

**SEVENTH  
REVISED AND RESTATED BY-LAWS  
OF  
KAUAI ISLAND UTILITY COOPERATIVE**

**ARTICLE I.  
Membership**

**Section 1 – Eligibility.** Any individual, partnership, joint venture, corporation, limited liability company, political entity or other person or legal entity that has agreed to purchase or purchases electric energy from Kauai Island Utility Cooperative (the “Association”) shall be eligible for membership in the Association. Any person or entity applying for membership becomes a member only after entering into a Membership Agreement with this Association in a form approved by the Board of Directors and paying the then current membership fee. Membership in the Association shall be without regard to an applicant's race, gender, religion, income, marital status or nationality. No person or entity may hold more than one (1) membership in this Association. A husband and wife may jointly become a member of the Association subject to such rules and regulations established from time to time by the Board of Directors.

**Section 2 – Membership Fee.** The Association shall charge members a membership fee; provided, however, that the amount of such fee shall not exceed One Hundred Dollars (\$100.00). Such fee may be changed from time to time by the Board of Directors for members joining the Association after any such change.

**Section 3 – Inactivation of Membership.**

(A) The Association may inactivate a member's membership if the Member:

- (1) Fails to timely pay any amounts due the Association;
- (2) Fails to timely comply with the requirements of the Membership Agreement;
- (3) Ceases using all cooperative services of the Association; or
- (4) Dies, legally dissolves, or legally ceases to exist;

(B) A member's membership shall be deemed inactivated under this Section as of the date on which the provision of all cooperative services to the member ceases.

(C) The membership of a member which is a legal partnership (a "partnership-member") is not automatically inactivated upon the death of any partner, or following any other alteration in the partnership-member if the partnership-member continues to use a cooperative service of the Association. An individual who is no longer a partner in a

partnership-member remains liable to the Association for any amounts owed to the Association by the partnership-member at the time of the individual's departure from the partnership-member.

(D) Other than a member's right to receive previously accrued allocations of net margins on a patronage basis and the right to participate in accordance with law in the case of liquidation or dissolution of this Association, an inactivated member forfeits and relinquishes all rights provided in the Association's governing documents, including, but not limited to all voting rights and other rights of membership, and, upon such a member's inactivation, other than the Association's obligation to distribute previously accrued allocations of net margins on a patronage basis to the member, and the member's right to participate in accordance with law in the case of liquidation or dissolution of the Association, the Association's duties, obligations and liabilities imposed by these By-laws with regard to the member cease.

**Section 4 – Expulsion from Membership.** At any time if a member has, as determined by the Board of Directors by resolution, (i) intentionally or repeatedly violated any Bylaw of this Association, or (ii) failed in any material respect to comply with its Membership Agreement or any other agreement with this Association, or (iii) willfully and illegally obstructed any lawful purpose or activity of this Association; then, in any such event, the Board of Directors may, by majority vote at any validly held meeting, expel the member. The member against whom the charges are to be proffered shall be informed thereof in a writing delivered at least ten (10) days prior to the meeting of the Board of Directors where such member's termination is to be considered. Such member shall have the opportunity to be heard at said meeting in person or by counsel, and to present evidence.

**Section 5 – Termination of Membership.** A member's membership shall automatically terminate if a member ceases to have a Membership Agreement in effect with the Association.

**Section 6 – Withdrawal from Membership.** A member may withdraw from membership, at any time by giving written notice to this Association, in which event such membership shall terminate at the time of the Association's receipt of such notice.

**Section 7 – Effect of Termination of or Expulsion from Membership.** Upon termination of or expulsion from membership:

(A) All voting rights and other rights of membership shall automatically cease (other than the right to receive previously accrued allocations of net margins on a patronage basis and the right to participate in accordance with law in the case of liquidation or dissolution of this Association);

(B) The Association shall have a right of first refusal to purchase the member's membership holdings in the manner set forth in Article VII Section 7 of these Bylaws; and

(C) The terminated or expelled member's right to purchase electric energy from the Association shall cease unless said terminated or expelled member shall concurrently with the termination of the Member's membership or expulsion enter into a written contract to purchase such electric energy using the Association's standard electric power purchase contract.

Termination of membership or expulsion hereunder shall not impair the obligations or liabilities of the Association or the member under any contract between them, which contract or contracts may be terminated only as provided therein.

## **ARTICLE II.**

### **Meetings of Members and Voting**

**Section 1 – Annual Meeting of Members.** The annual meeting of the members of this Association shall be held on the island of Kauai on a date and at a time and place fixed by the Board of Directors during the second or third calendar quarter of each year. The meeting will be held for the purposes of reviewing the financial progress of the Association for the prior calendar year, and transacting any other business as may be designated in the Notice of Meeting.

