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**AMENDED AND RESTATED DECLARATION OF
CONDOMINIUM PROPERTY REGIME 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 apartment (i.e. unit) 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 By-Laws to incorporate all the necessary provisions of the Act, and to have this 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 Apartment Owners of Hale Napili ("Owners").

NOW, THEREFORE, the Declaration of Hale Napili is amended and restated to read as follows:

KNOW ALL MEN BY THESE PRESENTS:

1. **DESCRIPTION OF LAND.** The land submitted to the condominium property regime (formerly referred to as horizontal property regime), governed by this Amended Declaration, is described as follows:

ALL of that certain parcel of land (portion of the land described in Royal Patent Number 1663, Land Commission Award Number 5524 to L. Konia), situate, lying and being in the Ahupuaa of Napili 2 and 3, Kaanapali, Island County of Maui, State of Hawaii, and being ALLOTMENT NUMBER TWELVE (12), of the "HUI LAND OF MAILEPAP", Commissioners' Deed dated January 11, 1932, Equity

Division Case No. 235, Circuit Court of the Second Judicial Circuit, recorded in State of Hawaii Bureau of Conveyances in Liber 3631, on Page 338, and thus bounded and described:

Beginning at a concrete monument on the Napili 2 and 3 and 4 boundary on the beach, the coordinates of which referred to Government Triangulation Station "MALO" are 9,822.8 feet South and 9,547.2 feet West, and running thence by true azimuths:

1. 207° 09' 30" 80.0 feet along the beach to Allotment 9b, Thence
2. 297° 09' 30" 176.07 feet along Allotment 9b to Hui Road "H", thence
3. 27° 09' 30" 156.90 feet along Hui Road "H" to the Napili Napili 4 and 5 boundary, thence
4. 140° 45' 00" 192.12 feet along Napili 4 and 5 boundary, to the point of beginning and containing an area of 0.4788 Acre, or thereabouts.

SUBJECT, HOWEVER, to the reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent No. 1663.

2. **DESCRIPTION OF BUILDINGS.** The buildings submitted to the said condominium property regime, situated upon the land hereinbefore described, will when complete consist of the following: (a) a "Central Residential Apartment Building" of two (2) stories, including the ground floor, and eighteen (18) units ("Units"); (b) a separate "Office and Laundry Building" situated on the east corner of the said parcel of land. The Central Residential Apartment Building consists of two integrated sections: an "existing" section, the construction of which is substantially complete, and a "new addition" section, to be constructed on the south side of the said parcel of land. The principal materials of which the said existing section of the Central Residential Apartment Building is constructed are as follows: the exterior walls are of reinforced concrete block; the exterior walls of the second story shall be covered with rough sawn redwood siding; the ground floor slab is of reinforced concrete; the floor of the second story is of wood; the existing asbestos shingle roof shall be covered with wood shakes; the interior walls are of concrete block. The principal materials of which the said new addition section of the Central Residential Apartment Building shall be constructed are as follows: the exterior walls of the ground floor shall be of reinforced concrete block; the exterior walls of the second story shall be of wood studs covered with rough sawn redwood siding, on the exterior, and sheet rock and painted on the interior; the ground floor slab shall be of reinforced concrete covered with carpet; the floor of the second story shall be of wood frame with a plywood

subfloor, covered with carpet; the roof shall be of wood frame with wood shakes over building paper; the interior walls between Units shall be of concrete block covered with plywood veneer; the interior walls within each Unit shall be of wood studs covered with sheetrock and painted.

The principal materials of which the office and laundry building shall be constructed are as follows: the floor slab shall be of reinforced concrete; the walls shall be of single wall redwood construction; the ceiling shall be of drywall construction, painted; the roof shall be of wood frame with wood shakes.

