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(808) 521-9500 (OTI)

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BYLAWS OF THE ASSOCIATION
OF UNIT OWNERS OF
SKY ALA MOANA

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THESE BYLAWS are made this 15th day of March, 2019, by JL AVALON CAPBRIDGE, LLC, a Hawaii limited liability company ("Developer"), with its principal place of business and post office address at 800 Bethel Street, Suite 501-A, Honolulu, Hawaii 96813.

WITNESSETH:

WHEREAS, Developer is the developer of the "Sky Ala Moana" condominium project (the "Project"); and

WHEREAS, Developer and Lot Owners, as defined in the Declaration of Condominium Property Regime of Sky Ala Moana of even date herewith (the "Declaration") and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Office") own in fee simple those certain parcels of real property described in Exhibit "A" to the Declaration and noted on Transfer Certificate of Title Nos. 250,348, 1,014,665, 1,131,851, 1,131,852, 1,131,853, 1,131,854, 1,131,855, 1,131,856, 1,131,857, and 1,131,858 (the "Land"), and shown on Condominium Map No. 2477 filed in the Office concurrently therewith (the "Condominium Map"); and

WHEREAS, Developer has entered into separate agreements with Lot Owners to purchase the fee interest of Lot Owners in the Land; and

WHEREAS, Developer and Lot Owners desire to submit the Land and Improvements to a condominium property regime by recording the Declaration and adopting these Bylaws, all as provided for by Chapter 514B, Hawaii Revised Statutes, as amended (the "Act");

NOW, THEREFORE, Developer and Lot Owners hereby declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following Bylaws as provided herein, all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of such property.

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1. **AUTHORITY FOR BYLAWS.** Developer, acting as the present Association of the Project, hereby approves and adopts these Bylaws pursuant to the Act. These Bylaws are subject to the laws of the State, including but not limited to, the Act and Hawaii Administrative Rules, Title 16, Chapter 107 (the "HAR"), as amended from time to time.

Section 2. **LIMITED PURPOSE OF BYLAWS; COVENANTS TO RUN WITH THE LAND.** As stated in Section VII of the Declaration, Part VI of the Act entitled "Management of Condominiums" shall not apply to this Project, except for Section 514B-132 entitled "Managing Agents" shall apply so long as required by Section 514B-101 of the Act. As further provided in the Declaration, these Bylaws shall have no effect and shall not govern the operation and management of the Project or the Association so long as the Project contains five (5) or fewer Units; provided that the Association may look to these Bylaws for guidance for administrative matters. Should the Project contain five (5) or more Units, the Land and the Improvements shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following Bylaws, all of which are declared and agreed to be in furtherance of the plan set forth in the Declaration, to constitute a condominium property regime under the Act and for the purposes of enhancing and perfecting the value, desirability, and attractiveness of the Project. These Bylaws shall constitute covenants running with the Land and Units established thereon, and equitable servitudes and liens, and shall be binding upon all parties having or acquiring any right, title or interest therein. For the purposes of this Section, additional Units are created upon the subdivision of a Unit, and not upon the submission of a Unit to a condominium property regime under the Act.

Section 3. **DEFINITIONS.** The terms used herein with initial capital letters shall have the meanings given to them in Article I, Section B of the Declaration, except as otherwise expressly provided herein.

Section 4. **CONFLICTS.** These Bylaws are set forth to comply with the requirements of the Act and the HAR. In any case where any of these Bylaws conflict with the provisions of the Act, the HAR, or the Declaration, the provisions of the Act, the HAR, or the Declaration, as the case may be, shall control.

Section 5. **BINDING EFFECT OF BYLAWS ON OWNERS, MORTGAGEES, AND LESSEES.** Subject to Section I.2 herein, all present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and Occupants of Units, and their employees, business invitees, and any other Persons who may use any part of the Project in any manner are subject to the Condominium Documents, including these Bylaws. The acceptance of a Unit Deed, conveyance, mortgage, or Agreement of Sale, or the entering into of a lease, or the act of occupancy of a Unit shall constitute an acceptance, ratification, and agreement to comply with the provisions of Condominium Documents, including these Bylaws, as the same may be amended from time to time.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. **MEMBERSHIP.** All Owners of the Project together shall constitute the Association. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member until such time as his or her ownership of such Unit ceases for any reason. In the event that the Project is terminated, the Association shall consist of all former Owners who owned Units at the time of termination and who are entitled to distributions of proceeds under Section 514B-47 of the Act, or such Owners' heirs, successors or assigns.

Section 2. **ANNUAL MEETINGS.** The first annual meeting of the Association shall be held as provided in the Declaration. Thereafter, the annual meetings of the Association shall be held on a date that is selected by the Board. If the Board does not choose a meeting date by the 15th of February of each year, then the meeting will be held at the Project at 6:30 p.m. on the third (3rd) Wednesday in March of each year, or at such other time as the Board may determine from time to time. Developer may set the date and time for the first annual meeting. Owners may transact other business at such meeting as may properly come before the Association.

Section 3. **PLACE OF MEETINGS.** All meetings of the Association shall be held at the Project, or elsewhere within the State of Hawaii, as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.

Section 4. **NOTICE OF MEETINGS AND OTHER NOTICES.** The Secretary shall cause written notice of all meetings, annual or special, stating the date, time, and place of the meeting and whether it is annual or special, together with a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws, to be given by (a) hand delivering such notice(s) and form, (b) mailing, postage prepaid to the mailing address of each Unit or any other address designated in writing by the Owner, or, (c) at the option of the Owner, expressed in writing, by facsimile or electronic mail to the electronic mailing address designated in writing by the Owner, at least fourteen (14) calendar days before the date assigned for the meeting. The notice must state the authority for holding the meeting, the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws, and any proposal to remove a Director; provided that nothing herein shall preclude an Owner from proposing an amendment to the Declaration or these Bylaws or to remove a Director at any annual meeting. Upon written request for notices delivered to the Board, a Lender may obtain a copy of any and all notices permitted or required to be given to the Owner, whose interest is subject to said Mortgage or deed of trust. Notice may be considered waived as follows:

A. Anyone who attends a meeting, in person or by proxy, waives any right to claim that notice was not properly given unless, when the meeting begins, he or she objects to holding it because notice was not properly given.

B. An Owner may waive notice of any Association meeting by signing a document that (i) waives notice, (ii) consents to or approves the action taken at the meeting, or (iii) approves the minutes of the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

C. An Owner automatically waives notice of any Association meeting if he or she does not file a written objection with the Secretary or the Managing Agent within fifteen (15) calendar days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

Upon notice being given in accordance with the provisions hereof, the failure of any Owner to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each Owner shall keep the Association informed of any changes in address.

Section 5. **SPECIAL MEETINGS.** A special meeting of the Association may be called at any time for any one (1) or more purposes. It may be called by (a) the President, (b) a majority of the Directors, or (c) a petition signed by not less than twenty-five percent (25%) of the Owners and presented to the Secretary or to the Managing Agent. The Owners may transact only that business the general nature of which is stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary or the Managing Agent shall send written notice of the meeting to all Owners. In the event that the Secretary or the Managing Agent shall fail to send out notices within fourteen (14) calendar days of receipt of any petition to have such meeting, or such other period as may be required by Section 514B-121 of the Act, the petitioners calling for the meeting may send the notice in accordance with the provisions for such notice contained in these Bylaws. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within forty-five (45) calendar days from the date the call was received.

Section 6. **ADJOURNMENT OF MEETINGS.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than thirty (30) calendar days from the time the original meeting was called, as may be determined by majority vote of the Owners present, without notice other than the announcement at such meeting. If the meeting is adjourned for thirty (30) calendar days or more, or if the law requires a new notice, then a new notice must be given. 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 7. **CONDUCT OF MEETINGS AND ORDER OF BUSINESS.** All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

Section 8. **VOTING.** Each Owner shall be entitled to that percentage of the total vote of all of the Owners which equals the percentage of the Common Interest appurtenant to such Unit as set forth in the Declaration. The respective Owners may cast votes in person or by proxy; provided voting by acclamation is permitted for items where formal voting is not necessary. An executor, administrator, personal representative, guardian, or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any Unit owned or controlled by him or her in such capacity, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such Unit in such capacity not later than the commencement of the meeting. The vote for any Unit owned of record by two (2) or more Persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others. If more than one (1) Owner is present, the votes allocated to that Unit may be cast only in accordance with the agreement of the majority in interest of the Owners. There is a majority agreement if any one (1) 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 co-Owners do not agree in their vote, then the entire vote allocated to that Unit will not be counted. Corporations, general partnerships, limited partnerships, limited liability partnerships, and limited liability companies which are Owners shall designate a general partner, officer, member, or manager, as appropriate, for the purpose of exercising the vote; and such representative of an Owner which is a corporation, general partnership, limited partnership, or limited liability company shall present satisfactory written evidence to the Secretary of his or her designation as representative not later than the commencement of the meeting.

A. **QUORUM.** The term "**quorum**" refers to the number or percentage of Owners who must be present at a meeting to conduct business for all Owners. For all meetings of the Association, one

hundred percent (100%) of the Owners must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws.

B. **WHEN A MEMBER IS "PRESENT"**. Members are "present" at a meeting if: (i) they attend it in person, or (ii) their proxy holder attends it for them, or (iii) someone else permitted by these Bylaws attends it for them.

