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**AMENDED AND RESTATED BYLAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF HALE NAPILI**

WHEREAS, on or about September 14, 1970, a Declaration of Horizontal Property Regime together with a "Declaration of Covenants, Conditions and Restrictions and Bylaws of the Association of Apartment Owners of Hale Napili Apartments, A Horizontal Property Regime" were recorded together with the Bureau of Conveyances of the State of Hawaii in Liber 7183, Page 231 (the "Original Declaration and Bylaws").

WHEREAS, there now exists a new statute known as the "Condominium Property Act" designated as Chapter 514B of the Hawaii Revised Statutes, (in this Amended and Restated Declaration referred to as "the Act"); and

WHEREAS, under Section 514B-23(b) of the Act, a condominium association, with the vote or written consent of Owners holding at least a majority of the project common interests may adopt the Act, to be the condominium act governing the condominium association and the condominium project; and

WHEREAS, Owners holding more than a majority of the common interests in the Hale Napili condominium project (sometimes referred to herein as the "Project") have voted to amend and restate the original Declaration of Hale Napili so that the Hale Napili condominium project is to be governed by the provisions of the Act; and

WHEREAS, pursuant to Section 514B-109(a) and (b) of the Act, the Board of Directors of the Association of Apartment Owners of Hale Napili has voted to amend and restate the Original Declaration and Bylaws to incorporate all the necessary provisions of the Act, and to have the Amended and Restated Declaration of Hale Napili ("Amended Declaration") and the Amended and Restated Bylaws of the Association of Apartment Owners of Hale Napili ("Amended Bylaws") to conform to the Act, effective upon an appropriate vote of the Owners of Hale Napili ("Owners").

NOW, THEREFORE, the Bylaws of the Association of Apartment Owners of Hale Napili is restated to read as follows:

The following Amended Bylaws shall apply to the above-named condominium project (herein sometimes called the "Project"), as described in and created by the original Declaration of Horizontal Property Regime, (as the same has been amended and/or restated to the date of the recording of this instrument, hereinafter called the "Declaration") recorded at the Bureau of Conveyances of the State of Hawaii on September 14, 1970, in Liber 7183 at Page 219 and as amended by Amended and Restated Declaration of Condominium Property Regime of Hale Napili to be executed and recorded concurrently herewith and to all present and future Owners, tenants and occupants of any Units of the Project and all other persons who shall at any time use the Project:

ARTICLE I
INTRODUCTORY PROVISIONS

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Condominium Property Act, Chapter 514B of the Hawaii Revised Statutes (the "Act") except as otherwise expressly provided herein. The term "common elements" means those elements designated in the Amended Declaration as common elements and limited common elements. The term "Project" shall include the land, the buildings and all other improvements thereon (including the Units and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term "House Rules" refers to the rules and regulations for the Project governing the conduct of occupants of the buildings adopted by the Board of Directors of the Association (the "Board"). "Owner" or "Unit Owner" means a person or corporation or partnership entity owning severally or as a co-tenant of a Unit and the common interest appertaining thereto, to the extent of such interest so owned. Unless otherwise specified, "Unit" as used herein has the same meaning and definition as contained in the Act and includes each of the apartments and/or Units designated and described in the Amended Declaration. The term "Association" means the Association of Apartment Owners of Hale Napili. Unless otherwise provided herein, the term "Mortgagee" means any holder, including an institutional holder, of any recorded first mortgage, or equivalent security interest lien on any Unit in the Project.

Section 2. Conflicts. These Bylaws are set forth to comply with the requirements of the Act. In case any of these Bylaws conflict with the provisions of said Act or of the Amended Declaration, the provisions of said Act or of the Amended Declaration, as the case may be, shall control.

Section 3. Application. All present and future owners, mortgagees, tenants and occupants of Units and their employees, and any other persons who may use any part of the Project in any manner are subject to these Amended Bylaws, the Amended Declaration and the House Rules. The acceptance of a deed or conveyance or mortgage or the act of occupancy of a Unit shall constitute an agreement that these Amended Bylaws, the House Rules and the provisions of the Amended Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

ARTICLE II
ASSOCIATION OF APARTMENT OWNERS

Section 1. Membership. The Association shall be comprised of all of the Unit Owners acting as a group in accordance with these Amended Bylaws and the Amended Declaration. The Project is operated in a manner similar to a hotel, with Units used for "transient vacation rentals," as defined by section 514E-1 of the Hawaii Revised Statutes. Such transient vacation rental operation is administered by Hale Napili Rental Pool, LLC ("Hale Napili Rental Pool"). **ALL OWNERS SHALL BE REQUIRED TO BE MEMBERS OF HALE NAPILI RENTAL POOL AND SHALL BE BOUND BY THE OPERATING AGREEMENT OF HALE NAPILI RENTAL POOL AND THE RULES ENACTED BY HALE NAPILI RENTAL POOL AS SUCH OPERATING AGREEMENT AND RULES MAY BE AMENDED**

FROM TIME TO TIME. Notwithstanding any provision to the contrary in the Amended and Restated Declaration of Hale Napili or these Amended and Restated Bylaws of Hale Napili, the Association and its Board shall act in a manner that is consistent with such rental operation, and in a manner that encourages Owners to cooperate in the operation of Hale Napili Rental Pool. Prior to any sale or conveyance of an Owner's interest in a Unit, such Owner shall provide a copy of the Hale Napili Rental Pool Operating Agreement and Rules to the buyer and disclose, in writing that membership in Hale Napili Rental Pool is mandatory for all Owners.

Section 2. Qualification. The Owner of any Unit, which shall be understood to include a vendee under an agreement of sale for purposes of these Bylaws, upon acquiring an interest therein, shall automatically become a member of the Association and the Hale Napili Rental Pool, and shall remain a member thereof until such time as his Ownership of such Unit ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3. Powers of Association. The following powers shall be vested in the Association, which shall exercise said powers in accordance with the provisions hereof:

- (A) The election of a Board of Directors.
- (B) The operation of the property, payment of common expenses and determination and collection of common charges.
- (C) The collection from the Owners of their shares of the common expenses.
- (D) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (E) The adoption of rules and regulations governing the details of operation and use of the common elements.
- (F) The establishment of such restrictions and requirements not inconsistent with the Amended Declaration or the Act regarding the use and maintenance of the Units and the use of the common elements.
- (G) The further amendment of these Amended Bylaws in accordance with the Declaration, Article X, Section 14 hereof, and subject to the Act, as amended.
- (H) The approval of the annual budget prepared and submitted by the Board of Directors.

Nothing in this Section 3 shall prohibit the delegation by the Association of any of its powers in accordance with these Bylaws as they may be amended from time to time.

Section 4. Other Powers. In addition to the powers enumerated in Section 3 above and in addition to the powers granted by any other provisions herein, the Association may exercise any and all powers not inconsistent with any law or the Declaration, which are reasonably

incidental to the fulfillment of the purposes of the Project set forth in the Declaration, or are reasonably incidental to the exercise of its powers as set forth in the Declaration or herein.

ARTICLE III MEETINGS OF THE ASSOCIATION

Section 1. Place of Meetings. Meetings of the Association shall be held at the Project or such other suitable place convenient to the members of the Association within the State of Hawaii as may be designated by the Board. Provided, however, in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii. (Section 514B-121(e) of the Act)

Section 2. Annual Meeting. The annual meeting of the Association shall be held in October of each year (unless another date is selected by the Board of Directors), at such reasonable time and place as the Board of Directors shall designate by giving written notice delivered to each Voting Owner not less than thirty (30) days prior to the date fixed for such meeting.