3. LOCATION OF UNITS. The condominium property regime consists of eighteen (18) Units, and common and limited elements, as more particularly shown on the condominium map no. 174 (the "Condominium Map") filed simultaneously with the original Declaration recorded in September 14, 1970 in Liber 7183, Page 219. All of the Units will be located within the Central Residential Apartment Building. There are nine (9) Units located on the ground floor, and nine (9) Units located on the second story, of the Central Residential Apartment Building. The Units are numbered in ascending order, by story, and from northeast to southwest, then from northwest to southeast. Units 1 through 9 are located on the ground floor of the Central Residential Apartment Building, and Units 10 through 18 are located on the second story of the Central Residential Apartment Building. Units 1 through 5, and 10 through 14, and portions of Units 6 and 15, are located in the existing section of the Central Residential Apartment Building. Units 7, 8, 9, 16, 17 and 18, and portions of Units 6 and 15, are located in the new additional section of the Central Residential Apartment Building.)

The Units are of two types: "One Bedroom Units", and "Studio Units". Units 1, 6, 10 and 15 are "One Bedroom Units". Units 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 16, 17 and 18 are "Studio Units".

Each One Bedroom Unit shall consist of a bedroom, living room, bath, and kitchen. The approximate enclosed floor space for each One Bedroom Unit is as shown below:

<u>Unit</u>	<u>Floor Space</u>
1	576 square feet
6	484 square feet
10	572 square feet
15	498 square feet

Units 1 and 10 shall each have a lanai of approximately 112 square feet; Unit 15 shall have a lanai of approximately 74 square feet. Unit 6 shall not have a lanai.

Each Studio Unit shall consist of a living room, bath and kitchen. Units 7, 8, 9, 16, 17 and 18 shall also have a dressing room. The approximate enclosed floor space for each Studio Unit is as shown below:

<u>Unit</u>	<u>Floor Space</u>
2	401 square feet
3	386 square feet
4	401 square feet
5	401 square feet
7	381 square feet
8	417 square feet
9	417 square feet
11	401 square feet
12	386 square feet
13	401 square feet
14	401 square feet
16	386 square feet
17	422 square feet
18	433 square feet

Each of the following Studio Units shall have lanais with the approximate space as shown below:

<u>Unit</u>	<u>Lanai Space</u>
2	112 square feet
3	108 square feet
4	112 square feet
5	112 square feet
11	112 square feet
12	108 square feet
13	112 square feet
14	112 square feet
16	49 square feet
17	40 square feet
18	75 square feet

Units 7, 8 and 9 shall not have a lanai.

Units 1 through 9 shall each have immediate access to the land heretofore described. All of the other Units shall each have immediate access to the open corridor immediately adjacent to and connecting the Units on the second story, and the stairways.

Each Unit shall consist of the space measured horizontally by the distances between the interior surfaces of the perimeter walls of each Unit, and the space measured by the area of the lanais of each Unit with a lanai; and measured vertically by the distance between the topside surface of the floor and the underside surface of the ceiling.

4. DESCRIPTION OF COMMON ELEMENTS. The common elements include:

a. The land heretofore described, except such portions hereinafter described as limited common elements, and the superadjacent airspace above the roof, and next to the exterior walls, of the said buildings.

b. All foundations, columns, beams and supports, girders, roof, walks, stairways, exterior walls, partition walls between each Unit, floors and ceiling of the Central Residential Apartment Building, and the open corridors immediately adjacent to and connecting the Units on each story of the Central Residential Apartment Building.

c. The separate "office and laundry building", and washer and dryer installed therein, parking area, sewage disposal system and outdoor lighting.

d. All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, refrigeration, television, sewage disposal, and other utilities (including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located in common area or in Units), and all tanks, pumps, motors, fans, compressors, ducts and other apparatus and installations existing for common use.

e. All tangible personal property, accounts, general intangibles, instruments and money, and any Unit of the regime, acquired and held by the Association of Apartment Owners ("hereinafter the "Association") or the board of directors of the condominium property regime, or their agents, for the administration, maintenance, safety and operation of the common elements of the regime, or for the common use and benefit of the Owners.

f. All other apparatus and installations existing in the said Central Residential Apartment Building or on the said land hereinbefore described existing for, or rationally of common use to, or necessary or convenient to the existence, maintenance or safety of all the Units of the condominium property regime hereby established.