Section 9. **MAJORITY VOTE**. The vote of a majority of the Common Interest present or represented at a meeting at which a quorum is present shall be binding upon all Owners, for all purposes, except where a higher percentage vote is required in the Declaration, these Bylaws, or by law. Notwithstanding the preceding sentence: (i) where a vote requires a Majority of Owners, the term "**Majority of Owners**" shall mean the Owners to which are appurtenant more than fifty percent (50%) of the total Common Interest; and (ii) where a vote requires a specific percentage of Owners, the specified percentage of the Owners means Owners to which are appurtenant such percentage of the Common Interest.

Section 10. **PROXIES**. An Owner may appoint in writing a proxy to represent the Owner at meetings of the Association. An Owner may vote by mail or electronic transmission through a duly executed proxy. If a Unit is owned by more than one (1) person, each Owner may vote or register protest to 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. An Owner may revoke a proxy given only by actual notice of revocation to the Secretary or Managing Agent. A proxy is void if it purports to be revocable without notice.

A. A proxy, to be valid, must: (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; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed name(s) and signature(s) of the Person(s) giving the proxy, the Unit number for which the proxy is given, the name of the person to whom the proxy is given, and the date that the proxy is given; (iii) if it is a standard proxy form authorized by the Association, 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; (c) to the Board as a whole and that the vote be made on the basis of the preference of the majority of the Directors present at the meeting; or (d) to those Directors present at the meeting with the vote to be shared with each Director 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.

B. 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 indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit.

C. 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.

D. Nothing in this Section shall affect the holder of any proxy under a first Mortgage of record or under an agreement of sale.

E. With respect to the use of Association funds to distribute proxies:

1) If the Board intends to use Association funds to distribute proxies, including the standard proxy form, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) calendar days before its distribution of proxies. If the Board receives within seven (7) calendar days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all Owners either: (a) a proxy form containing the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (b) 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, which shall

be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page and indicate the Owner's qualifications to serve on the Board or reasons for wanting to receive proxies.

2) The 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 subpart (i) of this Subsection.

F. No Managing Agent or their employees, shall solicit, for use by the Managing Agent any proxies from any Owner that retains the Managing Agent, nor shall the Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

G. The Board 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 that subject to applicable approval rights of Developer, the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

Section 11. **MINUTES OF ASSOCIATION MEETINGS.** Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) calendar days after the meeting, if authorized by the Owners at an annual meeting. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval and unapproved final drafts of minutes shall be available within sixty (60) calendar days after the meeting. If approved by the Board, Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) calendar days after approval. An Owner shall be allowed to offer corrections to the minutes at an Association meeting.

Section 12. **ASSOCIATION POWERS.** Except as otherwise provided herein, and subject to the provisions of the Declaration and these Bylaws, the Association, even if unincorporated, shall have those powers set forth in Section 514B-104 of the Act, as limited by Section 514B-105 of the Act. The Association delegates its powers to the Board, unless such delegation is prohibited by the Act.

ARTICLE III

BOARD OF DIRECTORS

Section 1. **NUMBER AND QUALIFICATION.** The affairs of the Association shall be governed by the Board, which shall be comprised of five (5) Directors. Each Director shall be an Owner, co-Owner, vendee under an agreement of sale, a trustee or beneficiary of a trust that owns a Unit, or an officer of any corporate owner or a representative of any entity which owns a Unit. There shall be no more than one (1) Director from each Unit. The partners of a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be Owners for purposes of serving on the Board. No employee of the Association shall serve on the Board. Any Director who is an employee of a Managing Agent shall not participate in any discussions regarding the Condominium Management Agreement with such Managing Agent and shall be excluded from any executive session where such Managing Agent or Condominium Management Agreement will be discussed.

Section 2. **ELECTION AND TERM OF OFFICE.** Directors shall be elected at each annual meeting to fill the vacancy in the office of Directors occurring as of the time of such meeting, and shall be nominated from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to Owners and to solicit votes. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Each Director shall serve a term of one year. The Directors shall hold their office until their respective successors have been elected.

Section 3. **REMOVAL OF MEMBERS OF THE BOARD.** At any annual or special meeting of the Association duly called, Directors may be removed and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement of a Director shall be by a vote of a majority of the Owners and, otherwise, in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of Directors. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at such meeting. The replacement of the Director so removed

shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of Directors. Any Director removed by the Board shall not be eligible for reelection to the Board for a period of one (1) year after such Director's removal.

Section 4. **VACANCIES.** A Director's office shall become vacant in the event of such Director's death, incapacity, or resignation or if such Director shall cease to be an Owner or co-Owner of record of a Unit, a vendee of a Unit under an Agreement of Sale, a trustee or beneficiary of a trust which owns a Unit, or an officer, partner, member, or other Person authorized to act on behalf of any other legal entity which owns a Unit. Any vacancies other than a vacancy caused by the natural expiration of the term of such Director or the removal of such Director, shall be filled by the vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall serve until his or her successor is elected at the next annual meeting of the Association. The successor elected at such annual meeting serves until the expiration of the term of the Director whose seat is vacated.

Section 5. **POWERS AND DUTIES.** The Board shall have all the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and the Declaration, and for the maintenance, upkeep, and repair of the Project in good order and condition, and the Association may delegate, all rights, powers, and duties to the Board, except those rights, powers, and duties that cannot be delegated to the Board by law, the Declaration, or these Bylaws. The Board shall have all rights, powers, and duties to act on behalf of the Association other than those requiring the vote of the Association set forth in the Act and subject to all rights and approval requirements set forth in the Declaration and these Bylaws, including without limitation, the Developer's Reserved Rights or any approval rights of Developer.

Section 6. **COMPENSATION.** No Director shall receive any compensation from the Association for travel expenses, Directors' fees and *per diem* 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 meeting shall reflect in detail the items and the amounts of the reimbursements. 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 shall include these expenses as separate line items. These expenses include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for travel expenses on the island of Oahu, all reimbursement for other travel expenses shall be subject to pre-approval by the Board and shall be reflected in the minutes as discussed above.

Section 7. **ORGANIZATIONAL MEETING.** The first meeting of the Board shall be held immediately after the first annual meeting of the Association and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided that a majority of the Board shall be present thereat. At such meeting, the Board shall elect the Officers for the ensuing year.

Section 8. **REGULAR MEETINGS.** Regular meetings of the Board 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 (1) such meeting shall be held during each calendar year.

Section 9. **NOTICES; WAIVER OF NOTICE.** Notice of all Board meetings and other notices to the Directors shall be given to each Director by the Secretary or the person or persons calling the meeting. Notice of regular meetings of the Board shall be given to each Director personally or by first class mail, facsimile, or electronic mail at least seven (7) calendar days, if practicable, prior to the day named for such meeting. Notice of all Board meetings shall also be posted by the Managing Agent or a member of the Board, in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board. Before or at any meeting of the Board, 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 shall be a waiver of notice to him or her of such meeting. If all the Directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. **NO PROXY VOTE; CONFLICT OF INTEREST.** A Director shall not cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a

conflict of interest. In the event of a conflict of interest, the Director shall disclose the nature of such conflict prior to a vote at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. For the purposes of this Section, "**conflict of interest**" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. Ownership and use of a Unit by a Director for the purposes permitted by the Declaration and these Bylaws do not, by themselves, create a conflict of interest. If abstentions for such a reason would result in less than a majority being able to vote, the Directors who do not abstain shall appoint one or more persons as temporary Directors to vote on the matter in question.

Section 11. **EXECUTIVE SESSION.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene privately in executive session to discuss and vote upon matters: (a) concerning personnel; (b) concerning litigation in which the Association is or may become involved; (c) necessary to protect the attorney-client privilege of the Association; or (d) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 12. **SPECIAL MEETINGS.** Special meetings of the Board may be called by the President on three (3) business days' notice to each Director, given personally or by mail, facsimile transmission, or electronic mail transmission (which notice shall state the time, place and purpose of the meeting), and on posting of notice, if practicable; provided, however, that in the case of emergency situations, as determined by the President, a special meeting of the Board may be called by the President on eight (8) hours' notice to each Director. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice, if practicable, on the written request of at least two (2) Directors.

Section 13. **CONDUCT OF MEETING.** All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. All meetings of the Board (whether organizational, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

Section 14. **QUORUM OF BOARD.** At all meetings of the Board, a majority of the total number of Directors established by these Bylaws shall constitute a quorum for the transaction of business, and action by a majority of the Directors present at any meeting at which a quorum is present shall constitute action by the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those Directors present may adjourn the meeting and call an additional meeting at which a majority of the total number of Directors.

Section 15. **EMPLOYEES; BACKGROUND CHECK.** Upon written authorization of an applicant for employment as a security guard or a position that would allow the employee access to the keys of or entry into Units or access to Association funds, the Board and the Managing Agent are empowered to conduct a background check or direct another responsible party to conduct the check as provided in Section 514B-133 of the Act. This information shall be used only for the purpose of conducting the criminal history check authorized by this Section and the Act. The failure of the Association, the Board, and the Managing Agent to conduct or verify a background check shall not give rise to a private cause of action against the Board or the Managing Agent for acts and omissions of the employee or vendor hired.

