

## **Account Management Services Agreement**

### **Services Agreement**

This Services Agreement is made on \_\_\_\_\_ (the "Effective Date") between Kalapana Seaview Estates Community Association, Inc., aka KSECA, ("Customer"), and Garbarinolaw Limited Liability Law Company (Garbarinolaw LLLC), a full service law firm owned and operated by Michael H. Garbarino, Hawaii State Bar License No. 010474, including its Association Services division, which provides account management and collections services for planned community associations ("Service Provider"). The Customer and Service Provider are sometimes collectively referred to herein as the "Parties" and individually as a "Party".

Customer wishes to retain the services of the Service Provider, and the Service Provider agrees to provide Customer the services, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

### **Article 1. Services**

#### **1.1 Services.**

Service Provider, in its capacity as a duly licensed Hawaii law firm, agrees to perform the following services (collectively the "Services") on behalf of the Customer:

Service Provider represents that it is properly licensed and can perform reasonable and lawful effects to collect accounts receivable of Customer, constituting those member dues that become unpaid and delinquent for a period of 90 days or longer, and any late fees or related penalties imposed by Customer for the debtor's failure to pay dues on time.

Customer shall provide to Service Provider, every 90 days, accounts receivable to collect. Customer represents that any accounts which it turns over to Service Provider are legally due and owed. Customer shall provide upon request to Service Provider source documentation for any and all accounts due, and, verification of any balance due.

Service Provider shall at all times conduct collection activity on behalf of Customer in compliance with all laws and lawful regulations and shall hold Customer harmless from any claims related to unlawful collection activity.

A report of the status of all collections shall be provided to Customer by Service Provider every 90 days.

Service Provider is authorized to charge a late fee of \$10 per annual member due that becomes delinquent, as well as to assess a delinquency penalty in the form of 10% interest on the debt owed, with the interest compounding annually on the total amount past due.

Customer shall be entitled to, either itself or through designated agents, auditors and accountants, conduct audits of the books and records of Service Provider to verify accountings.

Service Provider shall be responsible for all expenses related to its collection efforts, and for each assignment to Service Provider of a debt owed, Service Provider may also impose on the debtor its collection costs, which may include postage, handling, copying, service fees, proportional overhead costs, and in the case of legal action, court costs and attorneys' fees, as may become payable in accordance with law.

The Parties acknowledge and agree that the Services provided herein do not include in court representation. The filing in court of formal legal action is outside the scope of this agreement. Nevertheless, the services provided under this agreement are subject to a standing Customer agreement, at all times, that any given debt assigned for collection under this agreement may be authorized for formal legal action with approval by Customer, and as specifically authorized by Customer's Board of Directors.

Customer shall advertise in its officially adopted collection policies that formal legal action may be brought if doing so becomes necessary to enforce payment on a debt assigned under this agreement. Any court action, before being instituted, shall first be the subject of a separate written attorney-client representation agreement that is entered into between Service Provider and Customer.

Customer agrees and acknowledges that this is an independent contractor arrangement, with legal assignment to Service Provider of the delinquent accounts, that accordingly, Service Provider will determine the method, details, and means of performing the Services. Service Provider agrees to confer with Customer on matters such as collection letter content and to collaborate on the development and issuance by Customer of policies, procedures, and communications to the membership.

## **1.2. Modification of Services; Change Orders**

The Parties acknowledge and agree that during the term of the Agreement the Services may be modified and/or expanded from time to time by the Parties. No changes to the Services will be authorized by Service Provider, and Service Provider shall have no obligation to perform any additional or modified Services, until a Change Order has been agreed upon and signed by an authorized representative of Service Provider.

### **1.3. Subcontractors**

Customer acknowledges and agrees that Service Provider may, at its sole discretion, use subcontractors and consultants to perform some of the Services to be provided under this Agreement. In the event Service Provider utilizes subcontractors or consultants to perform any of the Services, Service Provider shall remain responsible to Customer for performance under this Agreement.

### **1.4. No Exclusivity.**

Service Provider may represent, perform services for, and contract with other additional clients, persons, or companies as Service Provider, in its sole discretion, sees fit, provided those services do not pose a direct conflict of interest with the services performed for the Customer.