5. LIMITED COMMON ELEMENTS. There shall be respectively appurtenant to Units 6, 7, 8 and 9, as a limited common element, appertaining to, and reserved for the exclusive use of each such Unit, those several portions of the land heretofore described adjacent to the respective living rooms of Units 6, 7, 8 and 9, and shown on the Condominium Map as "yard space", with the following approximate areas:

<u>Unit</u>	<u>Yard Space</u>
6	74 square feet
7	62 square feet
8	58 square feet
9	93 square feet

6. PERCENTAGE OF UNDIVIDED INTEREST. The percentage of undivided interest in the common elements appertaining to each Unit is as follows:

Units 1, 6, 10 and 15..... 6.8%

Units 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 16, 17 and 18..... 5.2%

7. STATEMENT AS TO USE OF UNITS. The Units are intended to be used for residential purposes. The Association shall have the power to enact administrative rules and regulations governing the details of the operation and use of the common elements; provided, that such rules and regulations shall be consistent with the provisions of this Amended Declaration and the Amended Bylaws.

8. EASEMENTS. In addition to the parking easements set forth in paragraph 4 above and any easements herein designated in the limited common elements, the Units and common elements shall have and be subject to the following easements:

a. Each Unit shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and in support of such Unit; in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements, if any, as herein provided; and in all other Units of the building for support.

b. If any part of the common elements encroaches upon any Unit or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. In the event the building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

c. The Association shall have the irrevocable right, to be exercised by the Board, to have access to each Unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another Unit or Units. Each Owner shall afford the Association and the other Owners, and to the employees, independent contractors or agents of the Association or other Owners, during reasonable hours, access through the Owner's Unit reasonably necessary for the operation of the Project and the maintenance, repair and replacement of an Unit. Unless entry is made pursuant to the circumstances described in the first sentence of this subsection c, if damage is inflicted on the common elements or on any Unit through which access is taken, the Owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the cost of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

d. Each Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other Units and serving his or her Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units for access to any common elements located in such Unit.

9. ALTERATION AND TRANSFER OF INTERESTS. Except as otherwise provided in this Amended Declaration, the common interest and easements appurtenant to each Unit shall have a permanent character, shall not be altered without the consent of all Owners of Units affected thereby as expressed in an amendment to this Amended Declaration duly recorded, shall not be separated from such Unit and shall be deemed to be conveyed or encumbered with such Unit even though not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act.

10. USE. The buildings and other improvements and each Unit within the Project shall be restricted to the following uses:

a. Each Unit shall be used and occupied only as private dwellings by the Owner thereof, his tenants, family, domestic servants and social guests. Subject to such limitation, the Owner of each Unit shall have the absolute right to lease or rent same for long-term or transient purposes subject to the limitations, restrictions, covenants and conditions of this Amended Declaration, the Amended By-Laws, the Operating Agreement and Rules of Hale Napili Rental Pool, and any conveyance document.

b. No Owner will suffer anything to be done or kept in his or her Unit or elsewhere which will jeopardize the soundness of any building, or which will interfere with or unreasonably disturb the rights of other Owners, or which will obstruct the corridors, stairways or walkways of the Project, or which will increase the rate of fire insurance on the improvements of the project or the contents thereof, or which will reduce the value of any such improvements.

c. Anything herein to the contrary notwithstanding, no Owner shall do any work which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, nor may any Owner add any material structure or excavate any basement or cellar without in every such case the consent of sixty-seven percent (67%) of the Owners being first obtained; the consent of all Owners whose Units or appurtenant limited common elements are directly affected; and the approval of the Board, which shall not unreasonably withhold such approval; provided the Board shall always have the right to disapprove a proposed addition or alteration that the Board reasonably determines could jeopardize the soundness or safety of the Project, impair any easement, or interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Project. provided, further that nonmaterial structural additions to the common elements (as defined in Section 514B-140 of the Act), or additions to or alterations of an Unit made within such Unit or within a limited common element appurtenant to and for the exclusive use of the Unit, shall require approval only by the Board of Directors, which approval shall not be unreasonably withheld, and such percentage, number, or group of Owners as may be required by this Amended Declaration or the Amended By-Laws.

d. The Owner of a Unit shall not, without the prior written consent of the Board, display any sign or place any other thing upon any door, window, wall or other portion of the Unit or the common elements so as to be visible from any point outside of his or her Unit.

e. 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 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 this Amended and Restated Declaration or the Amended and Restated Bylaws of Hale Napili, the Association and its Board shall act in a manner that is consistent with rental such 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.