**Section 2 – Special Meetings of Members.** Special meetings of the members of this Association shall be held on the island of Kauai at the place specified in the notice of the meeting. Any such special meeting may be called by (i) the Board of Directors, (ii) the Chairman, or (iii) 5% of all members, or 250 members, whichever is less. Each call for a special meeting shall be in a written notice signed by the person or persons making the same, addressed and delivered to the Secretary, and shall state the purpose or purposes of such meeting. Upon receipt of such a notice of demand for special meeting, executed and delivered in accordance with this Section 2, the Board of Directors shall cause such special meeting to be held within thirty (30) days after said receipt.

**Section 3 - Notice of Meeting.** Written notice of every annual meeting of the members shall be prepared and mailed postage prepaid to the last known post office address of each member not less than fifteen (15) days before such meeting; provided, however, that, if the Association's Articles of Incorporation are to be amended at an annual meeting, said notice of that meeting shall be mailed to each member at least thirty (30) days before such meeting. Additional notice of annual meetings may also be given by posting of a prominent notice/sign at all Association locations where Association employees are permanently assigned, and/or by such other reasonable means (e.g. other media advertising and/or posting on the Association's internet web site) as the Board of Directors may determine is appropriate. Notice of every special meeting of the members shall be given not less than fifteen days before such meeting by posting of a prominent notice/sign at all Association locations where Association employees are permanently assigned, and by publishing said notice on at least two (2) separate days in a newspaper of general circulation in the County of Kauai; provided, however, that, if the Association's Articles of Incorporation are to be amended at that special meeting, notice of that meeting shall be posted as aforesaid at least thirty (30) days before such meeting. Additional notice of special meetings may also be given by such other reasonable means (e.g. other media

advertising and/or posting on the Association's internet web site) as the Board of Directors may determine is appropriate. All such notices shall state the time and place of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. No business shall be transacted at special meetings other than that referred to in the notice.

**Section 4 - Voting.**

(A) Each member shall be entitled to one vote upon each matter submitted to a vote at a meeting of the members. Voting by proxy and cumulative voting shall not be permitted.

(B) A member may submit a written vote on any motion, resolution or amendment to be acted upon at a meeting of the members or otherwise, provided that such a written vote has been specifically authorized by the Board of Directors for that motion, resolution or amendment. Such written vote must be cast on a ballot prepared for that purpose by the Board of Directors. It shall be cast by delivery of such ballot to the Secretary, or the Secretary's designee, by the day of the meeting at which the vote is to be taken, or deposited in a ballot box at that meeting if the vote is to be taken at a meeting of the members, or cast by delivery of such ballot to the Secretary, or the Secretary's designee, by the day the vote is to be taken if the vote is to be taken other than at a meeting of the members, or cast by appropriate electronic means as approved by the Board of Directors. Ballots shall be counted by an independent third party selected by the Board of Directors for that purpose, which third party shall certify the results to the Board.

**Section 5 - Quorum.** Except for any motions, resolutions or amendments for which the Board of Directors may have specifically authorized a written vote pursuant to Article II, Section 4, above, five percent (5%) of the members shall constitute a quorum necessary to the transaction of business to be voted on by the members at any annual or special meeting of the members.

**Section 6 - Member Approval of Certain Actions.** Upon the vote of a majority of the Directors, or by the written petition of 5% of all members, or 250 members, whichever is less, such petition to be delivered to the Chairman no more than twenty (20) business days after the posting on the Association's internet web site of the preliminary draft of the Board's minutes reflecting any action taken by the Association's Board of Directors, such action shall be submitted to the members for approval in a manner determined by the Board of Directors; provided, however, that the rights of third parties which have vested between the time such action was approved by the Board of Directors and the approval or disapproval of the members shall not be impaired.

**ARTICLE III.  
Directors**

**Section 1 - Number and Qualifications.**

This Association shall have a Governance Board of Directors (the "Board of Directors") comprised of at least seven (7) and no more than nine (9) voting Directors selected

when and in the manner hereinafter provided, each of whom shall be an individual member or the designated representative of a member of the Association which is a partnership, joint venture, corporation, limited liability company, political entity or other legal entity. The Board of Directors may establish reasonable skills, experience and background requirements for being eligible to serve or continuing to serve as a Director. Other than the President of the Association (who is a non-voting ex-officio member of the Board of Directors), no member of the Board of Directors may be a paid employee of the Association, and no Director may become a paid employee of the Association for a period of one (1) year after such Director's Directorship has terminated. In the case where a member is not an individual, the Board of Directors shall have the authority to establish reasonable policies and procedures for designation of the representative of that member eligible to serve on the Board of Directors.