Section 16. **MINUTES OF BOARD MEETINGS.** The minutes of the meetings of the Board shall: (a) shall include the recorded vote of each Director on all motions except motions voted on in executive session; (b) be approved no later than the second succeeding regular meeting; (c) 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) calendar 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 17. **ACTION BY DIRECTORS WITHOUT MEETING.** Any action required or permitted to be taken at any meeting of the Board or of a committee of the Board may be taken without a meeting if all of the Directors authorized to vote on such matter or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective

date of such action. Such consent shall be filed with the minutes of the Board meetings or committee meetings as the case may be and shall have the same effect as a unanimous vote.

Section 18. **REMOTE MEETINGS.** Subject to the notice requirements contained in these Bylaws, members of the Board or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment 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. If permitted by the Board, any Owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the Owner pay for the costs associated with the participation.

Section 19. **DUTY OF DIRECTORS.** In the performance of their duties, each Director shall owe the Association a duty and exercise the degree of care and loyalty required of a director of a nonprofit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended.

Section 20. **COPIES OF DOCUMENTS.** The Association at its expense shall provide all Directors with a current copy of the Declaration, Bylaws, House Rules and, annually, a copy of the Act, with amendments, and the HAR.

ARTICLE IV

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 the Board. The Board may appoint such additional officers, including one or more vice presidents, an assistant treasurer, an assistant secretary, and such other Officers as in its judgment may be necessary. All Officers shall be members of the Board. Except as specifically authorized by the Association at an annual or special meeting, no Officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such Officer. An Owner shall not act as both an Officer of the Association and an employee of the Managing Agent.

Section 2. **ELECTION AND TERM.** The Officers of the Association shall be elected annually by the Board at its organizational meeting or any special meeting called for such purpose and shall hold office at the pleasure of the Board.

Section 3. **DUTY OF OFFICERS.** In the performance of their duties, each Officer of the Association shall owe to the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer of a corporation organized under Chapter 414D of the Hawaii Revised Statutes.

Section 4. **REMOVAL.** Any Officer may be removed either with or without cause by vote of a majority of the members of the Board, and his or her successor shall be elected at any regular meeting of the Board or any special meeting called for such purpose.

Section 5. **VACANCIES.** An Officer's office shall become vacant in the event of such Officer's death, incapacity, or resignation or if such Officer shall cease to be an Owner or co-Owner of record of a Unit, a vendee of a Unit under an Agreement of Sale, a trustee or beneficiary of a trust which owns a Unit, or an officer, partner, member, or other Person authorized to act on behalf of any other legal entity which owns a Unit. Any vacancies other than a vacancy caused by the natural expiration of the term of such Officer or the removal of such Officer, shall be filled by the vote of a majority of the remaining Officers, even though they may constitute less than a quorum, and each person so elected shall serve until his or her successor is elected at the next annual meeting of the Association. The successor elected at such annual meeting serves until the expiration of the term of the Officer whose seat is vacated.

Section 6. **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. 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 Bylaws or assigned to him or her from time to time by the Board.

Section 7. **SECRETARY.** The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all Units, maintain and keep the minute book wherein resolutions shall be recorded, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary and all other duties assigned by the Board.

Section 8. **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, in general, perform all of the duties incident to the office of Treasurer and all other duties assigned by the Board.

Section 9. **EXECUTION OF AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC.** After the first annual meeting of the Association, all agreements, contracts, deeds, leases, checks, and other instruments of the Association, including any amendments to the Declaration or these Bylaws, shall be executed by any two (2) of the President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated in writing by the Board.

Section 10. **LIABILITY AND INDEMNITY OF THE BOARD AND OFFICERS.** The Directors and Officers shall not be liable to the Association for any mistake of judgment or otherwise except for their own individual gross negligence or willful misconduct. The Association shall obtain and maintain at the Association's expense a policy of Directors' and Officers' liability insurance covering the Directors and Officers.

The Association shall defend and indemnify each Director and Officer against all costs, expenses, and liabilities, including the amount of judgments, amounts paid in compromise settlements, and amounts paid for reasonable attorneys' fees, and other related expenses which may be incurred by or imposed on the Directors and Officers in connection with any claim, action, suit, proceeding, investigation, or inquiry hereafter made, instituted, or threatened in which he or she may be involved as a party or otherwise by reason of his or her being or having been a Director or Officer, or by reason of any past or future action taken or authorized or approved by him or her, or any omission to act as a Director or Officer, whether or not he or she continues to be a Director or Officer at the time of the incurring or imposition of such costs, expenses, or liabilities. The Association shall not defend and indemnify the Directors or Officers for such costs, expenses, or liabilities as shall relate to matters as to which he or she is liable by reason of his or her gross negligence or willful misconduct toward the Association in the performance of his or her duties as a Director or Officer. As to whether or not a Director or Officer was liable by reason of gross negligence or willful misconduct toward the Association in the performance of his or her duties as a Director or Officer, in the absence of final adjudication of the existence of such liability, each Director and Officer may conclusively rely upon an opinion obtained by the Association's attorney. The foregoing right of indemnification shall not be exclusive of other rights to which a Director or Officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators, and assigns of each Director or Officer.

ARTICLE V

MANAGEMENT

Section 1. **MANAGEMENT AND OPERATION OF THE PROJECT.** The Board shall manage and operate the Project, and shall be delegated to it by the Association the powers and duties to do so, which include, but are limited to, the following:

A. OPERATION AND MAINTENANCE OF THE COMMON ELEMENTS. Subject to limitations in the Declaration and these Bylaws, the Board will operate, maintain, repair, replace, and make Improvements to the Common Elements.

B. EMPLOYMENT OF PERSONNEL. The Board may hire employees, including operational and maintenance staff, and may designate, employ, train, supervise, and dismiss any personnel necessary or useful to maintain, repair, replace, rebuild, or restore the Common Elements or to operate the Project.

C. DELEGATION OF POWERS. The Board may delegate its powers to committees, agents, Officers, representatives, and employees at the Board's discretion.

D. ENFORCEMENT OF CONDOMINIUM DOCUMENTS; LAW. The Board will enforce the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project.

E. PENALTIES AND FINES. The Board may set penalties and fines, and charge interest on them if they are not paid, as it deems appropriate to enforce the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project. This includes, for example, penalties and fines, and any interest on them, for failure or refusal to pay to the Association on demand all costs, expenses, Common Expenses and Assessments (special or otherwise) required to be paid by law or under the Condominium Documents. Any penalties and fines must not be inconsistent with law or the Condominium Documents. The Board may, to the extent permitted by these Bylaws and applicable law, also terminate an Owner's access to the Common Elements and stop supplying such Unit with any and all services normally supplied or paid for by the Association.

F. BUDGET. Each year, the Board must prepare and adopt a budget of Common Expenses of the Association and determine the amounts of Assessments.

G. ASSESSMENTS. The Board must charge and collect Assessments of the Common Expenses and other charges payable by the Owners.

H. BANK ACCOUNTS. The Board must open bank accounts on behalf of the Association; it must also designate who must sign checks and other documents relating to the accounts.

I. ASSOCIATION FUNDS. The Board has custody and control of all funds of the Association. It must keep full and accurate books of account and records of the Association's funds. It must also prepare regular financial reports.

J. BORROWING MONEY. Subject to the notice and Owner approval requirements of Section 514B-105 of the Act and any approval requirements and spending limitations contained in these Bylaws or in the Declaration, the Association may authorize the Board to borrow money to be used for the repair, replacement, maintenance, operation, or administration of the Common Elements of the Project, or to make any additions, alterations, and Improvements to them. The cost of borrowing including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to this borrowing, with respect to the Common Elements will be a Common Expense.

K. PAYMENT OF COMMON EXPENSES. As agent of the Owners, the Board will pay all Common Expenses authorized by the Board.

L. INSURANCE AND BONDS. The Board will buy and keep in effect any insurance and bonds required or permitted by the Declaration or these Bylaws.

M. SERVICES. The Board will obtain any legal, accounting, and consulting services necessary or proper for the administration and operation of the Project or to interpret, enforce, or implement the Act, the HAR, the Condominium Documents, and any other material documents or decisions affecting the Project.

N. **DISCHARGE OF LIENS.** The Board may pay any amount necessary to discharge, directly or by bond, any item or encumbrance levied against the entire Project or any part of it that may, in the Board's opinion, constitute a lien against the Project or against the Common Elements rather than merely against the interest of particular Owners. If one (1) or more Owners is/are responsible for the existence of any such lien, they will be jointly and severally liable for the cost of discharging it or bonding against it, and the costs incurred by the Board by reason of such lien.

O. **PURCHASING UNITS.** With the affirmative vote of sixty seven percent (67%) of the Association, the Board may buy, lease, or otherwise acquire any Unit on behalf of the Association, the cost of which shall be a Common Expense. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title.

P. **LEGAL PROCEEDINGS.** The Board may begin, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair them; (iii) damage to any part of any Unit to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Units which arises out of, or is integrally related to, damage to any of the Common Elements or to any part of any Unit to the extent that the Association is obligated to maintain and repair them. Except as otherwise provided in Section 514B-161(b) of the Act, if the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one (1) party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees. Notwithstanding the foregoing, all claims regarding the design or construction of any part of the Project shall be resolved pursuant to Section XXXVII of the Declaration, and in no event may the Association begin, defend, settle, or intervene on behalf of any one (1) or more Owners in litigation, arbitration, mediation, or administrative proceedings in matters for which only the Owner(s) has (have) standing to assert.