11. **ALTERATION OF ADJACENT UNITS.** Subject to the prior written consent and approval of the plans therefor by the Board, the holders of all liens affecting such Units (if the lien holders require such consent) and all other Owners directly affected thereby as determined by the Board, the Owner of two (2) adjacent Units which are separated only by a wall shall have the right to make additions to or alterations within such Units, including the alteration and removal of all or a portion of the intervening wall separating the Units whether or not load-bearing; provided that no work shall be done which would jeopardize the structural integrity or safety of the building, reduce the value thereof or detract from the appearance of the building, or impair any easement. Said plans shall be prepared by a licensed architect and, if required by the Board, a licensed structured engineer. The Owner of such adjacent Units may install in and attach such doors and other devices to any opening or openings made in such intervening wall and may remove and retain ownership of the items so installed. Said additions and alterations may be undertaken without further amendment to this Amended Declaration or a filing of a complete set of floor plans of the building as so altered. Upon termination of the common ownership of such adjacent Units, any intervening wall which has been altered or removed pursuant to the foregoing provisions shall be restored substantially to the condition in which the same existed prior to such alteration or removal.

12. **ADMINISTRATION OF PROJECT.** Administration of the Project shall be vested in the Association, consisting of all Owners of the Project in accordance with the Amended By-Laws of the Association. Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Act, this Amended Declaration and the Amended By-Laws, and, specifically but without limitation, the Association shall:

a. Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

b. Keep all common elements of the project in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter

made by any governmental authority for the time being applicable to the Project or the use thereof.

c. Well and substantially repair, maintain, amend and keep all common elements of the Project, including, without limitation, the buildings thereof with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any Owner or his agent within thirty (30) days after the giving of such notice.

d. Before commencing or permitting construction of any improvement on the project, obtain a bond or certificate thereof naming all of the Owners and their respective mortgagees, if any, as their interests may appear, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanic's and materialman's liens.

e. Observe any setback lines affecting the Project and not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the project and the setback line along such boundary.

f. Not erect or place on the Project any building or structure, including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect, unless first approved by a majority of Owners (or such larger percentage as required by law or this Amended Declaration), including all Owners of Units thereby directly affected, and complete any such improvements diligently after the commencement thereof.

g. Not make or suffer any strip or waste or unlawful, improper or offensive use of the project.

13. **MANAGING AGENT.** Operation of the Project may be conducted for the Association by a responsible Managing Agent who shall be appointed by the Board of Directors, as it deems advisable, in accordance with the Amended By-Laws.

14. **COMMON EXPENSES.** All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including, without limitation, the operation thereof, any maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, and any

premiums for hazard and liability insurance herein required with respect to the Project and the cost of all utility services, including water, sewer, electricity and gas, garbage disposal and any other similar services unless separately metered, shall constitute common expenses of the Project for which all Owners shall be severally liable in proportion to their respective common interests. The Board shall from time to time assess the common expenses against all the Units in their respective proportionate shares, and the unpaid amount of such assessments against any Unit shall constitute a lien against such Unit which may be foreclosed by the Board or Managing Agent as provided by said Act, provided that thirty (30) days prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons or entities having any interest in such Unit as shown in the Association's record of ownership.

15. COMPLIANCE WITH AMENDED DECLARATION AND AMENDED BYLAWS. All Owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Amended Declaration, the Amended By-Laws of the Association, the House Rules, and all agreements, decisions and determination of the Association as lawfully made or amended from time to time and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved Owners.

16. FIRE AND EXTENDED COVERAGE INSURANCE. The Association, at its common expense, shall at all times keep all buildings of the project, including the common elements and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings, in accordance with the as-built condominium plans and specifications, insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in the State of Hawaii having a financial rating by Best's Insurance Reports of Class VI or better in an amount sufficient to provide for the full repair or full replacement thereof without deduction for depreciation, in the name of the Association as trustee for all Owners and mortgagees according to the loss or damage to their respective Units and appurtenant common interests and payable in case of loss to such bank or trust company authorized to do business in the State of Hawaii as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time cause to be deposited promptly with the Secretary of the Association true copies of such insurance policies or current certificates thereof, without prejudice to the right of each Owner to insure his or her Unit for his or her own benefit. Flood insurance shall also be provided under the provisions of federal Flood Disaster Protection Act of 1973 if the property is located in an identified flood hazard area designated by the Department of Housing and Urban Development with minimum limits equal to aggregate of the outstanding principal balances of all mortgage loans or Units in the project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The members of the Association may, by majority vote at any meeting of the Association require that the exterior glass of the project also be insured under such policy. The policy or policies under this Section 16 (unless unobtainable):