**Section 2 - Selection of Directors.** Directors shall be selected in the following manner:

(A) Directors shall be elected annually during the month of March on a date to be set each year by the Board of Directors (the "Election Day") to fill vacancies created by the expiration of the terms of Directors whose terms are to expire at the next annual meeting of the Directors, or have theretofore expired, using the procedures hereinafter provided, and such newly elected Directors shall serve for a term of three (3) years or until a successor is appointed and qualified.

(B) Candidates for election to Directorships must be nominated as provided in Section 3 of this Article.

(C) Candidates properly nominated to run for the Directorship positions for which members are scheduled to vote at any election, shall have the right, for a reasonable cost based fee, to have campaign materials mailed to all members upon such rules and regulations as the Board of Directors in its discretion shall determine.

(D) For each election of Directors a "Voter List" will be established which shall consist of only those members of the Association who are not inactivated members and who are members of record as of the day that is 30 days prior to the Election Day. At least twenty (20) days prior to the Election Day ballots for election to Directorships shall be mailed to all members on said Voting List.

(E) All ballots returned to the Secretary, or the Secretary's designee, before the time on Election Day set by the Board of Directors for the receipt of ballots, or deposited in a ballot box at the Association's offices before said time shall be thereafter counted by an independent third party selected by the Board of Directors for that purpose, which third party shall certify the results to the Board.

(F) The candidates receiving the highest number of votes for the number of positions being filled will be declared as elected regardless of the number of votes cast. Tie votes shall be decided by a coin flip conducted by a Circuit or District Judge of the Fifth Circuit Court, State of Hawaii.

**Section 3 – Nomination of Directors.** Unless otherwise provided in these By-Laws, Directors to be elected as provided in Section 2 of this Article must be qualified individuals, and must be nominated as herein provided.

(A) Nominating Committee Nominations. At least eighty (80) days prior to each Election Day, the Board of Directors shall appoint a Nominating Committee consisting of one Director (who is not standing for election in that election), who shall act as Chairperson, and four non-Director members, for the purpose of nominating individuals to stand for election as Directors in that election. At least sixty (60) days prior to the Election Day, said Nominating Committee shall:

- (1) nominate at least one (1) individual to run for election for each Directorship to be elected; and
- (2) post the Nominating Committee nomination or nominations at the Association's principle office and/or on the Association's internet web site.

(B) Member Petition Nominations. Members may nominate additional individuals to run for election for any Directorship position or positions to be elected. Members make Member Petition nominations by delivering to the Secretary, or the Secretary's designee on or before a date to be set by the Board of Directors, but at least twenty (20) days after the posting of the Nominating Committee nominations, a written petition for each Member Petition nomination containing:

- (1) the name of the Member Petition nominee; and
- (2) the printed names, addresses, telephone numbers and original signatures of at least 35 members; provided, however, that no member's signature shall appear on a greater number of Member Petitions than there are Directorship positions to be elected in that election, and if such signature does so appear, all such Member Petitions bearing the same member's signature received by the Secretary after the number of Directorship positions to be elected in that election has been reached shall have that member's signature stricken there from.

Such petition's compliance with this Bylaw shall be verified by the Nominating Committee, and, after such verification, the Association shall post the Member Petition nomination in approximately the same location as the Nominating Committee's nominations.

(C) Notice of Director Nominations. At least twenty (20) days prior to each Election Day, the Association shall prepare and mail a "Voters Guide" to the Voter List notifying the members of the:

- (1) number of Directorship positions for which members are scheduled to vote;
- (2) the names and qualifications of all nominations made by the Nominating Committee; and
- (3) the names and qualifications of all nominations made by Member Petition.

The Voters Guide contemplated herein shall be mailed with the ballot for the election of the Directors to be elected.

**Section 4 - Removal of Directors.**

(A) Removal by the Members. Any Director may be removed from office, with or without cause, upon the affirmative vote of two-thirds (2/3) of the members voting thereon. Any member may petition for the removal of a Director upon written notice signed by five percent (5%) of the members entitled to vote delivered to the Secretary, or the Chairman if the Secretary is the Director being petitioned for removal. Any such petition filed in accordance with this Section 4 shall be voted on at the next meeting of the members at which a quorum is present; provided that such meeting is held more than ten (10) days after the delivery of a copy of the petition to the Director whose removal is sought as hereinafter provided. A copy of the petition for removal shall be given to the Director whose removal is sought at least ten (10) days prior to the meeting of the members. At any meeting to remove a Director, both the members seeking a Director's removal and the Director shall have an opportunity to be heard in person or by counsel and to present evidence.