Section 3. Special Meetings. Special meetings of the Association shall be held at any time upon the call of the President, a majority of the Board or by a petition signed by at least twenty-five percent (25%) of the Unit Owners, as shown in the Association's record of Ownership, and presented to the Secretary or Managing Agent. Within fourteen (14) days of receipt of the petition, the Secretary or Managing Agent shall send written notice of the meeting to all Voting Owners and the meeting shall be held no earlier than fourteen (14) and no later than sixty (60) days from the receipt of the petition, at such time, date, and place as shall be determined by the Board. If the Secretary or Managing Agent fails to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting in accordance with the requirements of these Amended Bylaws. (Section 514B-121(b) of the Act)

Section 4. Notice of Meetings. The Secretary shall give written notice of all Association meetings, whether annual or special, in accordance with Article III, Sections 1, 2, and 3, in any of the following ways: (a) by hand delivering it to the Unit Owner, or (b) by mailing it, postage prepaid, addressed to the mailing address of the Unit Owner or to any other mailing address designated in writing by the Unit Owner or (c) unless written notice is received by the Secretary from an Owner objecting thereto, by electronic mail to the electronic mailing address designated in writing by the Unit Owner. The notice of any meeting shall contain at least: the date, time and place of the meeting, the items on the agenda for the meeting, including the general nature and rationale of any proposed amendment to the Declaration or these Amended Bylaws, and any proposal to remove a member of the Board, (provided, however, nothing in this section shall preclude any Unit Owner from proposing an amendment to the Declaration or Bylaws or to remove a member of the Board at any annual Association meeting), and a standard proxy form authorized by the Association, if any. (Section 514B-121(c) of the Act) Notwithstanding any other provision of these Bylaws, if an Owner holds less than a 25% interest in a Unit, then notice shall be remitted to the Voting Representative designated by that Owner pursuant to Section 2.5 of the Amended and Restated Operating Agreement of Hale

Napili Rental Pool, LLC, who shall have the sole obligation to ensure that such is distributed appropriately among the Owners who have designated such person, and notice to the Voting Representative shall constitute notice to all Members who have designated him or her. If notice is given pursuant to the provisions of this Section, the failure of any member of the Association to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any member of the Association in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 5. Quorum. The presence at any meeting in person or by proxy of a majority of the members of the Association shall constitute a quorum, and the acts of a majority of the members of the Association at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of the members of the Association" herein means the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration.

Section 6. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each Unit is entitled shall be the percentage of the common interest assigned to such Unit in the Declaration. An Owner may vote by mail or electronic transmission through a duly executed proxy. If a Unit is owned by more than one person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. (Section 514B-123(b) of the Act) If only one of several Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the Owners is present, the votes allocated to that Unit may be cast in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the votes allocated to that Unit without protest being made by any of the other Owners of the Unit to the person presiding over the meeting before the polls are closed. If majority agreement is not achieved prior to the polls being closed, no votes allocated to the Unit shall be counted. (Section 514B-123(a) of the Act) In the absence of protest, any Owner may cast the votes allocated to the Unit by proxy. (Section 514B-123(b) of the Act) No votes allocated to a Unit owned by the Association may be cast for the election or reelection of directors. (Section 514B-123(c) of the Act) The resident manager, managing agent or Board of Directors shall keep an accurate and current list of members of the Association and their current addresses, the names and addresses of the vendees of any Unit under an agreement of sale, if any, and the names and addresses of Unit mortgagees, if any. The list shall be maintained at a place designated by the Board of Directors, and a copy shall be available, at cost, to any Owner, provided the Owner furnishes to the resident manager or managing agent or Board of Directors a duly executed and acknowledged affidavit stating that the list (A) will be used by the Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and (B) shall not be used by such Owner or furnished to anyone else for any other purpose. The Board may prohibit commercial solicitations. The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the Board. All membership lists are the property of the Association and any membership lists contained in the managing agent's or resident manager's records are subject to

the provisions of this Section 6. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this Section 6. (Section 514B-153 of the Act)

Section 7. Proxies.

(A) No resident manager or managing agent, or their employees, shall solicit, for use by the resident manager or managing agent, any proxies from any Owner of the Association that retains the managing agent or employs the resident manager, nor shall the resident manager or managing agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. (Section 514B-123(i) of the Act) If the Board of Directors intends to use Association funds to distribute proxies, including any standard proxy form described below in subsection (ii), it shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days prior to its distribution of proxies; provided that if the Board of Directors receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board of Directors shall mail to all Owners either:

(i) A proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

(ii) A proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page indicating the Owner's qualifications to serve on the Board of Directors and reasons for wanting to receive proxies. (Section 514B-123(h)(1) of the Act)

(B) The authority given by the Owner to another person to represent him at meetings of the Association shall be in writing. To be valid a proxy shall: (i) be delivered to the Secretary or the managing agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Unit or Units for which the proxy is given, and the date that the proxy is given. A standard proxy form authorized by the Association, to be valid, must contain boxes wherein the Owner has indicated that the proxy is given: (A) for quorum purposes only; (B) to the individual whose name is printed on a line next to this box; (iii) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Board present at the meeting; or (iv) to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage. The proxy form shall also contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act. (Section 514B-123(d) of the Act)

(C) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the Owner

desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the applicable Unit. (514B-123(e) of the Act)

(D) A Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as an Owner under subsection (i) above. (514B-123(h)(2) of the Act)

(E) Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Unit or interest therein, a copy of which is filed with the Board of Directors, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board of Directors. Nothing in subsections (B), (C) or (D) of this Section 7 shall affect the holder of any proxy under a first mortgage of record or under an agreement of sale of any Unit or interest therein. (514B-123(g) of the Act) If a Unit is owned by more than one person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. In the absence of protest, any Owner may cast the votes allocated to the Unit by proxy. (Section 514B-123(b) of the Act) An Owner may revoke a proxy given pursuant to this Section 7 only by actual notice of revocation to the Association Secretary or the managing agent. A proxy is void if it purports to be revocable without notice. (514B-123(b) of the Act)

(F) The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by Owners; provided the Board of Directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations. (514B-123(j) of the Act)

(G) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy. (Section 514B-123(f) of the Act)

Section 8. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members of the Association present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 9. Order of Business. The order of business at all annual meetings of the Association shall be as follows:

- (A) Roll Call;
- (B) Proof of notice of meeting;
- (C) Reading of minutes of preceding meeting;
- (D) Report of officers;

- (E) Report of Committees;
- (F) Election of directors;
- (G) Unfinished business;
- (H) New business. (prior amendment recorded as Document No. 94-204804)

Section 10. Procedure. All Association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. (Section 514B-122(d) of the Act)

ARTICLE IV **BOARD OF DIRECTORS**

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) and not more than five (5) persons, each of whom shall be a natural person who is: (a) an Owner or co-Owner; (b) a trustee who also is the settlor of a trust that is an Owner or co-Owner; (c) a member of a limited liability company that is an Owner or co-Owner; or (d) a general partner of a general or limited partnership that is an Owner or co-Owner. There shall not be more than one representative of the Board from any one Unit. Any Owner who is a Board member and an employee of the Association's managing agent shall not participate in any discussion regarding a management contract at a Board meeting and shall be excluded from any executive session of the Board where the management contract or the property manager will be discussed. (Section 514B-107(c) of the Act) Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless the Owners are informed and a majority of the Owners approve of these expenses; provided that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the Board meeting where reimbursement of such actual expenditures are approved shall reflect in detail the items and amounts of such reimbursements. (Section 514B-107(d) and (f) of the Act) The directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to Owner approval. The directors shall serve without compensation. No resident manager of the Project shall be eligible to serve on the Board of Directors.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not restricted by law, the Declaration or these Bylaws directed to be exercised or done only by the Owners of the Units. In the performance of their duties, officers and members of the Board shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D of the Hawaii Revised Statutes. (Section 514B-106(a) of the Act).