Section 2. **MANAGING AGENT.**

A. **MANAGING AGENT.** The Association shall hire and at all times have a Managing Agent to perform the fiscal and administrative management of the Project and physical management of the Common Elements, the cost of which shall be a Common Expense.

B. **QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii and meet all of the requirements specified in Section 514B-132 of the Act.

C. **SELECTION.** Developer shall have the right to choose, and employ the first Managing Agent. Upon the expiration of the Developer Control Period, the Board may retain the Managing Agent or choose a replacement Managing Agent. The Board must use its best efforts to hire and keep a reputable, qualified, corporate company as the Managing Agent.

D. **MANAGEMENT AGREEMENTS.** The Managing Agent must enter into a Condominium Management Agreement with the Association. Subject to the requirements of the Act:

1) **POWERS AND DUTIES.** The Condominium Management Agreement may delegate to the Managing Agent any of the Board's powers and/or Officers' duties, except those that, by law or under the Condominium Documents, cannot be delegated. In all cases, the Managing Agent will be subject to the direction of the Board.

2) **TERM.** The Condominium Management Agreement:

(a) Shall provide for an initial term of not more than one (1) year from the date on which the Managing Agent must begin its performance.

(b) Shall provide that the contract will be renewed automatically unless a written notice canceling the Condominium Management Agreement is sent by either party to the contract at least sixty (60) calendar days before its expiration.

E. CANCELLATION OF THE CONDOMINIUM MANAGEMENT AGREEMENT BY THE ASSOCIATION. If applicable, the Condominium Management Agreement must give the Association the right to cancel in each of the following situations:

1) **FOR CAUSE.** The Association must have the right to cancel the Condominium Management Agreement whenever the Managing Agent breaches or fails to observe or perform a material part of the Condominium Management Agreement and fails to cure its breach or default within the time permitted by the Condominium Management Agreement;

2) **WITHOUT CAUSE.** The Association must have the right to cancel the Condominium Management Agreement without cause on not more than sixty (60) calendar days' written notice; and

3) **STATUTORY RIGHT.** The Association must have the right to cancel as provided in Section 514B-135(a) of the Act.

F. CANCELLATION BY THE MANAGING AGENT. The Condominium Management Agreement must provide that the Managing Agent has the right to cancel the Condominium Management Agreement on not more than sixty (60) calendar days' written notice.

G. BOND. From time to time, the Managing Agent must provide evidence satisfactory to the Board that it is bonded under a fidelity bond in the minimum amount required by the Act or any higher amount as the Board may reasonably require.

Section 3. **LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS.** Neither the Association nor the Managing Agent may enter into a contract to furnish goods or services for the Common Elements or to the Association for a period longer than one (1) year unless authorized by the vote or written consent of a Majority of Owners voting. This rule does not apply, however, to:

A. The Condominium Management Agreement.

B. A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.

C. Prepaid casualty and/or liability insurance policies not lasting more than three (3) years, provided that the policy permits "short-rate cancellation" by the insured.

D. Agreements for cable or satellite television, internet, elevator and refuse services and equipment for ten (10) years or less provided that neither Developer nor Managing Agent owns, directly or indirectly, ten percent (10%) or more of the provider or supplier.

E. Agreements for sale or lease of burglar alarm and fire alarm equipment. Installation, and services for ten (10) years or less provided that neither Developer nor Managing Agent owns, directly or indirectly, ten percent (10%) or more of the supplier.

F. Any other contract for three (3) years or less so long as the Association can cancel it after no more than one (1) year without cause, penalty or other obligation upon not more than ninety (90) calendar days written notice of termination to the other party.

Section 4. **LIMITS ON ASSOCIATION AUTHORITY.** The Association shall not take any action which is inconsistent with any and all limitations imposed upon the Association by the Condominium Documents.

Section 5. **RESTRICTIONS ON RENTING OR SELLING UNITS BY ASSOCIATION EMPLOYEES.** An employee of the Association may not engage in renting or selling Units in the Project except for Units owned by the Association, unless such activity is approved by vote of the Owners as required by the Act.

Section 6. **STOPPING VIOLATIONS BY OWNERS.**

A. **THE BOARD MAY STOP CERTAIN ACTIVITIES.** In addition to any other rights they may have, the Board and the Managing Agent may take action to stop any activity or condition that violates the law or the Condominium Documents or which poses an emergency, as defined in Section IV.D of the Declaration.

B. **THE BOARD MAY ENTER A UNIT.** The rights of the Board and the Managing Agent under Section V.6.A include the right and power, with reasonable notice, to enter any Unit at any time and to use any reasonable means under the circumstances in an emergency, as defined in Section IV.D of the Declaration, and neither the Board nor the Managing Agent will be liable to the Owner for trespass for such entry.

C. **THE BOARD MAY FILE A LAWSUIT.** The rights of the Board and the Managing Agents under Section V.6.A also include the right and power to file a lawsuit or other legal proceedings. For example, the Board may obtain a court order ordering the Owner to stop its activity or to abate any unsafe condition. The Owner must pay to the Association on demand all costs of any such lawsuit or other legal proceedings, including attorneys' fees.

D. **ABANDONED PROPERTY.** If anyone abandons any personal property in or on the Common Elements or Limited Common Elements appurtenant to more than one (1) Unit of the Project, the Board may sell it in a commercially reasonable manner, store it at the expense of its Owner, donate it to a charitable organization, or otherwise dispose of it as the Board chooses. However, the Board must do so in keeping with any legal requirements in the Act. The Association may keep any money from sale of the personal property except as otherwise provided by law.

ARTICLE VI

COMMON EXPENSES

Section 1. **DESIGNATION OF COMMON EXPENSES.** "Common Expenses" means all charges, costs and expenses as described in Section XI.A of the Declaration.

Section 2. **BUDGET AND RESERVES.** The Board must prepare and adopt an annual operating budget and provide copies of such budget to the Owners. The budget must contain any information required by the Act and the HAR.

A. **BUDGET.** The annual operating budget shall be prepared in accordance with the requirements set forth in Section 514B-148 of the Act and the HAR.

B. RESERVE FUNDS.

1) **REPLACEMENT RESERVES.** The Association must establish replacement reserve funds as required by law. The Association may set up any additional replacement reserve funds that the Board determines to be necessary or prudent. As required by the Act and the HAR, the Board shall calculate the Association's estimated replacement reserves based on a reserve study developed in compliance with the Act. The term, "**Association Property**" as used in the HAR governing the reserve study shall refer to all Common Elements with the responsibility for the Common Elements divided according to whether the Common Element is a Common Element or a Limited Common Element solely appurtenant to one (1) Unit. The Association must compute the estimated replacement reserves in the manner required by the Act and the HAR and shall set up separate replacement reserves. The annual operating budget must include all sums required to fund the replacement reserves funds in accordance with the Declaration, the Act, and the HAR. It may also include any greater amounts that the Board chooses in the exercise of its reasonable business judgment. Reserves may be used for those purposes required by the Act and the HAR. 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 will be liable if that estimate later proves incorrect. Replacement reserves for the Common Elements shall be assessed as a Common Expense. As permitted by Section 514B-148 of the Act, the requirements of Section 514B-148 of the Act shall override any requirements in the Declaration or these Bylaws with the exception of: (a) any provision in the Declaration, these Bylaws, or any other Condominium Documents that require the Association to collect more reserves than are required under Section 514B-148 of the Act; or (b) any provisions in the Declaration, these Bylaws, or any other Association documents that relate to upgrading the Common Elements, such as additions, Improvements, and alterations to the Common Elements.

2) **BUDGET LIMITATION.** The Board 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, as set forth in Section 514B-148(e) of the Act or with the approval of a Majority of Owners affected. Prior to the imposition or collection of an assessment under this Section that has not been approved by a Majority of Owners, the Board shall adopt 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 Owners with the notice of assessment.

3) **OWNERS' INTEREST IN RESERVES.** Except upon termination of the condominium property regime created by the Declaration, the interest of any Owner in the reserves of the Association:

- (a) Cannot be withdrawn or assigned separately, and
- (b) Will be transferred automatically with each transfer of the Unit, whether or not the deed or other transfer document expressly says so.

Section 3. ALLOCATION OF COMMON EXPENSES.

A. COMMON EXPENSES. All Common Expenses shall be set forth in the Association budget in accordance with the Declaration and shall include the following:

1) **UNIT AND LIMITED COMMON ELEMENT EXPENSES.** All charges, costs, and expenses incurred by the Association directly attributable to one (1) or more designated Units or any Limited Common Elements solely appurtenant to one (1) Unit, including but not limited to, utility costs, all costs of maintenance, repair, replacement, additions, and Improvements to the Unit(s) or said Limited Common Elements appurtenant and reserves therefor, shall be charged only to the Owners of the designated Unit. The Board may arrange to handle the maintenance and upkeep of any Limited Common Element solely appurtenant to one (1) Unit and may require the Owner pay for such cost.