(B) Removal by the Board. Any Director may be removed from office upon the affirmative vote of two-thirds (2/3) of the duly elected or appointed members of the Board of Directors only for failure to attend at least two-thirds (2/3) of all Regular and Special Board meetings in any twelve month period. On such grounds, any two (2) Directors may petition for the removal of another Director by delivering written notice signed by the petitioning Directors and delivered to the Secretary, or the Chairman if the Secretary is the Director being petitioned for removal. Any such petition filed in accordance with this Section 4 shall be voted on at the next meeting of the Board of Directors, provided that such meeting is held more than ten (10) days after the delivery of a copy of the petition to the Director whose removal is sought as hereinafter provided. A copy of the petition for removal shall be given to the Director whose removal is sought at least ten (10) days prior to the meeting of the Board of Directors. At any meeting to remove a Director, both the Directors seeking another Director's removal and the Director shall have the opportunity at the meeting to be heard in person or by counsel and to present evidence.

(C) **Removal by Judicial Proceedings.** Any Director may be removed the Circuit Court of the Fifth Circuit, State of Hawaii, in accordance with the provisions of Section 414D-140 of the Hawaii Revised Statutes or its successor.

**Section 5 - Vacancies.** Any vacancy on the Board of Directors or increase in the authorized number of Directors shall be filled for the un-expired term by a majority of the Directors then in office though less than a quorum or by the sole remaining Director.

**Section 6 - Annual Meeting.** An annual meeting of the Board of Directors shall be held on the island of Kauai within ten (10) days following the day on which the election of Directors is certified to the Board of Directors by the independent third party selected by the Board for that purpose, or, in the case of a tie vote, the day the tie is broken by a Circuit or District Judge of the Fifth Circuit Court, State of Hawaii, as set out in Section 2. (F) above. Said annual meeting shall be for the purposes of the installation of newly elected Directors, the election of the officers of this Association for the ensuing year, and the transaction of such other business as may properly come before the meeting.

**Section 7 - Regular Meetings.** Regular meetings of the Board of Directors, in addition to its annual meeting, shall be held on the island of Kauai at least once each month upon such notice and at such time and place as the Board of Directors may determine.

**Section 8 - Special Meetings.** Special meetings of the Board of Directors shall be held on the island of Kauai whenever called by the Chairman in the following manner: (i) on twenty-four (24) hours' notice given to each Director personally; (ii) by first class mail deposited at least five (5) days prior to the meeting; or (iii) on twenty-four (24) hours' notice by any other reasonable means (including, without limitation, facsimile, e-mail or other electronic means). Special meetings shall be called by the Chairman or Secretary in like manner and on like notice on the written request of any Director. The purpose of a special meeting shall be specified in the notice of the meeting. Notice of any special meeting may be waived by attendance at a meeting, except when a Director attends a meeting and objects to the transaction of business, or by a waiver of notice signed before, during, or after the meeting.

**Section 9 - Participation by Telephone.** Members of the Board of Directors may participate in a meeting through use of conference telephone or other similar communications equipment, so long as all Directors participating in such meeting can hear one another.

**Section 10 - Quorum, Voting.** A majority of the voting Directors in office shall constitute the quorum necessary for the transaction of business at any regular or special meeting of the Board of Directors, but if less than a quorum is present, those voting Directors present may adjourn the meeting from time to time until a quorum shall be present with no further notice of the meeting required. All questions shall be decided by the affirmative vote of a majority of the entire voting membership of the Board of Directors whether present at the meeting or not (four [4] if the number of Directors is seven [7] and five [5] if the number of Directors is eight [8] or nine [9]) except as otherwise specifically provided in these Bylaws.



**Section 11 - Action Without Meeting.** Any action which may be taken at a meeting of the Board of Directors or of a lawfully constituted committee thereof may be taken without a meeting if set forth and approved by a writing signed by all voting Directors or by all committee members, as the case may be, and such action shall be effective on the date on which the last signature is placed on such writing, or such earlier effective date as is set forth therein.

**Section 12 – Notice to Members.** Notice of all meetings of the Board of Directors shall be given to all members by posting of prominent signs at all Association locations where Association employees are permanently assigned, or by mailing such notice to the last known address of each member. Additional notice may also be given by such other reasonable means (e.g. media advertising and posting on the Association's internet web site) as the Board of Directors may determine is appropriate.

**Section 13 –Attendance at Board Meetings.** Members of the public may attend non-executive sessions of meetings of the Board of Directors upon such rules and regulations as the Board of Directors in its discretion shall determine.