a. Shall contain no provision limiting or prohibiting other insurance by the Owner of any Unit, such right being provided by statute, but if obtainable, shall provide that the

liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any such other insurance.

b. Shall contain no provision relieving the insurer from liability for loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, or, if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty on condition caused by the Board or the Owner or tenant of any Unit, or by reason of any act or neglect of the Board or the Owner or tenant of any Unit.

c. Shall provide that the policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association) except by the insurer giving at least sixty (60) days prior written notice thereof to the Board, every first mortgagee of a Unit and every other person in interest who shall have requested such notice of the insurer.

d. Shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the Owner or lessee of any Unit.

e. Shall contain a provision waiving any right of the insurer to repair, rebuild or replace, if a decision is made pursuant to Section 20 of this Amended Declaration not to repair, reinstate, rebuild or restore the damage or destruction.

f. Shall provide that any loss shall be adjusted with the Board and the mortgagee of any Unit directly affected by the loss.

g. Shall contain a standard mortgagee clause which:

(1) Shall name the holder of any mortgage affecting any Unit whose name shall have been furnished to the Board.

(2) Shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board of the Owner or lessee of any Unit.

(3) Shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the rights of any mortgagee against the Owner or lessee of any Unit or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or Owner, but without impairing mortgagee's right to sue.

(4) Shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate trustee selected by the Board who shall be a bank or trust company doing business in Honolulu, Hawaii, hereinafter referred to as the "Insurance Trustee" or "Trustee".

(5) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees on any Unit, in order of preference.

h. Shall name all Owners as insureds.

i. Shall provide for payment of the proceeds to the Insurance Trustee, except in the case of damage to a single Unit in which case the proceeds shall be paid to the Owner and mortgagee, if any, of such Unit, as their respective interest may appear.

j. Shall contain a provision requiring the insurance carrier at the inception of the Policy and on each anniversary date thereof to provide the Board with a written summary describing said Policy. Such summary shall include the type of the Policy, a description of the coverage and limits thereof, the amount of the annual premium and renewal dates.

17. COMPREHENSIVE LIABILITY INSURANCE. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (hereinafter called the "Policy") of Public Liability Insurance to insure the Board, each Owner, the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the property or activities thereon under the Comprehensive General Liability form to include (1) Water Damage Legal Liability and (2) Fire Damage Legal Liability. Said insurance shall provide combined single-limit coverage of not less than One Million Dollars (\$1,000,000.00) and:

a. Shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, or by any breach of warranty or condition caused by the Owner of any Unit or by any act or neglect of the Owner or tenant of any Unit.

b. Shall provide that the policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association) except by the insurer giving at least sixty (60) days prior written notice thereof to the Board, every first mortgagee of a Unit and every other person who shall have requested such notice of the insurer.

c. Shall contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other persons under them.

d. Shall contain a "severability of interest" endorsement precluding the insurer from denying the claim of an Owner because of negligent acts of the Association or the other Owners.

18. INSURANCE AGAINST ADDITIONAL RISKS. The Board may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii. The Board also shall be authorized to procure, at the expense of the Association, errors and omissions insurance for the protection of Board members, with reasonable policy limits of consistent with the range of such coverage within the State of Hawaii.