2) **SPECIAL ASSESSMENTS AGAINST OWNERS AT FAULT.** The Association will charge a special assessment to a Unit to pay for all charges, costs, and expenses incurred by the

Association due to the negligence, misuse, or neglect of the Owner or his or her tenants, guests, invitees, or licensees. The Association will not charge a special assessment if the cost and expense is reimbursed or paid by insurance proceeds but may charge as a special assessment the deductible amount, subject to the notice and hearing requirements of Section 514B-143 of the Act. Any special assessment charged under this Section will be secured by the lien of the Association described in Section VI.8.A. Special assessments may be included in Common Expenses if the special assessment is for the purchase or lease of any Unit by the Association, as permitted under the Act or the Bylaws.

Section 4. **ASSESSMENTS.**

A. **WHEN ASSESSMENTS BEGIN.** Assessments for Common Expenses shall be made based on a budget initially prepared by Developer and adopted by the Board. The budget shall be distributed or made available to each Owner at least annually by the Board. Each Owner, including Developer, shall become obligated for the payment of the share of Common Expenses allocated to the Owner's Unit from and after a specified date to be set forth in a written notice from Developer as permitted by Section 514B-41(b) of the Act. Developer shall mail the written notice to the Owners, the Association, and the Managing Agent, if any, at least thirty (30) calendar days before the specified date. Prior to the specified date, Developer shall assume all the actual expenses in the Project pursuant to the provisions of Section 514B-41(b) of the Act and state in Developer's public report for the Project that the Owners shall not be obligated for the payment of the Common Expenses assessable against the Units until such time as Developer sends the Owners written notice, that after a specified date, the Owners shall be obligated to pay for the portion of the Common Expenses that is allocated to their respective Units. After the specified date, Assessments will be payable in advance in monthly installments on the first day of each month, or at any other time that the Board chooses.

B. **AMOUNT OF ASSESSMENTS.**

1) **REGULAR ASSESSMENT.** Each year the Board will set the amount of the "**Regular Assessments**" based on the Common Expenses for each Unit based on the budget and the requirements of the Condominium Documents. The Board may increase the amount of the Regular Assessments during the year.

2) **SPECIAL ASSESSMENTS.** If for any reason the Regular Assessments are or will be inadequate to pay the expenses for which such Regular Assessment is designated, the Board must estimate the shortfall. The Board must then (i) increase the next year's budget, or (ii) charge a "**special assessment**". The Board may also charge a special assessment in any other circumstances permitted by law or by these Bylaws or the Declaration.

3) **NOTICE OF ASSESSMENTS.** Any time that the Board increases the Regular Assessment or charges a special assessment, it must give written notice of the increase or special assessment to each Owner. The notice must state the amount of the increase or of the special assessment for the Owner or the Owner's Unit. The Board must send the notice at least thirty (30) calendar days before the increase or special assessment takes effect.

C. **TREATMENT OF ASSESSMENTS.** Any part of Assessments used or to be used by the Association for any capital expense or major repairs or remodeling, including, but not limited to replacement of the roof, exterior painting of the building, and resurfacing of parking areas, will be treated as a capital contribution by the Owner that was assessed and paid for such items. It will be credited by the Association on its books as paid in surplus. It will not be treated as income to the Association or to the Owners.

Section 5. **HANDLING AND PAYMENT OF ASSOCIATION FUNDS.**

A. The funds in the general operating account of the Association must not be commingled with funds of other activities such as lease rent collections and rental operations (except to the extent permitted by Section 514B-149 of the Act). The Managing Agent must not commingle any Association funds with the Managing Agent's own funds.

B. All funds collected by the Association or by the Managing Agent, must be deposited, held, transferred, invested, and paid out in accordance with the requirements of the Act.

Section 6. **PAYMENT AS AGENT.** Each Owner, as principal, is liable for and must pay his or her share of the Common Expenses. The amount an Owner must pay will be set in accordance with the Declaration and these Bylaws. Except as otherwise provided in these Bylaws or in the Declaration, on behalf of the Owners the Board may pay all Common Expenses or cause them to be paid. The Board may require the Managing Agent to assist in these duties. The Board and the Managing Agent will transmit the payments made by the Owners to third persons to whom the payments must be made by the Owner. Neither the Board nor the Managing Agent, however, is liable for payment of the Common Expenses of any Owner.

Section 7. **DUTY TO PAY; INTEREST AND LATE CHARGES.**

A. **PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay, on time, all applicable Assessments charged to the Owner or to his or her Unit. If a Unit is owned by more than one Person, each of them will be jointly and severally liable for the Assessments. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. By acquiring a Unit, an Owner promises to pay all applicable Assessments charged to him or her, or to his or her Unit.

B. **INTEREST AND LATE CHARGES.** All sums not paid within thirty (30) calendar days after the due date will be subject to (i) interest at a rate set by the Board or, if no rate is set, then at one percent (1%) per month from the due date until paid; and (ii) a late charge equal to the greater of Fifty Dollars (\$50.00) or ten percent (10%) of the amount due. An Owner must also pay all costs of collection, including reasonable attorneys' fees.

C. **HOW PAYMENTS WILL BE APPLIED.** Payments will be applied first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment.

Section 8. **ENFORCEMENT.**

A. **ASSOCIATION LIEN.** The Association has a lien on each Unit for all Assessments charged to that Unit or to its Owner, including late charges, interest, costs of collection and reasonable attorneys' fees. If the Owner fails to pay these amounts, the Association may foreclose its lien in accordance with applicable law and the Condominium Documents. The Association's lien is prior to all other liens, except only:

1) Liens for taxes and assessments lawfully imposed by governmental authorities against the Unit and which, by law, have priority over the Association's lien, and

2) The lien for sums unpaid (plus costs and expenses including attorneys' fees provided in the Mortgage) on any Mortgage that is recorded before the Association records a Notice of Lien.

B. **ASSOCIATION REMEDIES.** If an Owner fails to pay any amount assessed to him or her, or to his or her Unit, then in addition to any other remedies the Board may have, the Board may enforce the obligation to pay those amounts as follows:

1) **NOTICE OF LIEN.** At any time after an Owner defaults, the Board or the Managing Agent may give a notice to the defaulting Owner. The notice must state the amount owed and the date when it became due. If this amount is not paid within ten (10) business days after the notice is delivered, the Board or the Managing Agent may record a "Notice of Lien" against the Owner's Unit. The Notice of Lien must be signed and acknowledged by any two (2) or more Directors or Officers of the Association, the attorney for the Association, or the Managing Agent. Whether or not a Notice of Lien is recorded, the Board will have all remedies provided in these Bylaws, the Declaration and the Act on account of the default. Each default will be a separate basis for a Notice of Lien. But a single Notice of Lien may cover more than one default, and may include defaults between the date of the Notice of Lien and the date of the sale.

2) **FORECLOSURE OF LIEN.** The Board or the Managing Agent, acting on behalf of the Association, may foreclose the Association's lien in a manner like a Mortgage foreclosure. They may do so by filing a lawsuit for foreclosure. They may also foreclose using the non-judicial or power of sale foreclosure procedures authorized by law. The Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The Board or the Managing Agent must give to an Owner at least ten (10) business days prior written notice of the Association's intent to foreclose. It must send this notice by registered mail. The Managing Agent, acting on behalf of the Association and as directed by the Board, may bid on the Unit at the foreclosure sale and may acquire, hold, lease, Mortgage, and convey the Unit. The Association may offset the Owner's debt against the amount bid at the sale. The Association may also accept a deed of the Unit to the Association (or to a trustee holding title for the Association) in place of foreclosure.

3) **LAWSUIT.** The Association may file one or more lawsuits to enforce an Owner's obligation to pay Assessments. The Association may file a lawsuit to recover a money judgment for the unpaid Common Expenses without foreclosing or waiving its lien for those expenses. The Association may not file a lawsuit unless a majority of the Board authorizes it at a regular or special Board meeting. The Board may file the suit on behalf of the Association. The Managing Agent may file the suit on behalf of the Association if the Board authorizes it to do so in writing.

4) **CANCELLATION OF NOTICE OF LIEN.** On behalf of the Board, any two (2) Directors or Officers of the Association or the Managing Agent, will sign, acknowledge, and deliver to the Owner a document canceling a Notice of Lien if the Board receives payment in full of the amount claimed to be due and owing (including interest, late fees, and any costs of enforcement and attorneys' fees) and the Owner asks for the cancellation document and pays a reasonable fee for such document.

5) **TERMINATION OF RIGHT TO USE COMMON ELEMENTS.** Pursuant to the procedures, requirements and rights specified in Section 514B-146(e) and (f) of the Act, the Association may terminate a defaulting Owner's right of access to and use of the Common Elements other than as may be strictly required for access to the Unit and may also stop supplying any defaulting Owner with any and all services normally supplied or paid for by the Association.

Section 9. **WAIVER.** In one or more cases, the Board may not insist on strict performance of or compliance with the covenants of an Owner under the Condominium Documents, or may not use some or all of the rights and powers that the Board has to enforce compliance. This does not mean, however, that the Board has waived the right to do so. Instead, the covenants of each Owner will remain in full force and effect and the Board will continue to have all of its rights and powers to enforce them despite any failure to do so in the past. Whether or not the Board knows that an Owner has violated the Condominium Documents, it may receive and accept any money paid by the Owner without waiving the Owner's breach. The Board will not be deemed to have waived any provision of the Condominium Documents, expressly or by implication, unless the Board expressly states the same in a document that is signed by an Officer pursuant to authority contained in a resolution of the Board.