**Section 14 – Minutes.** Minutes shall be kept of all Board of Directors meetings. No later than twenty (20) working days after the day of any Board of Directors meeting, a draft notice of all significant actions taken at that meeting shall be posted in a prominent place at all Association locations where Association employees are permanently assigned, and on the Association's internet web site.

**Section 15 - Executive Committee.** The Board of Directors may by resolution approved by two-thirds of the Directors establish an executive committee. The executive committee shall be composed of a number of Directors as set forth in the Board of Directors' resolution establishing the committee, and shall have and exercise such power and authority as specified by the Board of Directors; provided, however, that such committee shall not have the powers of the Board of Directors in regard to: apportionment or distribution of proceeds, election of officers, filling vacancies in the Board of Directors, amendments to the Articles of Incorporation or Bylaws, adopting a plan of merger or consolidation with another association or corporation, authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Association, authorizing the voluntary dissolution of the Association, adopting a plan for the distribution of the assets of the Association, altering or amending any resolution of the Board of Director not specifically authorized in that resolution, approval of the form of Membership Agreement or termination of membership. Any such executive committee shall act only in the interval between meetings of the Board of Directors and shall be subject at all times to the control and direction of the Board of Directors. Copies of the minutes of each executive committee meeting shall be mailed to all Directors within seven (7) days following such meeting.

**Section 16 - Other Committees.** The Board of Directors may from time to time establish other committees at its discretion, subject to the limits on powers described in Section 15 above and to the requirement that minutes be mailed to all Directors described in Section 15 above.

**Section 17 - Compensation.** Voting Directors and non-employee committee members shall be entitled to a stipend of One Hundred Fifty and No/100 Dollars (\$150.00) per day, or substantial portion thereof, actually spent on Association Business, and subject to reasonable rules and regulations set by the Board of Directors. Such stipend to be escalated annually by the percentage increase in the Honolulu Consumer Price Index (CPI) in any particular year using the CPI in calendar year 2001 as the denominator. In addition, reimbursement for expenses incurred in attending Board of Directors meetings or other business of this Association (including a reasonable per diem for expenses in lieu of actual expenses) shall be allowed as authorized by the Board of Directors.

#### **ARTICLE IV.** **Duties of Directors**

**Section 1 - General Powers.** The business and affairs of this Association shall be governed by the Board of Directors, which Board shall exercise all of the powers of this Association except such as are by law, the Articles of Incorporation or these Bylaws conferred upon or reserved to the members. The Board of Directors shall adopt such policies, rules, regulations, and actions not inconsistent with law, the Articles of Incorporation or these Bylaws, as it may deem advisable.

**Section 2 - Bonds and Insurance.** The Board of Directors shall require that adequate bonds be provided covering all officers, agents, and employees charged by this Association with responsibility for the custody of any of its funds or property. Such bonds, unless cash security is given, shall be furnished by a responsible bonding company and approved by the Board, and the cost thereof shall be paid by this Association. The Board of Directors shall provide for the adequate insurance of the property of this Association, or property which may be in the possession of this Association and in addition, adequate insurance for public liability.

**Section 3 - Accounting System and Audit.** The Board of Directors shall install and maintain an adequate system of accounts and records. At least once in each year the books and accounts of this Association shall be audited or by a certified public accountant and a report of such audit shall be made to the Board.

**Section 4 - Agreements with Members.** The Board of Directors shall have the power to carry out all agreements of this Association with its members in every way advantageous to this Association representing the members collectively.

**Section 5 - Depository.** The Board of Directors shall have power to select one or more banks or other financial institutions to act as depositories of the funds of this Association, and to determine the manner of receiving, depositing and disbursing the Association, the form of checks, and the person or persons by whom they shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

**ARTICLE V.**  
**Officers**

**Section 1 - Election of Officers.** At each Annual Meeting of the Directors the Board shall elect the principal officers of this Association, which principal officers shall be a Chairman, a Vice Chairman, a President, a Financial Vice President, a Secretary and a Treasurer or a Secretary/Treasurer; provided, however, that the President and Financial Vice President may, at the discretion of the Board of Directors, be given contracts of employment exceeding one year in length, which contracts may obviate the need for an annual election of those officers. The Board of Directors may elect such other officers as and when it may deem necessary. The Chairman and Vice Chairman must be Directors of this Association. If any vacancy shall occur among the principal officers of this Association, it shall be filled by the Board of Directors as soon as practicable at a meeting following the vacancy.

**Section 2 – Removal of Officers.** An officer may be removed by the Board of Directors whenever in its judgment the best interests of this Association will be served thereby. Any member may bring charges of misconduct or incompetence against an officer by filing them with the Secretary or President of the Association, together with a petition signed by ten per cent of the members requesting the removal of the officer in question. The Board of Directors shall vote upon the removal of the officer at the first meeting of the Board of Directors held after the hearing to be held on the charges using the procedures set out in Section 421-16, Hawaii Revised Statutes.