Section 3. Election and Term. Election of directors shall be by voting at each annual meeting and at any special meeting called for that purpose. The directors shall hold office for a period of one year and until their respective successors have been elected, subject to removal as herein provided.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Notwithstanding any provision herein to the contrary, any director elected to fill any vacancy on the Board of Directors shall serve for the remainder of the term of the director whose vacancy he is elected to fill. Death, incapacity or resignation of any director, or his ceasing to be the sole Owner or co-Owner of a Unit, shall cause his office to become vacant. Three unexcused absences from regular or special, properly noticed, Board meetings between annual meetings shall cause a director's office to become vacant if a majority of the remaining directors so vote.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of Owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Owners shall be given an opportunity to be heard at such meeting. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or managing agent signed by not less than twenty-five percent (25%) of the Owners as shown in the Association's record of Ownership; and provided further that if the Secretary or managing agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the Amended Bylaws. (Section 514B-106(f) and 514B-121(b) of the Act) If said vacancy is not so filled at the regular or special meeting, the Board of Directors shall fill said vacancy as provided in Section 4 above.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting, the Board of Directors shall elect the officers of the Association for the ensuing year. Notice of the annual Board of Directors meeting shall be given in a reasonable manner at least thirty (30) days, if practicable, prior to such meeting.

Section 7. Regular Meeting. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar quarter of each year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, email, telephone or telegraph, at least one day prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight (8) hours notice to each director, given personally or by

telegraph, email, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 8A. Telecommunication Meetings. Regular, special and organizational Board meetings may be conducted by means of communication through which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. Furthermore, if permitted by the Board, any Owner may participate in a Board meeting conducted by means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require the Owner pay for the costs associated with the participation. (Section 514B-125(c) of the Act)

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board of Directors, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds/Registration. The Board of Directors shall secure fidelity bonds as required by the Act. The premiums on such bonds shall be paid by the Association. The Board shall also register the Association annually as required by the Act.

Section 12. Conflict of Interest. A Director shall not vote by proxy at Board Meetings. (Section 514B-125(e) of the Act) A Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest. For purposes of these Bylaws, the phrase, "conflict of interest," shall mean an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. (Section 514B-125(f) of the Act)

Section 13. Procedure. All meetings of the Board of Directors shall be conducted in accordance with Robert's Rules of Order Newly Revised.

Section 14. Powers of the Board.

(A) The Board of Directors shall have the power to do all things set forth in the Act, as amended, and in these Bylaws, except as otherwise expressly prohibited.

(B) The Board of Directors shall be the exclusive agent for the Association in the exercise of the management and control of the common elements.

(C) The Board shall have the exclusive power to contract for all goods and services, payment for which shall constitute common expenses; provided, however, the Association may, by resolution adopted at a meeting duly called for the purpose, prohibit any proposed action by the Board of Directors which has not yet imposed an enforceable obligation on the Board of Directors or the Association.

(D) The Board of Directors may, from time to time, adopt and/or amend House Rules governing the details of the operation and use of the common elements; provided, however, that no such rules shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for the purpose; provided, further, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving House Rules adopted by the Board of Directors.

(E) Within ten (10) days prior to each annual meeting, the Board of Directors shall cause to be prepared a budget of the common expenses and replacement reserves (Section 514B-148(a) of the Act) required for the affairs of the Association (including, without limitation, the operation and maintenance of the Property) and determination of the amounts of monthly and special assessments and within thirty (30) days after adopting the budget make a copy of the budget available to all the Owners and notify all the Owners that the Owner may request a copy of the budget. (Section 514B-106(c) of the Act) The budget shall itemize the estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintenance and operating expenses, and all other charges and outgoings of any description to which the Association, or its property may be assessed or become liable, plus the reserves established by these Bylaws and the Act, less any surpluses from the operation of prior years, if any. The budget shall include a section itemizing any capital expenditures expected during the ensuing fiscal year. In addition to the budget, the Board of Directors shall prepare a schedule of quarterly assessments against each Owner for his proportionate share of such estimated cost of maintaining and operating the property of the Condominium Property Regime for such ensuing year, as well as a schedule of any special assessments, all in accordance with the provisions of Section 1 of Article IX of these Bylaws.

(F) The Board of Directors shall acquire for the benefit of the Owners, and shall pay for, out of the funds collected pursuant to paragraph (E) of this Section, all things necessary or proper for the operation of the Project and, in addition, shall pay for all expenses incurred which are designated common expenses by the Act, the Declaration or these Bylaws, including the following:

(1) Water, sewer, garbage, electricity, telephone and gas and other necessary utility services for the common elements (if not separately metered or charged to the Unit), and maintenance and gardening service for the common elements.

(2) Unless otherwise expressly provided, painting, maintenance and repair of the common elements (but not including the interior surfaces of any Unit) and such furnishings and equipment for the common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive rights and duty to acquire the same for the common elements.

(3) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these Bylaws or which, in its opinion, shall be necessary or proper for the proper operation of the Project, or common elements, or for the enforcement of these Bylaws; provided, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments, is caused by the misconduct of any Owner, the Board may assess that expense exclusively against such Owner's Unit. (Section 514B-144(d) of the Act)

(4) Maintenance and repair of any Unit, if such maintenance and repair is necessary in the discretion of the Board of Directors to protect the common elements or any other portion of the Project, and if the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board of Directors to said Owner or Owners; provided, that the Board of Directors shall levy a special assessment against such Unit for the cost of said maintenance or repair.

(5) Policies of hazard and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required by or authorized by the Declaration, these Bylaws or the Board.

(6) The annual services of a responsible Hawaii corporation to manage and control the Project (hereinafter called the "Managing Agent"), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine to be necessary or proper for the operation of the Project whether such personnel are employed directly by the Board of Directors or are furnished by the Managing Agent. The Managing Agent's annual services contract shall be subject to the prior approval of a majority of the members of the Association.

(7) Legal and accounting services necessary or proper in the operation of the Project or the common elements or the enforcement of these Bylaws.

(8) The Board of Directors shall also pay any amount necessary to discharge any lien or encumbrance which may, in the opinion of the Board of Directors, constitute a lien against the Project or against the common elements rather than merely against

the interest therein of a particular Owner or Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging the same.

(G) The Board of Directors may enter any Unit when necessary in connection with the maintenance or repair or construction for which the Board of Directors is responsible. Such entry shall be made with as little inconvenience to the Owner as is practical, and any damage caused thereby shall be repaired by the Board of Directors at the expense of the Association of Owners, and such expenses are hereby designated a common expense.

(H) The Board of Directors is authorized from time to time to lease or rent appropriate living quarters for use by the Managing Agent or other employees, with or without charge, and to enforce, modify and make agreements with respect to any lease or tenancy of any portions of the common elements on behalf of the Owners.