19. MISCELLANEOUS INSURANCE PROVISIONS.

a. The Board shall review not less frequently than annually the adequacy of its insurance program and shall report in writing the Board's conclusions and action taken on such review to the Owner of each Unit, and to the holder of any mortgage on any Unit who shall have requested a copy of such report. At the request of any mortgagee of any Unit, the Board shall furnish to such mortgagee a copy of the Policy or Policies described in Sections 16, 17, and 18 of this Amended Declaration and of any other policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Board shall be available for inspection by Owner (or purchaser holding a contract to purchase an interest in a Unit) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Owners of Units to insure such Units and the contents thereof for their own benefit at their own expense. All policies shall include a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date, to provide the Board with a written summary, in laymen's terms, of the policy including the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Board shall provide this information to each Owner.

b. The Board in the case of a claim for damage to a Unit or the common elements, may:

- (1) Pay the deductible amount as a common expense;
- (2) After notice and an opportunity for a hearing; assess the deductible amount against the Owners who caused the damage or from whose Units the damage or cause of loss originated; or
- (3) Require the Unit Owners of the Units affected to pay the deductible amount. (Section 514B-143(d) of the Act)

c. The Board, with the vote or written consent of a majority of the Owners, may require Owners to obtain reasonable levels of insurance. The liability of an Owner shall include but not be limited to the deductible of the Owner whose Unit was damaged, any damage not covered by insurance required by this subsection-(c) as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment and other furnishings. If the Owner does not purchase or produce evidence of insurance requested by the Board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the Owner. In no event is the Association or Board liable to any person either with regard to the failure of an Owner to purchase insurance or a decision by the Board not to purchase the

insurance for the Owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

20. DAMAGE AND DESTRUCTION.

a. If any building is damaged by fire or other casualty which is insured against and said damage is limited to a single Unit, the insurance proceeds shall be used by the Owner and mortgagee, if any, of such Unit to pay the contractor employed by the Board to rebuild or repair such Unit, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor.

b. If such damage extends to two or more Units or extends to any part of limited common elements or to the common elements, the Board shall thereupon contract to repair or rebuild the damaged portions of the building, including all Units so damaged, as well as the common elements, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to the destruction or damage, or, if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in a Unit directly affected thereby; provided that:

(1) In the event said modified plan eliminates any Unit that may have been damaged or destroyed and such Unit is not reconstructed, the Insurance Trustee shall pay to the Owner of said Unit and the mortgagee of record of any interest in said Unit, as their interests may appear, the portion of said insurance proceeds allocable to the Owner's common interest (less the proportionate share of said Unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

(2) In the event the restoration of the building in accordance with the original plans and specifications or with such modified plan as shall have been previously approved by the Board and the mortgagee of record of any interest in a Unit directly affected thereby shall not be permissible under the laws and regulations then existing, the proceeds of the insurance, after paying the cost of the removal of the debris, shall be disbursed to Owners of Units so damaged and their mortgagees of record, as their interests may appear, in proportion to the respective common interests of said Owners.

(3) In the event the insurance proceeds are insufficient to restore the building, then the Project shall be rebuilt, repaired or restored as prescribed in this Amended Declaration or in accordance with such modified plan as shall have been previously approved by the Board, a majority of the Owners of Units directly affected thereby and the mortgagees of record of any interest in a Unit directly affected thereby, unless the Owners of at least sixty-seven percent (67%) of the interests in the common elements execute an instrument within one hundred eighty (180) days of the loss expressing their decision not to rebuild, repair or restore. In such event the proceeds of the insurance shall be first used to remove any remaining improvements and the balance, if any, shall be paid to the Owners and said mortgagees, as their interests shall appear, in proportion to the percentage interest of each Owner in the common

elements appurtenant to his or her Unit, and the Owners shall be released and relieved of all obligations to rebuild.

c. The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Paragraph ~~21~~ 20. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on all Owners in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Unit shall be specially assessed against such Unit.

d. The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

(1) The work shall be in charge of an architect or engineer (who may be an employee of the Association).

(2) Each request for payment shall be made by fourteen (14) days prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Insurance Trustee the sum requested does not exceed the value of the work done to the date of such certification.

(3) Each request shall be accompanied by waivers of liens satisfactory to the Insurance Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that there has not been filed with respect to the premises any mechanic's or other lien or instrument for the retention of title in respect of any part of the work not discharged of record.

(4) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.

(5) The fees and expenses of the Insurance Trustee as determined by the Board and the Insurance Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

(6) Such other conditions not inconsistent with the foregoing as the Insurance Trustee may reasonably request.

Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Insurance Trustee shall be paid or credited to the Unit Owners directly affected thereby and their mortgagees of record in proportion to their respective common interests.