**Section 3 - Duties of Chairman.** The Chairman shall (a) preside over all meetings of this Association and of the Board of Directors; (b) call special meetings of the Board of Directors; (c) perform all acts and duties usually performed by a presiding officer; and (d) sign all membership certificates and such other papers of this Association as he may be authorized or directed to sign by the Board of Directors; provided, however, that the Board of Directors may authorize any person to sign any or all checks, contracts, and other documents in writing on behalf of this Association. The Chairman shall perform such other duties as may be prescribed by the Board of Directors.

**Section 4 - Duties of Vice Chairman.** In the absence or disability of the Chairman, the Vice Chairman shall perform the duties of the Chairman.

**Section 5 - Duties of President.** The President shall be the Association's Chief Executive Officer and shall perform such duties and shall exercise such authority as usually performed by a chief executive, and such other or lesser duties as the Board of Directors specifies from time to time. The President shall be a non-voting ex-officio member of the Board of Directors.

**Section 6 - Duties of the Financial Vice President.** The Financial Vice President shall be the Association's Chief Financial Officer and shall perform such duties and shall exercise

such authority as usually performed by a chief financial officer, and such other or lesser duties as the President after consultation with the Board of Directors shall specify from time to time.

**Section 7 - Duties of Secretary.** The Secretary shall cause minutes to be kept of all meetings of the Board of Directors and all meetings of the members and record all votes and keep minutes of all proceedings. He or she shall have general charge and supervision of the books and records of this Association, and shall sign such other papers pertaining to this Association as he or she may be authorized or directed to sign by the Board of Directors. He or she shall keep or cause to be kept complete membership records. He or she shall make all reports required by law and shall perform such other duties as may be required of him by this Association or the Board of Directors. An Assistant Secretary, if any, shall perform the duties of the Secretary during his absence or disability.

**Section 8 - Duties of Treasurer.** The Treasurer shall perform such duties with respect to the finances of this Association as may be prescribed by the Board of Directors. An Assistant Treasurer, if any, shall perform the duties of the Treasurer during his absence or disability.

**Section 9 - Compensation.** The salary, compensation and other benefits of the President shall be fixed by the Board of Directors. The salary compensation and other benefits of the Financial Vice President shall be fixed by the President and approved by the Board of Directors. The compensation of any other officer who is not a member of the Board of Directors shall be determined by the President in accordance with procedures established by the Board of Directors.

**Section 10 - Special Powers.** The President or any officer may be vested by the Board of Directors with any power and charged with any duty not contrary to law or inconsistent with the Articles of Incorporation or these Bylaws.

## **ARTICLE VI.** **Indemnification and Insurance**

**Section 1 - Indemnification.** This Association shall indemnify each Director, officer, manager, employee or agent of this Association, including, without limitation, non-director members of Board committees, and any person serving at the request of this Association as a Director, officer, manager, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him to the fullest extent to which such officers, Directors and employees may be indemnified under the law of the State of Hawaii, or any amendments thereto or substitutions therefor.

**Section 2 - Insurance.** This Association shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, manager, employee or agent of this Association, including, without limitation, non-director members of Board committees, or is or was serving at the request of this Association as a Director, officer, manager, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity.

**ARTICLE VII.**  
**Method of Operation - Patronage Capital**

**Section 1 – Cooperative Operation.** This Association shall be operated upon the cooperative basis in carrying out its business within the scope of the objects and purposes defined in the Articles of Incorporation. The term “patronage” as used in the Articles of Incorporation shall be defined as described herein. Each transaction between this Association and each member shall be subject to and shall include as a part of its terms each provision of the Articles of Incorporation and Bylaws of this Association, whether the same be expressly referred to in said transaction or not.

**Section 2 - Gross Receipts.** All proceeds received by this Association for services rendered to members plus all sums received for products, supplies or services sold for the account of this Association shall be deemed to be “gross receipts”.

**Section 3 - Net Margins - Patronage Capital.**

(A) To determine net margins (also sometimes referred to as “patronage”), the Association shall deduct from gross receipts on a fiscal year basis:

- (1) All operating expenses and costs; and
- (2) The cost of services performed for members; and
- (3) The cost of products, supplies and other property procured or sold by this Association; and
- (4) All taxes and all other necessary expenses; and
- (5) Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices; and
- (6) Those gross receipts, which by their nature reduce the costs and expenses incurred in connection with the generation of gross receipts, shall be used to reduce the deductions from gross receipts as set forth herein.