(I) The Board of Directors is prohibited from making any loans and investments except pursuant to these Bylaws or to authority expressly granted by a resolution of the Association at a meeting duly called for such purpose.

(J) The Board of Directors may, upon a vote of a majority of Owners, purchase Units of the Project at foreclosure or other judicial sales, on behalf of all Owners, and thereafter sell, lease, mortgage, vote the common interest appurtenant to and otherwise deal with such Units.

(K) [RESERVED]

(L) The Board of Directors shall have the right to make such elections under the tax laws of the United States or the State of Hawaii as shall be deemed in the best interest of the Association, including, without limitation, any election available under Section 528 of the Internal Revenue Code of 1954, as amended, or any successor or State tax provision of similar import.

(M) Nothing herein contained shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the Owners, or any of them, or the Association.

(N) The Board of Directors shall have the authority to adopt reasonable rules and regulations related to parking on the Project including, but not limited to, rules which prohibit the parking of vehicles on the common elements and/or limited common elements which are without current licensing, registration and/or are not operable, rules which prohibit parking in unauthorized stalls and any parking which may impede the flow of traffic, and/or which limit consecutive days of parking any vehicle in common area parking areas. As the Project is operated in a manner similar to a hotel, the Board may adopt rules giving priority for parking spaces to rental guests rather than Owners and/or prohibiting parking by Owners when 14 or more rental Units are occupied by guests. The Board shall have the authority to enforce such

rules and regulations by any reasonable means including, but not limited to towing and/or imposing fines.

(O) Subject to any approval requirements and spending limitations contained herein or in the Declaration, the Owners may authorize the Board to borrow money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all Owners, and Owners representing at least fifty percent (50%) of the common interest vote or give written consent to such borrowing. In connection with the borrowing, the Board may grant to the lender the right to assess and collect monthly or special assessments from the Owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing, shall be a common expense of the Project. For purposes of this Section 14, subsection (O), the financing of insurance premiums by the Association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the Association may purchase the leased equipment for its fair market value. (Section 514B-105) of the Act)

(P) To impose charges and penalties, including late fees and interest, for late payment of assessments; levy reasonable fines for violations of the Declaration these Bylaws and/or any rules and regulation adopted pursuant to these Bylaws; and establish a fine schedule stating the basis for the imposition of any fine; allowing an appeal to the Board of a fine with notice and opportunity to be heard; and if the fine is paid, the Owner or other person or entity against whom the fine is imposed, shall have the right to initiate a dispute resolution process as provided by Sections 514B-161, 514B-162 of the Act or by filing a request for an administrative hearing under a pilot program administered by the State of Hawaii Department of Commerce and Consumer Affairs. (Section 514B-104(a)(11) of the Act) Provided, however, the Board shall not deduct and apply portions of common expense payments received from an Owner to unpaid late fees, legal fees, fines, and interest, (other than amounts remitted by a Unit in payment of late fees, legal fees, fines and interest) unless the Board adopts and distributes to all Owners the policy required by Section 514B-105(c) of the Act. The unpaid amount of any penalty or fine against any Owner shall constitute a lien against his interest in his or her Unit which may be foreclosed by the Board of Directors or Managing Agent in the same manner as provided in the Act for common expenses; provided, however, that the said lien for such penalty or fine shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Unit and to all sums unpaid on any mortgage of record recorded prior to the recordation of the notice of lien by the Association. The Board shall have the power to impose monetary fines upon Owners, tenants and any other person using or coming upon the project or any part thereof for any purpose whatsoever, for violations of the Declaration, these Bylaws, the rules and regulations or any statute, ordinance, or applicable requirement of any governmental entity, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Managing Agent or resident manager, if any, to impose the aforementioned fines in accordance with such schedule. Written notice of the initial schedule of fines and each new schedule of fines, including any amendments thereto, shall be sent to all Owners and the Owners shall be allowed the opportunity to be heard thereon at the

next regular meeting of the Board of Directors. Such notice shall be mailed to the Owners at least fourteen (14) days in advance of the meeting.

(Q) To lease or otherwise use for the benefit of the Association of those common elements which are not actually used by any of the Owners for an originally intended special purpose, as determined by the Board of Directors; provided that unless the approval of the Owners of sixty-seven percent (67%) of the common interest appurtenant to the Units is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice. (Section 514B-38 of the Act)

(R) To lease or otherwise use for the benefit of the Association of those common elements not falling within subparagraph (Q) above, upon obtaining: (A) the approval of the Owners of sixty-seven percent (67%) of the common interests appurtenant to the Units, including all directly affected Owners and all Owners of Units to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on Units with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees. (Section 514B-38 of the Act)

(S) Dispose of personalty abandoned in or on the common elements of the Project in any one of the following ways:

- (1) Sell the personalty in a commercially reasonable manner;
- (2) Store such personalty at the expense of its Owner;
- (3) Donate such personalty to a charitable organization; or
- (4) Otherwise dispose of such personalty, provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(a) The Board notifies the Owner in writing of:

(i) The identity and location of the personalty; and

(ii) The Board's intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested, to the Owner's address as shown by the records of the Association, or to an address designated by the Owner for the purpose of notification; or, if neither of these is available, to the Owner's last known address, if any; or

(b) If the identity or address of the Owner is unknown, the Board shall first advertise the sale, donation, or disposition at least once in a daily newspaper of general circulation within the County of Maui.

The proceeds of any sale or disposition of personalty as set forth above shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the Owner for thirty (30) days, after which any proceeds not claimed shall become the property of the Association. (Section 514B-139 of the Act)

(T) Take appropriate action with respect to an elderly Owner pursuant to the provisions of Section 514B-142 of the Act. (Section 5145B-142 of the Act)

Section 15. Open Meetings. All meetings of the Board of Directors other than executive sessions, shall be open to all Owners, and Owners who are not on the Board of Directors may participate in any deliberation or discussion of the Board of Directors unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters: (i) concerning personnel, (ii) concerning litigation in which the Association is or may become involved, (iii) necessary to protect the attorney-client privilege of the Association or (iv) necessary to protect the interests of the Association while negotiating contracts, leases and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session. (Section 514B-125(a) and (b) of the Act)

Section 16. Documents. The Association at its expense shall provide all Board members with a current copy of the Association's Amended Declaration, Amended Bylaws, House Rules, and, annually, the Act with amendments. (Section 514B-107(e) of the Act)

ARTICLE V **OFFICERS**

Section 1. Designation. The principal officers of the Association shall be a President, a Secretary and a Treasurer, all of whom shall be elected by and, in the case of the President, from the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. An Owner shall not simultaneously act as an officer of the Association and an employee of the Managing Agent employed by the Association. All officers must be Owners and members of the Association. Only one Owner from each Unit may serve as an officer at any one time.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors, and his successor elected, at any regular meeting of the Board or any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board, he or she shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He or she shall

also have such other powers and duties as may be provided by these Amended Bylaws or assigned to him or her from time to time by the Board.

Section 5. [RESERVED]

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of Ownership of all Units, have charge of such books, documents and records of the Association as the Board may direct, prepare, execute, certify and record amendments to the Declaration, (Section 514B-108(b)(5) of the Act), and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer shall also act as, or may appoint, a Parliamentarian during the meetings of the Association and of the Board of Directors.

Section 8. Auditor.

(A) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant; provided that the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all Unit Owners taken at an Association meeting.