### **1.5. Compliance with Laws; Permits and Licenses.**

Customer agrees, at its own expense, to operate in full compliance with all governmental laws, regulations and requirements applicable to the services provided hereunder.

## **Article 2. Fees and Expenses**

### **2.1. Fees.**

As full consideration for the provision of the Services, Customer shall pay Service Provider fees in the amount of 20% (twenty-percent) of KSECA dues and late fees/charges collected by Service Provider (the "Fees").

### **2.2. Billing and Payment.**

Service Provider shall prepare and submit an invoice to the Customer, via email or facsimile or other agreed delivery method, covering the total amount owed for Fees and Expenses for the Services as agreed upon in this Agreement at least every 90 days.

## **Article 3. Warranty**

The Services to be performed hereunder are professional services with professional advice, which may include attorney client privileged communications. Service Provider does not warrant in any form the results or achievements of the Services provided or the resulting work product and deliverables. Service Provider warrants that the Services will be performed by qualified personnel in a professional and workmanlike manner in accordance with the generally accepted industry standards and practices. Service Provider shall comply with all statutes, ordinances, regulations and laws of all international, federal, state, county, municipal or local governments applicable to performing the Services hereunder.

## **Article 4. Ownership of Work Product**

This is not a work-for-hire agreement. The copyright in all deliverables created hereunder for Customer shall belong to the Service Provider. All intellectual property rights in all pre-existing works and derivative works of such pre-existing works and other deliverables and developments made, conceived, created, discovered, invented or reduced to practice in the performance of the Services hereunder are and shall remain the sole and absolute property of Service Provider, subject to a worldwide, non-exclusive license to Customer for its internal use as intended under this Agreement, and the Service Provider retains all moral rights therein. This Agreement does not grant Customer any license to any of the Service Provider's products, which products must be separately licensed.

## **Article 5. Confidential Information**

### **5.1. Confidential Information.**

The Parties acknowledge that by reason of their relationship to the other hereunder, each will disclose or provide access (the "Disclosing Party") to the other Party (the "Receiving Party") certain Confidential Information.

"Confidential Information" shall mean (a) information concerning the Parties' products, business and operations including, but not limited to, information relating to business plans, financial records, customers, suppliers, vendors, products, product samples, costs, sources, strategies, inventions, trade secrets, procedures, sales aids or literature, technical advice or knowledge, contractual agreements, pricing, procedures, distribution methods, inventories, marketing strategies and interests, data, designs, drawings, work sheets, computer programs and systems and know-how or other intellectual property, of a Party and its affiliates that may be at any time furnished, communicated or delivered by the Disclosing Party to the Receiving Party, whether in oral, tangible, electronic or other form; (b) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (c) information acquired during any tours of or while present at a Party's facilities; and (d) all other non-public information provided by the Disclosing Party hereunder. In no event shall Service Provider's use or disclosure of information regarding or relating to the development, improvement or use of any of Service Provider's products be subject to any limitation or restriction. All Confidential Information shall remain the property of the Disclosing Party.

### **5.2. Use of Confidential Information; Standard of Care.**

The Receiving Party shall maintain the Confidential Information in strict confidence and disclose the Confidential Information only to its employees, subcontractors, consultants and representatives who have a need to know such Confidential Information to fulfill the business affairs and transactions between the Parties contemplated by this Agreement. The Receiving Party shall always remain responsible for breaches of this Agreement arising from the acts of its employees, subcontractors, consultants

and representatives. Receiving Party shall use the same degree of care as it uses with respect to its own similar information, but no less than a reasonable degree of care, to protect the Confidential Information from any unauthorized use, disclosure, dissemination, or publication. Receiving Party shall only use the Confidential Information in furtherance of its performance of its obligations under this Agreement, and agrees not to use the Disclosing Party's Confidential Information for any other purpose or for the benefit of any third party, without the prior written approval of the Disclosing Party. The Receiving Party shall not decompile, disassemble, or reverse engineer all or any part of the Confidential Information.

### **5.3. Exceptions.**

Confidential Information does not include information that: (a) was lawfully in Receiving Party's possession before receipt from Disclosing Party; (b) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the Receiving Party; (c) is developed by Receiving Party independently of any Confidential Information it receives from Disclosing Party; (d) Receiving Party receives from a third party free to make such disclosure without, to the best of Receiving Party's knowledge, breach of any legal or contractual obligation, or (e) is disclosed by Receiving Party with Disclosing Party's prior written approval.