(B) Net margins shall be calculated, allocated and distributed by the Board of Directors as hereinafter provided.

**Section 4 - Manner of Distribution of Patronage:**

(A) The net margins shall be distributed annually in cash or in the form of written notices of credits to the member's patronage capital account, or any combination thereof, in proportion to the value or quantity of the services purchased by the member from the Association during the applicable fiscal year.

(B) Allocations and distribution of net margins shall be made as soon as practicable after the close of each fiscal year and written notice shall be sent to each member showing the total amount of distribution made to him and the manner of such distribution, showing the exact amount distributed in cash and in credits to the member's patronage capital account. Said notice shall be given not more than eight and one-half months after the close of the fiscal year.

(C) Ten percent (10%) of net margins shall be placed in a surplus fund established by the Board of Directors until the balance of such fund shall equal at least fifty percent (50%) of the value of the Association's patronage capital.

**Section 5 - Loss or Losses.** In the event this Association shall incur a net loss in any fiscal year, such net loss may at the option of the Board of Directors, be charged either against any earned surplus or paid-in surplus which is unallocated, or against prior allocated patronage capital or subsequent years' net margins or savings. In no event shall the Board of Directors have the authority to make any assessment against members other than write-down of existing allocated patronage capital in this Association. This section shall not be construed or administered in such a way as to deprive this Association of the right to carry back or carry forward net operating losses to past or future years, in accordance with the applicable provisions of the Internal Revenue Code or State tax statutes.

**Section 6 - Revolving Capital.** When, in the sole opinion of the Board of Directors, this Association has sufficient equity so that the financial integrity of the Association will not be jeopardized, the Board of Directors may authorize the Association to, and the Association shall, retire and refund patronage capital to members and former members. The Board of Directors shall determine the amount, manner and method of the retirement and refund.

**Section 7 - Patronage Capital Refunds to Estates** Notwithstanding any other provision of these bylaws, the Board of Directors, at its discretion, shall have the power at any time upon the death of any member or former member, who was a natural person (or, upon the death of an assignee of the patronage capital credits of a member or former member, which assignee was a natural person), if the legal representative of his estate shall request in writing that the patronage capital credited or assigned, as the case may be, be retired prior to the time such patronage capital credits would otherwise be retired under the provisions of these bylaws, to retire patronage capital credited to any such member or assignee, as the case may be, immediately upon such terms and conditions as the Board of Directors, acting under policies of general application to situations of like kind, and the legal representatives of such member's or

assignee's estate shall agree upon; provided, however, that the financial condition of the cooperative will not be impaired thereby.

**Section 8 – Right of Set-off.** Before retiring and refunding any patronage capital and/or deposits the Association may deduct by way of set-off from the patronage capital refund due any member or former member or refunds due from any deposits made by the member or former member with the Association, any amounts owed to the Association by that member or former member, including any applicable interest and late payment fees, and the Association shall have a security interest to secure such set-off rights in the patronage capital of the member or former member and/or deposits made by the member or former member with the Association .

**Section 9 - Transfer.**

(A) No assignment or transfer of any amount credited to the capital account of a member, including any such amount evidenced by a certificate or letter, shall be binding on this Association unless such assignment or transfer (i) complies with subsection (B) hereof, and (ii) has been entered in the books of this Association.

(B) A member desiring to assign, transfer or otherwise dispose of a membership interest in this Association or who is required to provide a right of first refusal of the member's interest in the Association pursuant to Section 6(B) of Article I of these Bylaws shall give notice in writing (the "First Refusal Notice") to the Association. If the notice is given by a member desiring to assign, transfer or otherwise dispose of the member's interest in the Association, it shall set forth the terms of the proposed transfer and the identity of the proposed transferee. If the notice is given pursuant to the requirement of Section 6(B) of Article I of these Bylaws, it shall simply offer the interest for purchase by the Association at its book value at the time of the offer. Upon receipt of the First Refusal Notice, the Association shall have ninety (90) days to purchase the membership interest desired to be transferred on the terms of the proposed transfer in the first instance or at book value in the second.

(C) If the Association does not exercise its option to purchase the membership interest within such ninety (90) day time period, the member desiring to transfer the membership interest may transfer it to the proposed transferee under terms identical to those specified in the First Refusal Notice, or the Directors shall purchase the holdings of a member expelled pursuant to Section 3 of Article I at the book value stated in the notice, if and when there are sufficient surplus funds for the purchase. As conditions precedent to the validity and completion of any transfer of membership interest, (i) the transferee must meet the eligibility requirements of the Association and be approved for membership in the Association; (ii) the transferee shall be required to execute a Membership Agreement; and (iii) such transfer shall, in the reasonable judgment of the Association, comply with applicable federal and state securities laws. Any proposed transfer which fails to comply with the provisions of this Article VII Section 7 shall be null and void.