(B) The Board of Directors shall make available a copy of any annual audit reports to each Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon the standard proxy form, (described at Article III Section 4), issued for an annual meeting a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report. The Board shall not be required to submit a copy of the annual audit report to the Owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

(1) An unaudited year end financial statement for the fiscal year to each Owner at least thirty (30) days prior to the annual meeting; and

(2) Any annual audit report to all Owners at the annual meeting, or as soon as the audit is completed, but not later than six (6) months after the meeting.

(C) If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. (Section 514B-150 of the Act)

Section 9. The Managing Agent. The Managing Agent shall act under the authority of and as agent for the Board of Directors. The Managing Agent may be appointed by the Board of Directors in accordance with these Bylaws. The Managing Agent may be designated by the Board of Directors as the person to accept service of process on behalf of the Association, the Board of Directors, or two or more Owners or, as the case may be, in any action relating to the common elements or more than one Unit.

The Managing Agent shall perform such duties as the Board of Directors shall direct. Unless otherwise so directed, the Managing Agent shall:

(A) Collect assessments to discharge common expenses and pay said common expenses in accordance with these Bylaws.

(B) Appoint a resident manager, subject to the control of the Managing Agent who shall assume the responsibility of the day-to-day operation and management of the common elements.

(C) Establish and maintain such reserve funds as may be necessary for the proper operation and management of the common elements. Each Owner shall have an interest in such reserves equal to his common interests.

(D) Keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board of Directors, and shall be available for examination by the Owners at convenient hours of weekdays.

(E) Bring and prosecute an action, without prejudice to the rights of any Owner to act for himself, on behalf of two or more Owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one Unit.

ARTICLE VI **EXECUTION OF INSTRUMENTS**

Section 1. Proper Officers. All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments shall be signed, executed and delivered by the President; provided, however, that the Board of Directors may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by such officer, agents, or employees of the Association, as shall be provided by general or special resolution.

Section 2. Facsimile Signatures. The Board of Directors may from time to time by resolution provide for the execution of any instrument or document of the Association or the Board of Directors by a mechanical device or machine, or by the use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board of Directors.

ARTICLE VII **INDEMNIFICATION**

No director or officer of the Association shall be liable for acts, defaults or neglect of any other director or officer or member or for any loss sustained by the Association or any member thereof, unless the same shall have resulted from his own willful misconduct or gross negligence. Every director, officer and agent of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with or resulting from any claim, action, suit, procedure, investigation, or inquiry as to whatever nature in which he or she may be involved as a party or otherwise by reason of his being or having been a director, officer or agent of the Association, whether or not he or she continues to be such director, officer or agent at the time of incurring or the imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his or her duties. In the absence of such final adjudication of the existence of such liability, the Association and each member thereof and officer or agent thereunder may conclusively rely on an opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representative of such person.

ARTICLE VIII **REPAIR, MAINTENANCE AND USE**

Section 1. Repair and Maintenance.

(A) Every Owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his or her Unit, the omission of which would adversely affect any common element or any other Unit, and shall be responsible for all loss and damage caused by his or her failure to do so.

(B) All repairs of internal installations within each Unit, such as water, light, gas, power, sewage, telephone, air conditioning, sanitation, doors, windows, lanai shades, lamps and all other fixtures and accessories belonging to such Unit, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors and ceilings of such Unit, shall be at the Owner's expenses; except that any repairs of common elements located within any Unit shall be a common expense. Nothing contained in this Article VIII shall impair or affect the division of responsibility for repairs and maintenance agreed upon between Hale Napili Rental Pool, LLC and an Owner who is a member of LLC, it being understood that

the ultimate responsibility for repairs and maintenance as between the Owners and the Association shall be governed by the Declaration and these Bylaws.

(C) Every Owner shall reimburse the Association for any expenditure incurred in repairing or replacing any common elements, furniture, furnishings and equipment thereof damaged or lost through the fault of such Owner or any person using the Project under him or her, and shall give prompt notice to the Managing Agent of any such damage, loss or other defect when discovered.

(D) No Owner shall use or keep anything on the grounds or any other common elements which would in any way hinder the full use and enjoyment thereof by any other Owner or occupant. Every Owner shall be responsible for the care and maintenance, including any costs of such care and maintenance, of any lanai adjacent to and for the use of their respective Units, as well as the care and maintenance of any railing which adjoins a lanai. It is intended that the building shall present a uniform appearance, and to effect that end, the Board may require the painting or repair of each lanai, patio, outside doors, windows, trim, fences, railings and other exposed portions of the building and regulate the type and color of paint to be used. The Board is authorized to contract for said painting and repair and to assess each Owner for his proportionate share of such painting and repair.

Section 2. Use.

(A) No Owner or occupant of a Unit shall post any advertisement, bill, poster or other sign on or about the Project except in areas explicitly designated for such by the Board.

(B) All Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants.

(C) No recreational activity shall be permitted in the stairways, corridors, or parking areas of the Project.

(D) No garments, rugs, or other objects shall be hung from the lanais, patios, windows or facades of the Project; nor shall they be dusted or shaken from the lanais, patios or windows or cleaned by beating or sweeping on the grounds of the Project.

(E) No garbage, refuse or trash of any kind shall be thrown, placed or kept on any common element other than the disposal facilities provided for such purposes.

(F) No Owner or occupant of a Unit, except as otherwise permitted by the Amended Declaration, shall install any wiring or other device for electrical or telephone installations, television, antenna, machines or other equipment or appurtenances on the exterior of the Project or protruding through the walls, windows or roof thereof.

(G) Nothing shall be allowed, done or kept in any Unit or common element which will overload or impair the floors, walls or roofs of the Project or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for

the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

(H) The Board, after notice to all Owners and an opportunity for Owner's comment, may determine that certain portions of the Units, or certain objects or appliances within the Units, pose a particular risk of damage to other Units or the common elements if they are not properly inspected, maintained, repaired or replaced by Owners. Those items determined by the Board to pose a particular risk are "high-risk components" for the purposes of this subsection (H). With regard to items designated as high-risk components, the Board may require any or all of the following:

(1) Inspection: at specified intervals or by the Association, or inspectors designated by the Association, upon replacement or repair of the components by the Owner; and/or

(2) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and/or

(3) Replacement or repair: meeting particular standards or specifications established by the Board, including additional components or installations specified by the Board, or using contractors with specific licensing, training or certification approved by the Board.

The imposition of requirements by the Board under this subsection (H) shall not relieve Owners of obligations regarding high-risk components as set forth in this Amended Declaration or the Amended Bylaws including, without limitation, the obligation to maintain, repair and replace the components.

If an Owner fails to follow requirements imposed by the Board pursuant to this subsection (H), the Association, after reasonable notice, shall enter the Unit to perform the requirements with regard to such high-risk components at the sole cost and expense of the Owner, which costs and expenses shall be a lien on the Unit as provided in Article IX below. Nothing in this subsection (H) shall be deemed to limit the remedies of the Association for damages, or injunctive relief, or both. (Section 514B-138 of the Act)

ARTICLE IX **ALLOCATION AND COLLECTION OF COMMON EXPENSES**

Section 1. Allocation of Common Expenses. For the purpose of fixing and determining the payments of the common expenses to be made as provided in the Amended Declaration, the Board shall, on behalf of all Owners, determine in advance for each calendar year the estimated aggregate amount of the common expenses for such year, except that the first year shall begin on the designated date of completion of construction of the Project and end on the 31st day of December of said year. The Board shall allocate the common expenses amongst the Owners in accordance with the terms and conditions of the Amended Declaration. The Board, on behalf of the Owners, may from time to time during each year make reasonable adjustments in said

estimated aggregate amount of common expenses on the basis of actual cost incurred in prior months or periods. Each Owner's share of said allocated amounts of the estimated common expenses, as determined from time to time by the Board, shall be payable by the Owner in quarterly installments in advance on or before the 10th day of each month. Any omission or delay in determining and allocating the common expenses for any period shall not relieve the Owner therefrom. In such event, the Owner, pending the determination and allocation thereof, shall continue to pay the same common expenses that the Owner had been paying during the last preceding period and shall pay the deficiency, if any, upon the determination and allocation of the proper common expenses within ten (10) days after notice thereof. Said installments transmitted to the Board, as agent of all Owners, shall then be transmitted by the Board to the third person entitled to payment of same from each Owner.