Section 10. **ASSESSMENT DISPUTES.**

A. **STATEMENT OF UNPAID AMOUNTS.** No Owner may withhold any Assessment claimed by the Association. An 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 penalty, 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 and (4) other such matters as provided in Section 514B-146(c) of the Act. Upon receipt of such a request, the Association, or the Managing Agent on behalf of the Association, must provide a written statement disclosing this information and anything else required by the Act or the HAR.

B. **ASSESSMENT DISPUTES.** An Owner who pays the Association the full amount claimed by the Association may still contest the Assessment in the manner provided in the Act.

Section 11. LIABILITY OF ANYONE WHO ACQUIRES TITLE THROUGH FORECLOSURE. In this Section, "New Owner" means a Lender or anyone else who obtains title to a Unit as a result of the foreclosure of a Mortgage. A New Owner and its successors and assigns are not liable for the share of the Common Expenses or Assessments charged to the Unit and which became due before the New Owner took title. Instead, those unpaid amounts will be Common Expenses collectible from the Owners, including the New Owner and his or her successors and assigns and will be allocated in accordance with Section XI.A of the Declaration. The Board may specially assess the amount of the unpaid regular monthly Common Expenses against a mortgagee or other purchaser who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent Unit; provided that the mortgagee or other purchaser may require the Association to provide at no charge a notice of the Association's intent to claim lien against the delinquent Unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent Unit, which notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the Unit. A New Owner will be deemed to acquire title and is required to pay the Unit's share of Common Expenses and Assessments beginning at the time stated in the Act or, if not stated, then, the earlier of: (1) thirty-six (36) calendar days after the order confirming the sale to the purchaser has been filed with the court; (2) sixty (60) calendar days after the hearing at which the court grants the motion to confirm the sale to the purchaser; (3) thirty (30) calendar days after the public sale in a nonjudicial power of sale foreclosure, pursuant to Chapter 667 of the Hawaii Revised Statutes; or (4) the date when the deed is recorded.

Section 12. LIABILITY FOR UNPAID COMMON EXPENSES.

A. In this Section, "Existing Owner" means the Owner who transfers a Unit, and "New Owner" means the Person to whom the Unit is transferred. If a Unit is transferred voluntarily and not as a result of foreclosure, the New Owner will be jointly and severally liable with the Existing Owner for all unpaid Assessments against the Existing Owner for his or her share of the Common Expenses up to the time of the transfer subject to any limitations in Section 514B-146(h) of the Act. This does not limit the New Owner's right to recover from the Existing Owner the amounts paid by the New Owner for these unpaid Assessments.

B. Both the Existing Owner and the New Owner have the right to ask the Managing Agent or the Board for a letter listing any unpaid Assessments against the Existing Owner or his or her Unit. Within twenty (20) business days after receiving the request, the Board or the Managing Agent must provide the letter. The letter will state the amount of the unpaid Assessments against the Existing Owner. The New Owner is not liable for, and the Unit will not be transferred subject to a lien for, any unpaid Assessments against the Existing Owner in excess of the amount stated in the letter except for the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the thirty (30) day period immediately preceding the date of the letter.

Section 13. ABANDONMENT OF UNIT; DEED TO BOARD. An Owner cannot avoid liability for Assessments by not using or by abandoning his or her Unit or by waiving his or her rights to use or enjoy the Common Elements. With the unanimous consent of the Board, any Owner may deed his or her Unit and its Common Interest to the Association on behalf of all other Owners. The Owner will not be liable for any Common Expenses charged after the deed is accepted by the Association and is recorded.

Section 14. TAXES AND ASSESSMENTS.

A. Each Owner (i) must take reasonable steps to see that the government assesses any taxes on his or her Unit and its Common Interest and on any personal property or any other interest of the Owner separately from taxes on other Units or other Owners, and (ii) must pay those taxes.

B. If, in the opinion of the Board, any taxes or assessments may be a lien on all or any part of the Common Elements, the Board may pay those taxes or assessments as part of the Common Expenses. Each Owner must pay to the Board his or her proportionate share of any Assessment by the Board for any such taxes or assessments paid by the Board. The Owners must make these payments at the time and in the manner that the Board directs. Any Assessments charged by the Board under this Section will be secured by the Association's lien and the non-paying Owner shall be required to reimburse the Board for any amount paid by the Board in connection

therewith, including, without limitation, attorneys' fees and other expenses incurred in charging and collecting the amount owed.

Each Owner must sign any documents and take any action that the Board reasonably requires to facilitate dealing with the proper governmental authority regarding taxes and assessments.

Section 15. **UTILITY EXPENSES.** All utilities serving the Units or the Limited Common Elements appurtenant to the Units shall be separately metered whenever possible. If not possible, then calculations shall be made pursuant to the provisions of the Declaration. The cost of utility services for the Common Elements is a Common Expense. The cost of utility services for Units or the Limited Common Elements appurtenant to the Units shall be charged directly to the Owner.

A. The cost of utility services to any Unit or Limited Common Elements that are separately metered, sub-metered, or check metered shall be calculated based upon actual usage and shall be payable by the Owner of such Unit or the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant, payable directly to the service provider if a separate bill is rendered (in which case the amounts owed and payable to the service provider shall not be or be deemed to be Common Expenses), or otherwise payable to the Association on demand (in which case the amounts owed and payable to the Association shall be and be deemed to be Common Expenses). Unless otherwise permitted or required by the utility service provider(s), the Owners of Units that are separately metered, sub-metered or check metered shall be responsible for all costs and expenses of the maintenance, repair, and replacement of all metering equipment installed in or for their Units.

B. If any Owner fails to pay his or her share of all such costs and expenses that are payable to the Association, the Association shall have all of the rights and remedies against the Owner available to the Association for an Owner's failure to pay his or her share of Common Expenses.

Section 16. **COLLECTION FROM TENANT.** An Owner may rent or lease his or her Unit. If an Owner does so and if the Owner is in default for thirty (30) calendar days or more in paying the Unit's share of the Common Expenses, then for so long as the default continues, the Board may demand in writing and receive from the Owner's tenant any rent due up to the full amount owed by the Owner to the Association, including interest, if any. Any such demand or acceptance of rent from any tenant shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner under the Condominium Documents, or an acknowledgement or surrender of any rights or duties under the Condominium Documents. If the Board makes such a demand upon the tenant, the tenant shall be obligated to make the payments to the Board as demanded; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the Unit pending a Mortgage foreclosure, if a mortgagee is in possession pending a Mortgage foreclosure, or if Developer is the Owner. The Association may not demand that the tenant pay more than the amount of rent due from the tenant to the Owner under the lease or rental arrangement. Any amount paid by the tenant under this Section will discharge that amount of payment from the tenant's rent obligation. Even if the Board demands and receives any rent from a tenant, this will not release or discharge (i) any obligations of the Owner remaining unpaid or unperformed, (ii) any other duties of the Owner, or (iii) any rights of the Association under the Condominium Documents. The Board must comply with the requirements of the Act when exercising its rights under this Section.

Section 17. **AUDITS.** Except as otherwise permitted by the Act, each year the Association must have a public accountant or accounting firm conduct an audit of the Association's financial accounts and at least one (1) unannounced verification of the Association's cash balance. The Association will furnish to the Owners copies of the audit and any other financial statements at the times and in the manner stated in the Act.

Section 18. **FINANCIAL REPORTS.**

A. **FINANCIAL STATEMENTS.** The Association must prepare and send the following statements to each Owner:

1) **THE BUDGET.** At least thirty (30) calendar days before the fiscal year starts the Association must send to the Owners the approved budget for that year.

2) **THE ANNUAL REPORT.** The Association must send an annual report to each owner within ninety (90) days after the end of each fiscal year. The annual report must include:

- (a) A balance sheet showing the assets, liabilities and net worth of the Association at the end of the fiscal year;
- (b) An operating (income) statement for the fiscal year;
- (c) A statement of the net changes in the financial condition of the Association for the fiscal year; and
- (d) Any other information required by the law of any jurisdiction (for example, another state) where the Project is registered for public sale.

B. **REPORTS.** The Association will provide information and reports as required by Section 514B-154 of the Act and may utilize an internet site as permitted by such law.

ARTICLE VII

ASSOCIATION RECORDS

Section 1. **CONDOMINIUM DOCUMENTS.** The Association must keep at the Managing Agent's office an accurate copy of the Declaration, these Bylaws, a sample original Unit Deed, and all public reports and any amendments to them. The Managing Agent must provide copies of those documents to Owners, prospective purchasers, and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

Section 2. **MEMBERSHIP LIST.**

A. **THE ASSOCIATION MUST KEEP A LIST.** The Managing Agent or Board must keep an accurate and current list of names, addresses, mobile phone numbers, and email addresses of the Owners and of any other party or person that has managerial control of the Unit, or who serves as the point of contact for such Unit. The list must include, among others, anyone who is buying a Unit under any Agreement of Sale. It must also include the names and addresses of each Lender whose name and address is furnished to the Association. The list will be maintained at a place designated by the Board. The Managing Agent 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 records are subject to this Section. The Managing Agent or the Board may not use the information contained in the membership lists to create any separate list for the purpose of evading this Section.