### **5.4. Required Disclosures.**

If the Receiving Party is confronted with legal action to disclose Confidential Information received under this Agreement, the Receiving Party shall, unless prohibited by applicable law, provide prompt written notice to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order or other relief it deems appropriate, and Receiving Party shall reasonably assist disclosing Party in such efforts. If disclosure is Nonetheless required, the Receiving Party shall limit its disclosure to only that portion of the Confidential Information which it is advised by its legal counsel must be disclosed.

### **5.5. Unauthorized Use or Disclosure of Confidential Information; Equitable Relief.**

In the event the Receiving Party discovers that any Confidential Information has been used, disseminated or accessed in violation of this Agreement, it will immediately notify the Disclosing Party, take all commercially reasonable actions available to minimize the impact of the use, dissemination or publication, and take all necessary steps to prevent any further breach of this Agreement. The Parties agree and acknowledge that any breach or threatened breach regarding the treatment of the Confidential Information may result in irreparable harm to the Disclosing Party for which there may be no adequate remedy at law. In such event the Disclosing Party shall be entitled to seek an injunction, without the necessity of posting a bond, to prevent any further breach of this Agreement, in addition to all other remedies available in law or at equity.

## **5.6. Return of Confidential Information; Survival.**

Receiving Party shall promptly return or, at Disclosing Party's option, certify destruction of all copies of Confidential Information at any time upon request or within 15 days following the expiration or earlier termination of this Agreement. Notwithstanding any expiration or termination of this Agreement, Receiving Party's obligations to protect the Confidential Information pursuant to this Section will survive for two years after the expiration or earlier termination of this Agreement.

## **Article 6. Indemnification**

Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold the other Party and its affiliates and their respective officers, directors, employees and agents harmless from and against all third-party claims, losses, liabilities, damages, expenses and costs, including attorney's fees and court costs, arising out of the Indemnifying Party's (a) negligence or willful misconduct or (b) its material breach of any of the terms of this Agreement. The Indemnifying Party's liability under this Section shall be reduced proportionally to the extent that any act or omission of the other Party, or its employees or agents, contributed to such liability. The Party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any claim and give complete control of the defense and settlement of the Indemnifying Party, and shall cooperate with the Indemnifying Party, its insurance company and its legal counsel in its defense of such claim(s). This indemnity shall not cover any claim in which there is a failure to give the Indemnifying Party prompt notice to the extent such lack of notice prejudices the defense of the claim.

ARTICLE 6. STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDIES WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS AGREEMENT.

## **Article 7. LIMITATION OF LIABILITY; ACTIONS**

EXCEPT FOR THE PARTIES CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 5 OF THIS AGREEMENT AND INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 6 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. SUBJECT TO THE CUSTOMER'S OBLIGATION TO PAY THE

FEES TO THE SERVICE PROVIDER, EACH PARTY'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY THE CUSTOMER TO THE SERVICE PROVIDER UNDER THIS AGREEMENT IN THE 24 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

#### **Article 8. Cooperation of Customer**

Customer agrees to consider all reasonable requests of Service Provider and shall provide Service Provider's personnel with access to all documents and facilities as may be reasonably necessary for the performance of the Services under this Agreement.

#### **Article 9. Non-Solicitation**

Customer agrees that during the term of this Agreement and for one (1) year thereafter, it will not, directly or indirectly, solicit or induce any Service Provider employee that has interacted with Customer or has been involved, directly or indirectly, in the performance, review and/or acceptance of the Services, to consider or accept employment with Customer. Customer is not prohibited from responding to or hiring Service Provider employees who inquire about employment with Customer on their own accord or in response to a public advertisement or employment solicitation in general.

#### **Article 10. Term**

This Agreement will commence as of the Effective Date and will terminate on the earlier of one (1) year, or upon completion of the Services, unless earlier terminated in accordance with the provisions of this Agreement. Thereafter, for periods beyond the initial one (1) year term, the Agreement may be renewed for additional one year terms (each a "Renewal Term"), unless not less than sixty (60) days prior to the end of the Initial Term or any Renewal Term, either Party notifies the other of its intent not to renew the Agreement. The Initial Term and Renewal Terms, if any, are collectively referred to herein as the "Term".