Section 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses, and will maintain or cause to be maintained separate books of account of common expenses in accordance with recognized accounting practices, and will have such books of account available for inspection by each Owner or his authorized representative at reasonable business hours. The Board will annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year. Each Owner, as principal, shall be liable for and pay his share, determined as aforesaid, of all common expenses, and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be made by the Owner. The Board or Managing Agent collecting the common expenses shall not be liable for payment of said common expenses as a principal but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owner.

Section 3. Taxes and Assessments. Each Owner shall be obligated to have real property taxes for his own Unit and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes, other taxes and assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by paragraph 14 of the Amended Declaration and Article IX, Section 4 below.

Section 4. Default in Payment of Assessments. Each quarterly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. If the Owner shall fail to pay his assessment or any fines

assessed against him or her when due, then he or she may be assessed an additional \$10.00 for each such failure and all delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies herein or by law provided, the Board of Directors may enforce each such obligation as follows:

(A) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorney's fees in such amount as the court may adjudge against such defaulting Owner.

(B) At any time within ninety (90) days after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give notice to the defaulting Owner, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file and record a claim of lien against the Unit of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Unit against which claim lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these Amended Bylaws and (5) that a lien is claimed against said described Unit in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Each default shall constitute a separate basis for a claim of lien or a lien. Such lien shall have priority and may be enforced as set forth in the Amended Declaration and Section 514B-146 of the Act.

(C) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his or her Unit (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee established by the Board. In the event any claims of lien have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment of a reasonable fee established by the Board, the Board, acting by any two members, shall execute and acknowledge (in the manner provided above), a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Bureau of Conveyances recording data of the claim of lien, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the Owner or his successor upon payment of the fee.

Section 5. Collection from Tenant or Rental Agent.

(A) If a Unit is rented or leased and the Owner of such Unit defaults for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, so long as such default continues, demand and receive from any renter or lessee occupying the Unit, rental agent renting the Unit and/or rental pool entity renting the Unit (hereinafter collectively in this paragraph referred to as "lessee") an amount sufficient to pay all sums due from the Owner to the Association, including interest, if any, but the amount shall not exceed the amount due to the Owner from said lessee. The lessee's payment under this subsection (A) shall discharge that amount of payment from the lessee's rent obligation and any contractual provision to the contrary shall be void as a matter of law.

(B) Before taking any action under subsection (A) the Board shall give to the delinquent Owner written notice of its intent to collect the rent owed. The notice shall:

- (1) Be sent both first-class mail and certified mail;
- (2) Set forth the exact amount the Association claims is due and owing by the Owner; and
- (3) Indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(C) The Owner shall not take any retaliatory action against the lessee for payments made under subsection (A).

(D) Provided:

(1) The Board may not demand payment from a lessee pursuant to subsection (A) if a commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure, if a mortgagee is in possession pending a mortgage foreclosure or the lessee is served with a court order directing payment to a third party; and

(2) Before the Board or managing agent can take the actions permitted in subsection (A), the Board must adopt a written policy providing for the actions and have the policy approved by a majority vote of the Owners at an annual or special meeting of the Association or by written consent of a majority of the Unit Owners. (Section 514B-145 of the Act)

Section 6. Termination of Access to Common Elements. In conjunction with or as an alternative to foreclosure proceedings, where a Unit is Owner-occupied, the Association may authorize the managing agent or Board to, after sixty (60) days written notice to the Owner and to the Unit's first mortgagee of the nonpayment of the Unit's share of the common expenses, terminate the delinquent Unit's access to the common elements and cease supplying a delinquent Unit with any and all services, (including but not limited to utility services), normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon

payment of all delinquent assessments. Before the Board or managing agent can take the actions permitted in this subsection (c), the Board must adopt a written policy providing for the actions and have the policy approved by a majority vote of the Owners at an annual or special meeting of the Association or by written consent of a majority of the Owners. (Section 514B-146(e) of the Act)

Section 7. Assessment Disputes.

(A) No Owner shall withhold any assessment claimed by the Association. Any Owner who disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any fine, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, an Owner has no right to withhold assessments for any reason;

(5) That an Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the Owner immediately pays the assessment in full before filing for such mediation or arbitration and thereafter keeps assessments current; and

(6) That payment in full of the assessment does not prevent the Owner from contesting the assessment or receiving a refund of amounts owed.

Nothing in these Amended Bylaws shall limit the rights of an Owner to the protection of all fair debt collection procedures mandated under federal and state law. (Section 514B-146(c) of the Act)

(B) An Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 514B-162 of the Act, provided that an Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Owner pays all Association assessments within thirty (30) days of the date of suspension, the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to

pay all Association assessments by the end of the 30-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Owner shall be entitled to a refund of any amounts paid to the Association which are not owed. (Section 514B-146(d) of the Act)

Section 8. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board of Directors.

ARTICLE X **GENERAL PROVISIONS**

Section 1. Mortgages. Any Owner who mortgages his or her Unit or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of Ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any or interest therein shall report to such person the amount of any assessments against such Unit then due and unpaid.

Section 2. Rules and Regulations. Each Owner recognizes the right of the Board, from time to time, to establish and amend such House Rules as the Board may deem necessary for the management and control of the Units and the common elements and limited common elements and the Owner agrees that the Owner's rights under this instrument shall be in all respects subject to the appropriate House Rules which shall be taken to be a part hereof; and the Owner agrees to obey all such rules as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees and under-tenants of the Owner; and the House Rules shall uniformly apply to and be binding upon all occupants of the Units.

Section 3. Abatement and Enforcement of Violations by Unit Owners and Tenants.

The violation of any House Rule adopted by the Board, or the breach of any provision set forth in these Bylaws, or the breach of any provision of the Declaration, shall give rise to a cause of action in the Association, the Board, or any aggrieved Owner for:

- (A) Recovery of damages, or
- (B) Injunctive relief to abate the continuance of any such breach, or both.

(C) The violation of any of the condominium documents or the violation of the Act by a tenant or occupant other than an Owner, shall give the Board the right, in its sole discretion (in addition to pursuing any other rights or remedies against the Owner of the Unit involved or as otherwise provided by law, the Amended Declaration or these Amended Bylaws), after giving notice to the tenant and the Owner and an opportunity to be heard, to impose a fine or fines against the tenant or occupant, provided that the Owner shall be responsible for the conduct of the Owner's tenant or occupant and for any fines levied against the tenant or occupant or any legal fees incurred in enforcing the Amended Declaration, these Amended Bylaws or the House Rules against the tenant or occupant. The Board also may enforce any other rights against the tenant for the violation which the Owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the Owner or both. (Section 514B-104(b) of the Act)

All costs for or arising from utilization of the remedies provided for in this Section, including attorneys' fees, shall be borne by the defaulting party.

