of the officers shall be as established by the Board.
- 7.5 President. The President is the chief executive officer of the Association. Subject to the control of the Board, he supervises, directs, and controls the business and affairs of the Association. He presides at (is the chairperson of) all meetings of the members and all meetings of the Board. He is a member of all permanent committees, including the Executive Committee if any, and has the general powers and duties of management usually authorized for the office of president of the corporation organized under the laws of the State of Hawaii. This includes, among others, the power to appoint committees from among the owners and/or license holders from time to time as he alone decides are appropriate to assist in conducting the affairs of the Association. He also has any and all other powers



and duties given to him by these By-Laws or assigned to him from time to time by the Board.

7.6 Vice President. If the President is absent or disabled, the Vice President performs all duties of the President, and when he is acting as President, the Vice President has all the powers of, and is subject to all the restrictions on, the President. The Vice President also has any other powers and performs any other duties given to him from time to time by the President, the Board or by these By-Laws.

7.7 Secretary

(a) The Secretary will keep or cause to be kept, at the principal office of the association or any other place the Board picks, a book containing the minutes of all meetings of directors and members. The minutes must state the time and place that the meeting was held, whether it was a regular or special meeting, and how it was authorized if it was a special meeting, the notice of the meeting given, the names of the persons present at the Board meetings, the number of members present or represented at members' meetings and a brief description of what happened at the meetings

(b) The Secretary will give, or cause to be given, notice of all the meetings of the members and of the Board required by these By-Laws or by law. The Secretary also has any other powers and performs any other duties given to him by the Board or the By-Laws. The duties of the Secretary in this Section may be delegated to the managing agent.

7.8 Treasurer. The Treasurer must supervise the keeping and maintaining of full and accurate books and records of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account are always open to inspection by any director. All money and other valuables must be deposited in the name and to the credit of the Association with the depositories (such as a bank) picked by the Board. The Treasurer will oversee the payout of the funds of the Association as ordered by the Board and to provide to the President and the Board, whenever they ask for it, an accounting of all transactions and of the financial condition of the Association. The Treasurer also has any other powers and performs any other duties given to him by the Board or the By-Laws. The Board may delegate the performance of the Treasurer's duties, subject to supervision by the Treasurer, to a professional hired by the Association.

7.9 Executive Vice President. If the Association acts as Plan Manager for the Association pursuant to Chapter 514E, Hawaii Revised Statutes, the Board may appoint an Executive Vice President to perform all duties of the Responsible Managing Employee for the Association. The Executive Vice President need not be a member of the Association and may be appointed with the compensation and on such terms as the Board shall establish. The Executive Vice President may

also have any other powers and perform any other duties given to him from time to time by the President, the Board, the declaration, or by these By-Laws; provided that the Executive Vice President fulfills the responsibilities imposed under rule 16-106-5, Hawaii Administrative Rules. The Executive Vice President shall be a non-voting member of the Board.

## PART 8

### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

8.1 Definitions. For the purpose of this Part 8,

(a) "agent" means any person who is or was a director, officer, employee, or other agent of the Association, or is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, trust or other company;

(b) "proceeding" means any threatened, pending, or completed action or proceeding (such as a lawsuit). It could be for example, a civil suit, a criminal matter, or an administrative or investigative proceeding;

(c) "expenses" includes, but is not limited to, attorneys' fees, costs, judgments, fines, settlements and other amounts actually and reasonably incurred

8.2 The Association Will Indemnify (Reimburse) Its Agents. To the extent allowed by law, the Association must indemnify (that means they will pay for) any expense incurred by any agent in any proceeding. Section 414D-165 of the Hawaii Revised Statutes, as amended, defines how, when, and under what conditions the Association can make those payments. These By-Laws authorize and require the Association to reimburse its agents to the full extent allowed by law. If available, the Association may buy insurance, if the Board determines it is reasonable in cost, to provide those payments and the Association may, but is not required, to buy insurance which provides for reimbursement under circumstances where the Association could not reimburse the expense directly.

## PART 9

### MISCELLANEOUS

9.1 Who Can Sign Checks. Etc. All checks, drafts or other orders for payment of money, notes or similar documents issued in the name of or payable to the Association, must be signed or endorsed by such person or persons and in such manner as, from time to time, decided by resolution of the Board or, in the absence of a resolution, by any two of the President, Vice President, Secretary or Treasurer.