#### **Article 11. Termination**

##### **11.1. Termination for Breach.**

Either Party may terminate this Agreement at any time in the event of a breach by

the other Party of a material covenant, commitment or obligation under this Agreement that remains uncured: (a) in the event of a monetary breach, ten (10) calendar days following written notice thereof; and (b) in the event of a non-monetary breach after thirty (30) calendar days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party.

#### **11.2. Termination for Bankruptcy, Insolvency or Financial Insecurity.**

Either Party may terminate this Agreement immediately at its option upon written notice if the other Party: (a) becomes or is declared insolvent or bankrupt; (b) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within ninety (90) calendar days after its filing; or (c) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U.S.C. §365.

**11.3. Obligations upon Termination.** Termination of this Agreement for any reason shall not discharge either Party's liability for obligations incurred hereunder and amounts unpaid at the time of such termination. Customer shall pay Service Provider for all Services rendered prior to the effective date of termination.

### **Article 12. Relationship of the Parties**

The relationship of the Parties hereto is that of independent contractors. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents. Each of the Parties is an independent contractor and neither Party has the authority to bind or contract any obligation in the name of or on account of the other Party or to incur any liability or make any statements, representations, warranties or commitments on behalf of the other Party, or otherwise act on behalf of the other. Each Party shall be solely responsible for payment of the salaries of its employees and personnel (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

### **Article 13. Force Majeure**

Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, except for the payment of money, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures,



governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, or other similar or different occurrences beyond the reasonable control of the Party so defaulting or delaying in the performance of this Agreement, for so long as such force majeure event is in effect. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within five (5) business days of its occurrence.

#### **Article 14. Governing Law and Venue**

This Agreement will be governed by and interpreted in accordance with the laws of the State of Hawaii, without giving effect to the principles of conflicts of law of such state. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in Hawaii County, Hawaii. Both Parties hereby submit to the exclusive jurisdiction and venue of any such Court.

#### **Article 15. Attorney's Fees**

If either Party incurs any legal fees associated with the enforcement of this Agreement or any rights under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation, or other litigation expenses from the other Party as determined by such alternative dispute resolution or the court.

#### **Article 16. Assignment**

The Service Provider may subcontract its obligations and rights to a third-party with Customer approval.

#### **Article 17. Severability**

If any provision or portion of this Agreement shall be rendered by applicable law or held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

#### **Article 18. Survival**

Each term and provision of this Agreement that should by its sense and context survive any termination or expiration of this Agreement, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this Agreement.

#### **Article 19. Rights Cumulative**

The rights and remedies of the Parties herein provided shall be cumulative and not exclusive of any rights or remedies provided by law or equity.

## **Article 20. Counterparts**

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

## **Article 21. Notices**

Except where noted in Article 20 that facsimile or e-signature is acceptable, all notices or other communications required under this Agreement shall be in writing and shall be deemed effective when received and made in writing by either (a) hand delivery, (b) registered mail, (c) certified mail, return receipt requested, or (d) overnight mail, addressed to the Party to be notified at the following address or to such other address as such Party shall specify by like notice hereunder:

Customer:

12-7017 Kalihikai, # 4537, Pahoa, HI 96778

Attention: KSECA Board, Attn. President

Email: Board@KSECA.org

Service Provider:

13-3863 Pahoa Kalapana Rd, Pahoa, HI 96778

Attention: Mike Garbarino

Email: associationservices@icloud.com

## **Article 22. Waiver**

No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Agreement thereafter.

## **Article 23. Entire Agreement**

This Agreement, and any exhibits attached hereto, is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic or otherwise.

**Article 24. Agreement Modification**

Each Party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not contained in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. No change, modification, amendment, or addition of or to this Agreement or any part thereof shall be valid unless in writing and signed by authorized representatives of the Parties.

In witness whereof, the Parties hereto have executed this Services Agreement on the date set forth below.

**CUSTOMER**

By: \_\_\_\_\_

Name: Sage Melillo

Title: President, KSECA Board of Directors

Date: \_\_\_\_\_

**SERVICE PROVIDER**

By: \_\_\_\_\_

Name: Michael Garbarino

Title: Owner, Garbarinolaw LLLC & Association Services

Date: \_\_\_\_\_