Section 4. Maintenance and Repair of Units. All maintenance of and repairs to any Unit (other than maintenance of and repairs to any common elements contained therein, and not necessitated by the negligence, misuse or neglect of the Owner of such Unit) shall be the responsibility of the Owner of such Unit. Nothing contained in this Article X shall impair or affect the division of responsibility for repairs and maintenance agreed upon between Hale Napili Rental Pool, LLC and an Owner who is a member of LLC, it being understood that the ultimate responsibility for repairs and maintenance as between the Owners and the Association shall be governed by the Declaration and these Bylaws.

Section 5. Maintenance and Repair of Common Elements. All maintenance, repairs and replacements to the common elements, whether located inside or outside of the Units, shall be made by the Board and be charged to all the Owners as a common expense, unless necessitated by the negligence, nuisance or neglect of an Owner, in which case such expense shall be charged to such Owner.

Section 6. Additions or Alterations by Board of Directors. Whenever in the judgment of the Board the common elements shall require additions or alterations costing less than FIVE THOUSAND DOLLARS (\$5,000.00) which are to be paid as a common expense from normal annual operating funds and not from any reserve funds, the Board may proceed with such additions or alterations and shall assess all (or a part of the Owners in the case of such additions or alterations to the limited common elements) for the cost thereof as a common expense.

Section 7. Additions or Alterations by Unit Owners. No Owner shall make any addition or alteration in or to his or her Unit which may affect the common elements or change the exterior appearance of the Project, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by an Owner for approval of a proposed addition or alteration in his or her Unit within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition or alteration.

Section 8. Right of Access. An Owner shall grant a right of access of his or her Unit to the Managing Agent and/or any other person authorized by the Board, or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his or her Unit and threatening another Unit or a common element, or for the purpose of making inspections or alterations or repairs to the mechanical or electrical services or other common elements in his or her Unit or elsewhere in the Project, provided that requests for entry are made in advance and that any such entry is a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the Owner is present at the time or not.

Section 9. Notices. All notices hereunder shall be sent by email, or by registered or certified mail to the Board of Directors, c/o the Managing Agent or, if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time, by notice in writing to all Owners and to all mortgagees of Units. All notices to any Owner shall be sent by email or hand delivered or sent by registered or certified mail to the Owner's address at the Project or to such other address as may have been designated by him from time to time, in writing, to the Board. All notices to Mortgagees shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been effectively given when emailed, mailed or delivered, except notices of change of address which shall be deemed to have been given when received.

Section 10. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions thereof.

Section 11. Gender and Number. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 12. Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 13. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of Units shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

Section 14. Amendment. These Amended Bylaws may be amended at any time by the vote or written consent of at least sixty-seven percent (67%) of all Owners. No amendment to the Amended Bylaws is valid unless the amendment is duly recorded in the Bureau of Conveyances. Any proposed amendment to these Amended Bylaws together with the detailed rationale for the proposal may be submitted by the Board or by a volunteer Owners' group. If submitted by that group, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Owners as shown in the Association's record of Ownership. The proposed

bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five (365) days after mailing for a proposed bylaw submitted by either the Board or a volunteer Owners group. If the bylaw is duly adopted, the Board shall cause the bylaw amendment to be recorded in the Bureau of Conveyances. The volunteer Owners' group shall be precluded from submitting a petition for a proposed bylaw that is similar to that which has been previously mailed to the Owners within three hundred sixty-five days after the original petition was submitted to the Board. This Section 14 shall not preclude any Owner or volunteer Owners' group from proposing any bylaw amendment at any annual meeting of the Association. (Section 514B-108 of the Act)

Section 15. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

Section 16. Alterations. None of the provisions of the Project documents are intended to be in contravention of the State or Federal Fair Housing Act. The Board will at all times comply with the provisions of the Fair Housing Acts when acting upon requests by handicapped persons to make reasonable modifications, at their cost, to Units and/or to the common elements of the Project if the proposed modifications are necessary for their full enjoyment of the Project. The Board will also comply with the provisions of the Fair Housing Act when acting upon requests by handicapped persons for exemptions from any of the provisions of the Project documents which would interfere with said handicapped persons' equal opportunity to use and/or enjoyment of their Units and/or the common elements of the Project.

Section 17. Animals. Notwithstanding any other provision herein, visually impaired persons, hearing impaired persons and physically impaired persons shall be allowed to keep certified seeing-eye dogs, certified signal dogs, and certified service dogs, respectively, in their Units.

Section 18. Association Records.

(A) The Board shall keep financial records sufficiently detailed to enable the Association to comply with requests for information and disclosures related to the resale of Units. Except as otherwise provided by law, all financial and other records shall be made reasonably available for examination by any Owner and the Owner's authorized agents. Association records shall be stored on Maui; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on Maui. (Section 514B-152 of the Act)

(B) The Managing Agent or Board of Directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Managing Agent or Board of Directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. (Section 514B- 153(b) of the Act)

(C) Subject to the provisions of subsection (A), all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project or elsewhere within the State of Hawaii as determined by the Board. (Section 514B-153(c) of the Act)

(D) Any Managing Agent employed or retained by the Association may dispose of the records of the Association which are more than five (5) years old without liability if the managing agent first provides the Board of Directors with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board within sixty (60) days, which notice shall include an itemized list of the records which the Managing Agent intends to disposed. (Section 514B-154(h) of the Act)

(E) The Association's most current financial statement shall be available to any Owner at no cost on twenty-four (24) hour loan, at a convenient location designated by the Board of Directors. (Section 514B-154(a) of the Act)

(F) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by the Owners at convenient times at a place designated by the Board; provided that:

(1) The Board may require the Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

(2) The Owners pay for administrative costs in excess of eight (8) hours per year.

Copies of these items shall be provided to any Owner upon such Owner's request, provided that such Owner pays a reasonable fee for duplicating, postage and stationery and other administrative costs associated with the handling of the request. (Section 514B-154(b) of the Act)

(G) The Owners shall also be permitted to view proxies, tally sheets, ballots, Owners' check-in lists and the certificates of election for a period of thirty (30) days following any meeting of the Association; provided that:

(1) Owners shall make a request to examine the documents within thirty (30) days after the Association meeting.

(2) The Board may require the Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association, its members or both; and

(3) The Owners pay for administrative costs in excess of eight (8) hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty (30) days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty (60) days, after which they may be destroyed. Copies of tally sheets, Owners' check-in lists and the certificates of election from the most recent Association meeting shall be provided to any Owner upon the Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request. (Section 514B-154(c) of the Act)

(H) Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request. (Section 514-154(f) of the Act)

(I) The Association may comply with this Section 18 by making information available to Owners, at the option of each Owner, and at no cost, for downloading the information through an Internet site. Section 514B-154(g) of the Act)

(J) The imposition of any costs associated with any request by an Owner for legal or other information from the Association, the Board or the Managing Agent or their employees or agents, shall be governed by the provisions of Section 514B-105(d) of the Act; provided, however, any fee charged to an Owner to obtain copies of Association records under this Section 18 shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page. (Section 514B-154(j) of the Act)

Section 19. Prohibited Acts of Association Employees. No employee of the Association shall engage in selling or renting Units in the project except Association owned Units, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the Owners. (Section 514B-133(b) of the Act)

Section 20. Budgets and Reserves.