(7) To the extent that any loss, damage or destruction to the building or other property is covered by insurance procured by the Association, the Association shall have no claim or cause of action for such loss, damage or destruction against any Owner or lessee. To the extent that any loss, damage or destruction to the property of any Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Owner, or the Association. All policies of insurance referred to in this paragraph shall contain appropriate waivers of subrogation.

21. **CONDEMNATION.** In the event of a taking by eminent domain of part or all of the common elements, all compensation payable for or on account of the taking of any land shall be payable to each Owner affected, and his mortgagee, if any, in proportion to their respective common interest; provided that in the event of a partial taking of a Unit or Units and improvements which shall be capable of being restored, then the award payable on account of such a Unit or Units and improvements shall be payable to a condemnation trustee, which shall be a bank or trust company designated by the Board doing business within the State of Hawaii. The Board shall arrange for the repair and restoration of such Unit or Units and improvements as nearly as possible in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plans as shall be previously approved by the Board and the mortgagee of record of any interest in any Unit directly affected thereby. The condemnation trustee shall disburse the proceeds of such award received by such trustee to the contractor engaged in such repair and restoration in the same way funds are disbursed for repair and restoration work under Section 20 hereinabove, and in the event such proceeds are insufficient to pay the costs thereof, the Board shall pay any deficiency, and if the Board's maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on each remaining Owner.

22. **ALTERATION OF PROJECT.** Except as otherwise provided in this Amended Declaration, restoration or replacement of the Project or any building or other structure thereof or construction of any additional building or other structure or structural alteration or addition thereto, different in any material respect from said plans of the project, shall be undertaken by the Association or any Owners only pursuant to further amendment of this Amended Declaration, duly executed by or pursuant to the affirmative vote of all the Owners and accompanied by the written consent of the holders of all liens affecting any of the Units and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction the Association shall duly record or file of record such amendment together with a complete set of

floor plans of the project as so altered, certified as built by a registered architect or professional engineer. Notwithstanding any provision in this Amended Declaration to the contrary, any alterations or additions within a Unit or within a limited common element appurtenant to and for the exclusive use of such Unit shall require the written consent thereto and the written approval of the Owner's plans therefor by only the holders of all liens affecting such Unit (if the lien holders require such consent and approval), the Board and all other Owners thereby directly affected, as determined by said Board, and such alterations or additions may be undertaken without further amendment to this Amended Declaration or filing of a complete set of floor plans of the Project as so altered.

23. MAINTENANCE RESERVE FUND. The Board shall establish and maintain a reserve fund by the assessment of and payment by all the Owners in quarterly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each Owner's obligations to provide for utilities, insurance, maintenance and repair of the common elements, and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the project. The Board may include reserves for contingencies in such assessments, and such assessments may from time to time be increased or reduced in the discretion of the Board. The proportionate interest of each Owner in said fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said funds remaining after full payment of all common expenses of the Association shall be distributed to all Owners in their respective proportionate shares, except for the Owners of any Units then reconstituted as a new Condominium Property Regime. As required by the Act, the Association shall assess the Owners to fund the estimated replacement reserves and shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance expense of each part of the property for which the Association is responsible. The estimated replacement reserves shall include:

- a. 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
- b. Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000.

24. FRACTIONAL OWNERSHIP.

a. No 'time share plan' can be created for or in respect to any Unit, and no Unit shall be subject to any 'time share plan.' The phrase 'time share plan' shall have the meaning given by Hawaii Revised Statutes Chapter 514E, as amended or reenacted, which currently reads:

b. "Time share plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty-day period in any year, for any occupant. The term time-share plan shall include both time-share ownership plans and time-share use plans, as follows:

(1) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed or by other means, whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.