- 9.2 Contracts, Etc. How Executed. The Board, except as otherwise provided in these By-Laws, may authorize any officer or officers, agent or agents, to enter into any contract or sign any document in the name and on behalf of the Association. That authority may be general or confined to specific things. Unless authorized by the Board, no officer, agent or employee has any power or authority to bind the Association or to pledge its credit or to make it liable for any purpose or for any amount.
- 9.3 Inspection Of Declaration, The Articles, By-Laws And Association Rules. The Association will keep in its principal office the original or a copy of the declaration, the Articles, these By-Laws and the Association Rules with the latest revisions. The documents are open to inspection by all owners and license holders at all reasonable times during office hours.
- 9.4 Fiscal Year. The fiscal (tax) year of the Association ends on December 31st of each year.
- 9.5 The Association's Books And Records. The books, records and papers of the association will be kept at the principal office of the Association or any other place or places selected by the Board. Copies of the declaration, the Articles, the By-Laws and the Association Rules may be acquired by owners and license holders at a reasonable cost. The minutes of meetings of the Association, the Board, and all committees will be kept in written or typed form, and the accounting books and records will be kept either in written or typed form or in any other form (such as in a computer) capable of being changed into written, typed or printed form. The minutes, records, papers and accounting books and records are open to inspection on request of any owner or license holder, at any reasonable time during usual business hours, for a purpose reasonably related to his interests as an owner or license holder. The inspection may be made in person or by an agent or attorney, and includes the right to copy and make extracts. The Board will establish reasonable rules with respect to:
- (a) Notice to be given to the custodian of records by the owner or license holder desiring to make the inspection or to obtain copies.
  - (b) Hours and days of the week when an inspection may be made.
  - (c) Payment of the cost of making copies of documents requested by an owner or license holder.

Each director has the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director or owner or license holder includes the right to make extracts and copies of documents. As a condition to permitting an owner (including directors) to inspect the list of members or permitting an owner (including directors) or license holder to furnish information from the register or other books, papers or records of the Association, the owner or license holder must agree in writing not to use, or allow the use of that information for commercial or other purposes not reasonably

related to the regular business of the Association and his interest in the Association.

- 9.6 Annual Report to Owners. The Association must provide to each owner and license holder the budget and the annual report discussed in the declaration.
- 9.7 Investments. The Association shall have the right to retain all or any part of the securities or property acquired by it in whatsoever manner and to invest and reinvest any funds held by it according to the judgment of the Board of Directors, without being restricted to the class of investments which a director shall or may hereafter be permitted by law to make; provided, however, that the Association shall not retain any excess business holdings as defined in Section 4943 of the Internal Revenue Code of 1986, as amended (the "Code"), and provided, further, that the Association shall not make or retain any investment which may jeopardize the carrying out of any of its exempt purposes under Section 528 of the Code, or subject the Association to the tax imposed by Section 4944 or any other applicable section of the Code or Hawaii law.

## PART 10

### GENERAL PROVISIONS

- 10.1 Certificate of Membership The Board may but is not obligated to issue to the members certificates of membership in the Association in any form the Board picks.
- 10.2 How These By-Laws Can be Changed The Articles and these By-Laws may be revised from time to time by vote at any properly called, noticed and held regular or special meeting of the members at which a quorum is present or by unanimous written consent of the members. Any revision to these By-Laws requires the vote or written consent of members having a majority of all interests. A specific clause or provision of these By-Laws may require a higher vote. If so, no revision to that clause or provision will be effective unless approved by the members having the percentage of votes required for action to be taken under that clause or provision. Amendments will be kept by the Secretary with the other records and books of the Association. Amendments become effective upon recording a document in writing, signed by the President and Secretary of the Association, setting forth the changes and certifying that the amendment was adopted by the required vote of the owners. Amendments to the Articles require the approval of the majority of the members present at a properly called meeting of the members.
- 10.3 Captions. The captions in these By-Laws are inserted only as a matter of convenience and for reference. In no way do they define, limit or describe the scope of these By-Laws, or the intent of any provisions of these By-Laws.


- 10.4 Gender. The use of any gender (sex) in these By-Laws includes either or both of the other genders. The use of the singular includes the plural whenever the context so requires.
- 10.5 Failure To Enforce These By-Laws Now Does Not Mean They Cannot Be Enforced Later. No restriction, condition, obligation or provision contained in these By-Laws will be deemed to have been waived (given up) because of any failure to enforce it. This will still be true no matter how many violations or breaches of it take place.
- 10.6 How These By-Laws Should Be Read And Interpreted. The provisions of these By-Laws will be liberally interpreted to carry out the purpose of creating a uniform plan for vacation ownership and rights of use under which the Association carries out and pays for the operation and maintenance of the property committed to the resort vacation plan.
- 10.7 Even If Part Of These By-Laws Is Invalid, That Will Not Affect The Rest. The provisions of these By-Laws are and should be treated as being separate and independent. If anyone provision is invalid or partly invalid or unenforceable, that will not affect the validity or enforceability of any other provision of these By-Laws.


#### ADOPTION OF BY-LAWS

The undersigned, being the president and vice president of Kihei Timeshare Owners Association, and in accordance with the laws of the State of Hawaii, do hereby adopt the foregoing as the By-Laws of said corporation.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 19  
day of January, 2009.

**THE KIHEI TIMESHARE OWNERS  
ASSOCIATION**

By:   
(Print name: DONALD B. SWATMAN)  
Its: President

By:   
(Print name: LANE DURGIN)  
Its: V. P.

CERTIFICATE OF SECRETARY

I HEREBY CERTIFY that I am the duly appointed Secretary of Kihei Timeshare Owners Association and that the attached is a true and correct copy of the amended By-Laws of Kihei Timeshare Owners Association, duly adopted by a majority of the members at a meeting on 9/20, 2008.

Dated: Kihei, Hawaii; 1/19, 2009

John W. Wood  
Secretary, Kihei Timeshare Owners Association