Subject to the Act and any regulations adopted by the Real Estate Commission of the State of Hawaii:

(A) The budget required under Article IV Section 14(E) shall include at least the following:

(1) The estimated revenues and operating expenses of the Association;
(2) Information as to whether the budget has been prepared on a cash or accrual basis

(3) The total replacement reserves of the Association as of the date of the budget;

(4) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association;

(5) A general explanation of how the estimated replacement reserves are computed;

(6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and

(7) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves were calculated using a percent funded or cash flow plan.

(B) The Association shall assess the Owners to either fund a minimum of fifty percent (50%) of the estimated replacement reserves or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan. For each fiscal year the Association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year reserves, as determined by the Association's plan.

(C) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the Project. The estimated replacement reserves shall include:

(1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(2) Separate designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000.00. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000.00 may be aggregated in a single designated reserve.

(D) Neither the Association nor any Owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated

replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(E) The Board of Directors may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations or with the approval of a majority of the Owners. Prior to the imposition or collection of an assessment under this paragraph which has not been approved by a majority of the Owners, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(F) The requirements of this Section 20 shall override any requirements in the Amended Declaration, these Amended Bylaws, or any of the Association's other documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

(1) Any requirements in the Amended Declaration, these Amended Bylaws, or any of the Association's other documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

(2) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(G) Subject to the procedures of Section 22, and any rules adopted by the Real Estate Commission of the State of Hawaii, any Owner may enforce the Board's compliance with this Section 20 in the event the Board fails to so comply. In the event the Board has not prepared an annual operating budget and reserve study as required in this Section 20, the Board shall have the burden of proving it has complied with this Section 20 in any proceeding to enforce such compliance.

(H) As used in this Section 20:

"Capital expenditure" means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of the Association's future income and expense requirements to fund fully its replacement reserves provided that does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

"Emergency situation" means any extraordinary expenses:

(1) Required by an order of a court;

(2) Necessary to repair or maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered.

(3) Necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;

(4) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

(5) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.

"Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the Project including, but not limited to roofs, walls, decks, paving, and equipment that the Association is obligated to maintain. (Section 514B-148 of the Act)

Section 21. Meeting Minutes.

(A) Minutes of meetings of the Board of Directors shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

(B) Minutes of meetings of the Board of Directors shall be approved no later than the second succeeding regular meeting.

(C) Minutes of all meetings of the Board shall be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. (Section 514B-126 of the Act)

(C) Minutes of Association meetings shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) days after the meeting, if authorized by the Owners at an annual meeting. If Association meeting minutes are approved by the Board, Owners shall be given a copy of the approved minutes within thirty (30) days after approval. An Owner shall be allowed to offer corrections to the minutes of an Association meeting at an Association meeting. Minutes of all meetings of the Association shall be available within seven (7) calendar days after the meeting at which they are approved and unapproved final drafts of the minutes of an Association meeting shall be available within sixty (60) days after the meeting. (Section 514B-122 of the Act)

Section 22. Expenses of Enforcement.

(A) All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the Association for:

- (1) Collecting any delinquent assessments against any Owner;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the Amended Declaration, these Amended Bylaws, the House Rules, the Act or the rules against an Owner, such Owner's employees, tenants, guests, or invitees, shall be promptly paid on demand by such Owner to the Association; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by such Owner as a result of the action of the Association, shall be paid promptly on demand to such Owner by the Association.

(B) If any claim by an Owner is substantiated in any action against the Association, any of its officers or the Board of Directors to enforce any provision of the Amended Declaration, these Amended Bylaws, the House Rules, or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless:

- (1) The Owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or,
- (2) The Owner demonstrated to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

(C) If any claim by an Owner is not substantiated in any court action against the Association, any of its officers or directors, or the Board to enforce any provision of the Amended Declaration, these Amended Bylaws, House Rules or the Act, then all reasonable and necessary expenses, costs and attorney's fees necessarily incurred by the Association shall be awarded to the Association, unless before filing the action in the court the Owner has first submitted the claim to mediation, or to arbitration pursuant to Sections 514B-161 and 514B-162 of the Act.

Section 23. Restatement. These Amended Bylaws may be restated at any time in the manner prescribed by Section 514B-109 of the Act.

Section 24. Alternative Dispute Resolution.

(A) Except as provided in Section 514B-161 of the Act, at the request of any party to a dispute concerning or involving one or more Owners and the Association, the Board, or the Managing Agent or one or more Owners relating to the interpretation, application, or enforcement of the Act, the Amended Declaration, these Amended Bylaws or the House Rules,

the parties to the dispute shall be required to participate in mediation. (Section 514B-161 of the Act) If a dispute is not resolved by mediation as provided in subsection (a), in addition to any other legal remedies that may be available, (including the arbitration procedures described in subsection (b), any party that participated in the mediation may file a request for a hearing with the office of administrative hearings under the applicable provisions of the Act.

(B) Except as provided in Section 514B-162 of the Act, at the request of any party any dispute concerning or involving one or more Owners and the Association, the Board, or the Managing Agent or one or more Owners relating to the interpretation, application, or enforcement of the Act, the Amended Declaration, these Amended Bylaws or the House Rules shall be submitted to arbitration pursuant to the provisions of said Section 514B-162.

CERTIFICATE

BRIAN COWELL and LINDA LEVI, President and Secretary, respectively, of the Association of Apartment Owners of Hale Napili Apartments, do hereby certify that the foregoing **Amended and Restated ByLaws** of the Association Of Apartment Owners Of Hale Napili, were duly adopted by the apartment owners, and the Association of Apartment owners of Hale Napili, by a vote of not less than seventy-five percent (75%) of the owners, and that they have been duly authorized and directed to cause the same to be filed with the Bureau of Conveyances of the State of Hawaii.



BRIAN COWELL, President of Association
of Apartment Owners of Hale Napili
Apartments

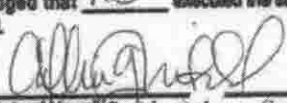


LINDA LEVI, Secretary of Association
of Apartment Owners of Hale Napili
Apartments

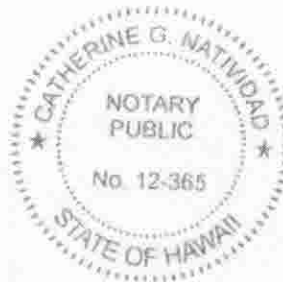
STATE OF HAWAII

COUNTY OF MAUI

On this 21st day of April, 2015, before me
personally appeared Brian Cowell - President
and N/A to me known
to be the person(s) described in and who executed the foregoing
instrument and acknowledged that he executed the same as
her free act and deed.
Witness my hand and seal.




Notary Public, State of Hawaii Catherine G. Natividad
My Commission Expires: 11/11/2016

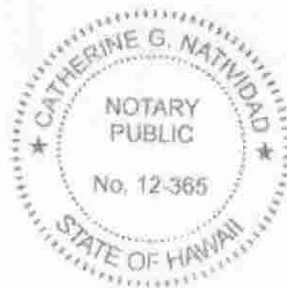


Doc. Date: undated # Pages 1 (one)

Notary Name: Catherine G. Natividad Second Circuit

Doc. Description Certificate

 04/21/2015
Notary Signature



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Marin)
On 03-31-2015 before me, Evan Timmel Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Linda Levi
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature Evan Timmel
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Certificate Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)
Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____