(2) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

c. The right to control, use or occupy any Unit shall never be divided among a Unit's owners by a specific or discernible temporal division whereby each Owner is entitled to the exclusive control, use or occupancy of the Unit for any fixed period of time (e.g., a specific number of days). The prohibitions set forth in the immediately preceding sentence shall include but not be limited to "time share", "interval ownership", "fractional fee", "membership club", or other types of plans that are similar in nature or use.

d. The Association shall have the right and power, to be exercised by the Board of Directors of the Association, to deny any person entry to, or the possession of, any Unit for which a time share has been created in violation of this section, so long as such violation shall continue. The Association may bring an action to obtain appropriate injunctive relief to prevent any violation of this section, or to require the observance of this section, without being required to post a bond as a condition to obtaining such injunctive relief, whether temporary, preliminary, or permanent. Nor shall the Association be required to show in any such action, that other relief is inadequate or that the damages suffered by the Association or by any Owner are or may be irreparable.

e. The Association shall have the power to enact resolutions, rules and regulations, and the power to amend and repeal the same from time to time, reasonably restricting and regulating the use of the Units and the common elements; provided that any such resolution, rule or regulation shall be consistent with the terms of this Amended Declaration and the Amended By-Laws.

25. AMENDMENT OF DECLARATION. This Amended Declaration may be further amended by the affirmative vote or written consent of not less than sixty-seven percent (67%) of the Owners. (Section 514B-32(11) of the Act) effective only upon the filing of an instrument setting forth such amendment and vote duly executed by such Owners or by the proper officers of the Association. In case of a further modification or amendment to the Amended By-Laws, this Amended Declaration may be further amended to set forth such modification or amendment pursuant to such percentage vote as is required by the Amended By-Laws to render the modification or amendment thereof effective.

26. DEFINITIONS. The terms "majority" or "majority of Owners" herein means the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the Owners means the Owners of Units to which are appurtenant such percentage of the common interests.

27. **INVALIDITY.** The invalidity of any provision of this Amended Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of any other provision of this Amended Declaration.

28. **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 or the intent of any provisions of this Amended Declaration.

29. **GOVERNING LAW.** Notwithstanding anything to the contrary in this Amended Declaration, the Amended Bylaws, House Rules and/or the Condominium Map, this Project shall be governed by the provisions of Chapter 514B of the Hawaii Revised Statutes, as the same shall be amended from time to time, and this Amended Declaration and the Amended Bylaws, House Rules and/or Condominium Map, shall be deemed amended to the extent necessary to conform to and be consistent with the provisions of said Chapter 514B of the Hawaii Revised Statutes, as amended from time to time.

30. **RESTATEMENT OF DECLARATION.** This Amended Declaration shall supersede the prior Original Declaration together with any recorded or unrecorded amendments thereto. The Association may at any time further amend and/or restate this Amended Declaration or the Amended Bylaws in the manner prescribed by Section 514B-109 of the Act.

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 Declaration** of Condominium Property Regime of Hale Napili, was 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.

X 

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




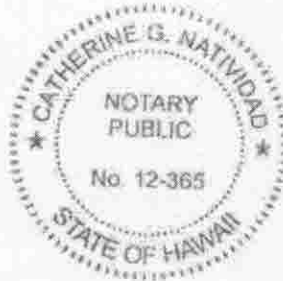
LINDA LEVI, Secretary of Association
of Apartment Owners of Hale Napili
Apartments

STATE OF HAWAII

COUNTY OF MAUI

On this 29th 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 his free act and deed.
Witness my hand and seal.

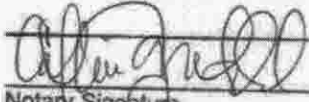

Notary Public, State of Hawaii Catherine G. Natividad
My Commission Expires: 11/11/2016

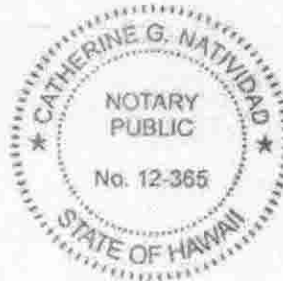


Doc. Date: undated # Pages 1 (one)

Notary Name: Catherine G. Natividad Second Circuit

Doc. Description Certificate

 04/29/2015
Notary Signature Date



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)

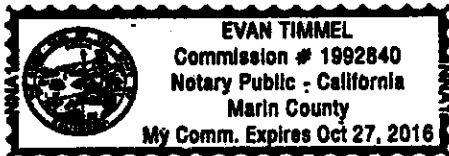
On 03-31-2015 before me, Evan Timmel Notary Public
Date Here Insert Name and Title of the Officer

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: _____