**Section 10 – Maximum Percentage of Capital.** The maximum percentage of capital, which maybe owned or controlled by one member shall not exceed twenty (20) percent of the total membership capital of the Association.

## **ARTICLE VIII.**

### **Consent**

**Section 1 - Consent.** Each person or entity that hereafter applies for and is accepted to membership in this Association and each member of this Association on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions, with respect to its patronage, which are made in written notices of allocation (as defined in 26 U.S.C. § 1388), and which are received by it from this Association, will be taken into account by it at their stated dollar amounts in the manner provided in 26 U.S.C. § 1385(a) in the taxable year in which such written notices of allocation are received by it.

**Section 2 - Consent Notification to Members and Prospective Members.** Written notification of the adoption of this bylaw, a statement of its significance and a copy of the provision shall be given separately to each member and prospective member before it becomes a member of this Association.

## **ARTICLE IX.**

### **Fiscal Year**

Except as otherwise established by the Board of Directors, the fiscal year of this Association shall commence on the first day of January and shall end on the last day of December of each year.

## **ARTICLE X.**

### **Amendments**

These Bylaws may be amended or repealed, or new Bylaws may be adopted, by a two-thirds majority of a quorum of the Members cast at a meeting of the Members called for that purpose (including, if appropriate, an annual meeting of the Members) when a resolution stating the text of the proposed amendment has been approved by the affirmative vote of two-thirds of the Directors. At least thirty (30) days advance notice of such proposed amendment shall be given to all members through a mailing or by giving prominent notice at all association locations.



**ARTICLE XI.**  
**Miscellaneous**

**Section 1 – No Seal.** The Association shall not have a corporate seal.

**Section 2 – Rules of Order.** Unless the Board of Directors determines otherwise, and to the extent consistent with law, the Articles and these By-Laws, all: (1) member meetings; (2) Board of Directors meetings; (3) member committee meetings, and (4) Board of Directors committee meetings are governed by the latest edition of Robert's Rules of Order.

**Section 3 – Governing Law.** These Bylaws must be governed by, and interpreted under, the laws of the State of Hawaii.

**Section 4 – Titles and Headings.** All titles and headings of Bylaw articles, sections, and sub-sections are for convenience and reference only, and do not affect the interpretation of any Bylaw article, section, or sub-section.

**Section 5 – Partial Invalidity.** When reasonably possible, every Bylaw article, section, sub-section, paragraph, sentence, clause, or provision (collectively, “Bylaw Provision”) must be interpreted in a manner by which the Bylaw Provision is valid. The invalidation of any Bylaw Provision by any entity possessing proper jurisdiction and authority, which does not alter the fundamental rights, duties, and relationship between the Association and Members, does not invalidate the remaining Bylaw Provisions.

**Section 6 – Cumulative Remedies.** The rights and remedies provided in these Bylaws are cumulative. The Association or any Member asserting any right or remedy provided in these Bylaws does not preclude the Association or Member from asserting other rights or remedies provided in these Bylaws.

**Section 7 – Entire Agreement.** Between the Association and any Member, the Governing Documents: (1) Constitute the entire agreement; and (2) Supersede and replace any prior or contemporaneous oral or written communication or representation.

**Section 8 – Successors and Assigns.** To the extent allowed by law: (1) The duties, obligations, and liabilities imposed upon the Association or any Member by these Bylaws are binding upon the successors and assigns of the Association or Member; and (2) The rights granted to the Association by these Bylaws inure to the benefit of the Association’s successors and assigns.

The binding nature of the duties, obligations, and liabilities imposed by these Bylaws upon the successors and assigns of the Association and any Member does not relieve the

Association or Member of the duties, obligations, and liabilities imposed by these Bylaws upon the Association or Member.

**Section 9 – Waiver.** The failure of the Association or any Member to assert any right or remedy provided in these Bylaws does not waive the right or remedy provided in these Bylaws.

**Section 10 – Lack of Notice.** To the extent allowed by law and the Articles, the failure of any Member or Director to receive notice of any Meeting, action, or vote does not affect, or invalidate, any action or vote taken by the Members or Board of Directors.

### Adoption of Bylaws

We, the undersigned Directors of the Association having been authorized to do so by valid vote of the members of the Association, on this 28<sup>th</sup> day of March, 2009, do hereby adopt the foregoing provisions as the Seventh Revised and Restated Bylaws of said Association.



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Teofilo "Phil" Tacbian  
Chairman, Board of Directors



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David Iha  
Secretary, Board of Directors