B. **RELEASE OF LIST.** The Association will make the list of Owners available, at cost, to any Owner who asks for it; provided that despite anything else stated in the Condominium Documents, the Association will not furnish the list of Owners or any copy of it, or any other documents from which a membership list may be compiled, nor allow anyone to inspect or make copies or extracts of the list or any other documents from which a list may be compiled, until after each of these conditions is satisfied:

1) The Owner requesting the list must furnish to the Managing Agent or Board a duly executed and acknowledged affidavit stating that (i) the list will be used by that Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters, and (ii) the list will not be used by that Owner or furnished to anyone else for any other purpose.

2) The Owner requesting the list satisfies any other conditions to obtaining the list contained in the Act.

3) All other lawful conditions adopted by the Board pursuant to Section VIII.7.F have been fully satisfied.

Section 3. **NOTICE TO BOARD OF DIRECTORS/LENDERS.** An Owner who mortgages his or her interest in a Unit shall notify the Board of the name and address of his or her Lender and within ten (10) business days after the recordation of the Mortgage shall provide the Board with a true copy of the Mortgage as recorded in the Bureau. The Board shall maintain such documents in a file entitled "Mortgages of Units." All notices permitted or required to be given to an Owner pursuant to these Bylaws or the Declaration shall also be given to the Lender of such Unit if such Lender has delivered to the Board written request for such notices.

Section 4. **LENDER PROTECTION.** Notwithstanding any provisions to the contrary contained herein:

A. At all times, all taxes, assessments, and charges which may become liens under the laws of the State of Hawaii shall relate only to the individual Units and their appurtenant Common Interest in and to the Common Elements and the rights of the individual Units to the exclusive use of appurtenant Limited Common Elements, but not to the Common Elements in themselves as a whole.

B. The Declaration and these Bylaws shall not give an Owner or any other party priority over any rights of Lenders pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards.

C. No amendment to this Section shall affect the rights of any Lender whose Mortgage is recorded prior to the recordation of such amendment and who does not consent thereto.

D. Any holder, insurer, or guarantor of the Mortgage on any Unit in the Project shall be provided with written notice of the following: (i) any proposed termination of the Project; (ii) any actual or threatened condemnation or eminent domain proceeding or any casualty loss affecting a material portion of the Project or any portion thereof; (iii) any delinquency of sixty (60) calendar days in the payment of assessments or charges owned by Owner whose Unit is subject to such Mortgage; (iv) any significant damage or destruction to the Common Elements or to a Unit covered by the first Mortgage held or insured by such party; (v) other than in connection with the express rights reserved in the Declaration, any proposal to subdivide, encumber, sell, or transfer the Common Elements or any part thereof; provided, however, that the granting of easements for public or private utilities or for public purposes consistent with the intended use of the Common Elements of the Project and the relocation of any easements appurtenant to the Project over other lands, pursuant to the exercise of any right to relocate such easements by the owner of such other lands, shall not be deemed a transfer within the meaning of this clause; (vi) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (vii) any proposed action that requires the consent of a specified percentage of Lenders.

E. Upon written request to the Association, any holder, insurer or guarantor of a duly recorded first Mortgage of a Unit, whose request states the requesting party's name and address and the number of the mortgaged Unit, shall also be entitled to a copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Project or any portion thereof, at such party's expense for reproduction costs.

Section 5. **RELEASE OF INFORMATION.** The Board may provide any information available to it pertaining to a Unit or the Project to the Lender of a first Mortgage of such Unit and such Lender may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan, without liability to the Owner of the mortgaged Unit.

Section 6. **UNIT DEEDS.**

A. Each Owner shall promptly record the Unit Deed or other conveyance to him or her of his or her Unit, and any Mortgage of his or her interest in his or her Unit, and file with the Board, through the Managing Agent, a recorded copy of the Unit Deed or other conveyance document. Each vendor of a Unit under an

Agreement of Sale shall promptly record the Agreement of Sale or a memorandum thereof and file a copy of such document with the Board. Each Owner, vendor, vendee and Unit mortgagee shall promptly notify the Board of any changes in his or her or its address.

B. During the Development Period, the Board must provide to Developer a clear and readable copy of all documents and information that it receives pursuant to Section VIII.2 within seven (7) calendar days after the Board receives it.

Section 7. **MINUTES AND RECORDS; EXAMINATION.**

A. **CURRENT FINANCIALS AND BOARD MINUTES.** The Association's most current financial statements and minutes of the Board meetings, once approved, will be available to any Owner at no cost on twenty-four (24) hour loan, at a convenient location designated by the Board.

B. **MINUTES.** Minutes of all meetings will be available within seven (7) calendar days after approval by the Board, and unapproved final drafts of the minutes of a meeting will be available within sixty (60) calendar 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. Minutes of meetings of the Board and the Association for the current and prior year will be available for examination by Owners at convenient hours at a place designated by the Board. Minutes of meetings must include the recorded vote of each Director on all motions except motions voted on in executive session. If notice of a Board meeting was properly given but a Director is absent, the minutes must say so. Copies of meeting minutes will 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.

C. **FINANCIAL RECORDS.** Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers (or other comparable lists or schedules), insurance policies, contracts, and invoices of the Association for the current and prior year and delinquencies of ninety (90) calendar days or more will be available for examination by Owners at convenient hours at a place designated by the Board; provided that:

1) The Board must require 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 Owners or both; and

2) Owners pay for administrative costs in excess of eight (8) hours per year. Copies of these items will be provided to any Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

D. **VOTING RECORDS.** Owners have the right to view proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election for a period of thirty (30) calendar days following any meeting of the Association; provided that:

1) The Board must require Owners to furnish 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 Owners or both; and

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

Proxies and ballots may be destroyed following the thirty (30) calendar day period. Copies of tally sheets, Owners' check-in lists, and the certificate of election from the most recent meeting of the Association will be provided to any Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling such request.

E. **OTHER RECORDS.** Owners may file a written request with the Board to examine other documents. The Board must give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

F. **PROTECTION OF ASSOCIATION INFORMATION.** To the extent permitted by law, the Board may establish reasonable additional requirements and conditions to the inspection by Owners (including Directors) of the list of Owners or to furnishing information from the register or other books, papers or records of the Association especially when that information might be used to compile a list of Owners. For example, the Board may set rules governing (1) when notice must be given to the Association or Managing Agent by the person desiring to inspect the Association's records, (2) hours and days of the week when an inspection may be made, (3) payment of the cost of reproducing copies requested by the party making the inspection, to the extent not specified elsewhere in these Bylaws, and (4) the posting of a bond.

Section 8. **RECORDS; EXAMINATION; DISPOSAL.**

A. **RECEIPTS, EXPENDITURES, AND DELINQUENCIES.** The Managing Agent or Board must 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 must also keep monthly statements indicating the total current delinquent dollar amount of any unpaid Assessments for Common Expenses.

B. **LOCATION OF RECORDS.** All records and the vouchers authorizing the payments and statements will be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as the Board chooses. The records may be kept and maintained on paper or in electronic, magnetic, or other form accessible using electronic data processing equipment.

C. **DISPOSAL OF RECORDS.** The Managing Agent may dispose of records of the Association at the times and under the conditions stated in the Act or, if it does not address it, then at the times and under the conditions that the Board chooses.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. **WHO CAN SIGN CHECKS.** All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Association must be signed or endorsed as stated in a resolution adopted by the Board. If no resolution is adopted, they must be signed by any two of the President, Vice President, Secretary, or Treasurer. The same rule applies to signing and delivering other documents authorized by the Condominium Documents or by action of the Board or the Association.

Section 2. **WHO CAN SIGN CONTRACTS AND OTHER DOCUMENTS.** Except as otherwise provided in these Bylaws, the Board may authorize any Officer or Officers, agent or agents, to enter into any contract or sign any document for the Association. This authority may be general or it may be limited to specific things. Unless authorized by the Board, no Officer, agent, or employee has any power or authority to bind the Association or to pledge its credit or to make it liable for any purpose or for any amount.

Section 3. **AMENDMENT.**

A. **AMENDMENT BY VOTE OR WRITTEN CONSENT.** The Bylaws may be amended at any time by the vote or written consent of sixty-seven percent (67%) of all Owners, provided that:

1) Each item required by the Act to be set forth in these Bylaws must always be included in these Bylaws; and

2) Such amendment shall be subject to all limitations and requirements regarding amendments to the Condominium Documents contained in the Declaration.

B. DEVELOPER'S RESERVED RIGHTS TO AMEND. Notwithstanding anything set forth in this Section to the contrary, Developer (pursuant to its Developer's Reserved Rights) has the right to amend these Bylaws to the extent set forth in the Declaration.

C. RECORDING. A duly authorized amendment to these Bylaws will take effect only after it is signed by the proper Officers of the Association and it is recorded at the Bureau.

D. PROPOSAL OF AMENDMENTS. Any proposed amendment to these Bylaws with the rationale for such proposal may be submitted by the Board or by a volunteer Owners' committee. If submitted by the volunteer Owners' committee, it must be accompanied by a petition signed by not less than twenty-five percent (25%) of the Owners as shown in the Association's records of ownership maintained by the Board as provided in Section VIII.2.A. The proposed amendment, the rationale, and the ballots for voting on the amendment must be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within thirty (30) calendar days after the Board receives the petition. The vote or written consent required to adopt the proposed amendment to these Bylaws will be as set forth in Section IX.3.A, above; provided that the vote or written consent must be obtained within three hundred sixty-five (365) calendar days after mailing for a proposed bylaw submitted by either the Board or a volunteer Owners' committee; and provided further than any such amendment shall be subject to the limitations set forth in Section XV.D of the Declaration. If the proposed amendment is duly adopted, then the Board must record the amendment. The volunteer Owners' committee cannot submit a petition for a proposed amendment to these Bylaws that is substantially similar to the amendment previously mailed to the Owners within one (1) year after the original petition was submitted to the Board. This Section does not preclude any Owner or voluntary Owners' committee from proposing any amendment to these Bylaws at any annual meeting of the Association.

E. RESTATEMENT OF BYLAWS. Notwithstanding anything set forth in the Condominium Documents to the contrary, the Association has the authority under the Act:

- 1) To restate these Bylaws to set forth all amendments to them; and
- 2) To amend these Bylaws as required to conform to the provisions of the Act or any other law or regulation adopted by a governmental authority.

The Association may amend or restate these Bylaws if the Board adopts a resolution authorizing it. No restated or amended Bylaws will be effective unless they are recorded at the Bureau.

Section 4. **NOTICE.** Except as otherwise expressly provided in these Bylaws, all notices must be given as follows:

A. Notice to the Association must be given to each Director. The notice may be given personally or by mail or messenger service. The notice must be mailed or delivered to the Board members at their addresses as shown on the membership list, or to any other address that the Board designates by notice to all Owners and Lenders.

B. Notice to an Owner may be given by delivering such notice in person, by messenger service or by mail to his or her address as it is shown on the membership list or by electronic mail or facsimile if such Owner has authorized transmission to the electronic mail address or facsimile number designated by the Owner for delivery of notices of meetings pursuant to Section II.11 of these Bylaws.

C. Notice to an Eligible Mortgage Holder or Lender may be given by delivering such notice in person or by mail or messenger service. The notice must be mailed or delivered to the Eligible Mortgage Holder's or Lender's address as it is shown on the membership list, or to any other addresses that the Eligible Mortgage Holder or Lender designates by notice to the Board.

D. All notices must be in writing. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If sent by electronic mail or facsimile to the electronic mail address or facsimile number designated by the Owner for notices of meetings pursuant to Section II.11 of these Bylaws the notice will be deemed given upon electronic confirmation of delivery. Notwithstanding the prior sentence to the contrary, notices of addresses and changes of addresses will be deemed given only when they are actually received.

Section 5. **CAPTIONS.** The captions describing each Section are for convenience only and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

Section 6. **PRONOUNS.** Pronouns (for example, "his" or "her") used in these Bylaws include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

Section 7. **INTERPRETATION.** The provisions of these Bylaws will be interpreted to carry out the purpose of creating a mixed use condominium in accordance with the Declaration and the Act.

Section 8. **EFFECT OF INVALID PROVISIONS.** The provisions of these Bylaws are severable. Invalidation of any part of these Bylaws by judgment, decree, or order shall in no way affect any other provisions of these Bylaws, each of which shall remain in full force and effect.

Section 9. **COUNTERPARTS.** The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate, unexecuted, and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document.

Section 10. **INDEMNIFICATION OF LOT OWNER.** Developer and the Association agree to indemnify, defend, and hold Lot Owners and their respective officers, directors, shareholders, agents, and employees harmless from and against any and all claims, liabilities, and any damage, including attorneys' fees, any of which arise, directly or indirectly, as a result of, or directly or indirectly in connection with, these Bylaws or any other document, including, but not limited to any public report under the Act, created, executed or delivered by Developer in connection with the Project; provided that this indemnity shall not extend to (a) claims caused by the gross negligence or willful misconduct of a Lot Owner, or (b) claims against a Lot Owner other than as a result such Lot Owner permitting Developer to create a condominium property regime on the Land or Lot Owner being a signatory to the Declaration and these Bylaws. Nothing in the foregoing exception shall be deemed a waiver by Lot Owners or a limitation of any of Lot Owners' rights or remedies, except as set forth in said exception. Developer and, by their acceptance thereof, Owners acknowledge that Lot Owners have no obligation to review these Bylaws or any other document prepared by Developer for adequacy or compliance with law, that Lot Owners do not by the execution hereof endorse these Bylaws or any such document, and any inadequacy or misrepresentation by Developer hereunder shall not be deemed gross negligence or willful misconduct of Lot Owners.

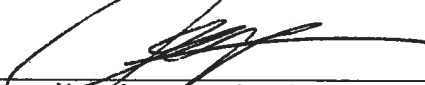
Section 11. **LIMITED PURPOSE OF JOINDER BY LOT OWNER; RELEASE AND WAIVER OF CLAIMS.** Lot Owners have joined these Bylaws for the sole purpose of permitting Developer to comply with the requirements relating to the submission of the Land to a condominium property regime pursuant to the Act, has not reviewed these Bylaws for adequacy or compliance with law, and expressly disclaim any responsibility for these Bylaws, the matters set forth herein, and/or any other documents or agreements relating to the Project, including, but not limited to, the Declaration, and any public report issued under the Act relating to the Project. Developer, the Association, all Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and occupants of Units and their employees, business invitees, and any other persons who may use any part of the Project do so with the understanding that Lot Owners have no liability hereunder, and each and every one of the foregoing shall be deemed to the fullest extent permitted by law to have waived as against Lot Owners, and to have released Lot Owners, as to any claim relating to the Project. No action taken by Developer or any other person pursuant to these Bylaws shall be deemed to be the act of either Lot Owner, unless such action is expressly authorized or approved by such Lot Owner in writing in each instance. Notwithstanding anything provided to the contrary, under no circumstances will Lot Owners have any liability for expenses under these Bylaws except to the

extent that a Lot Owner is a Unit Owner. In the event any Lot Owner is found to be liable in any claim relating to this Declaration, any recovery shall be limited to the assets of such Lot Owner, and shall not extend to the individual officers, directors, or shareholders thereof. No officer, director, or shareholder of a Lot Owner shall, by reason of being an officer, director, or shareholder of a Lot Owner, have any personal liability under the terms of these Bylaws.

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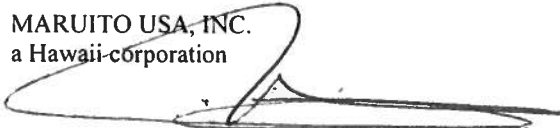
IN WITNESS WHEREOF, Developer and Lot Owners, acting as the initial Association, hereby adopts the foregoing Bylaws as the Bylaws of the Association of Unit Owners of Sky Ala Moana on the date first above stated.

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company

By: 
Name: Christine H. H. Camp
Its: Authorized Representative

"Developer"

MARUITO USA, INC.
a Hawaii corporation

By: 
Name: Steve K. Somboreno
Its: Authorized Representative

WATUMULL ENTERPRISES, LTD.
a Hawaii corporation

By: _____
Name: _____
Its: _____

"Lot Owners"

SK Ala Moana

IN WITNESS WHEREOF, Developer and Lot Owners, acting as the initial Association, hereby adopts the foregoing By-Laws of the Association of Unit Owners of Sky Ala Moana on the date first above stated.

JL AVALON CAPBRIDGE, LLC
a Hawaii limited liability company

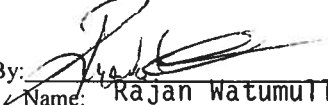
By: _____
Name: _____
Its: _____

"Developer"

MARUITO USA, INC.
a Hawaii corporation

By: _____
Name: _____
Its: _____

WATUMULL ENTERPRISES, LTD.
a Hawaii corporation

By:  _____
Name: Rajan Watumull
Its: President

"Lot Owners"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 13th day of March, 2019, before me appeared ^{H.H.} Christine Camp ^{K.N.P.}, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Karen Nomura
Print Name: Karen Nomura
Notary Public, in and for said State
My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF SKY ALA MOANA**

Document Date: undated or Undated at time of notarization.

No. of Pages: 32 Jurisdiction: First Circuit
(in which notarial act is performed)

Karen Nomura 3/13/2019
Signature of Notary Date of Notarization and
Certification Statement

Karen Nomura
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

K.M.P.

On this 15th day of March, 2019, before me appeared Steven K. Sombroero, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Karen Nomura

Print Name: Karen Nomura

Notary Public, in and for said State

My commission expires: 5/1/2021

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: **BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF SKY ALA MOANA**

Document Date: undated or Undated at time of notarization.

No. of Pages: 32 Jurisdiction: First Circuit
(in which notarial act is performed)

Karen Nomura
Signature of Notary

3/15/2019
Date of Notarization and
Certification Statement

Karen Nomura
Printed Name of Notary



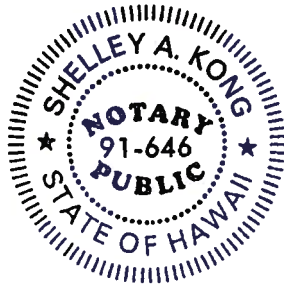
(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 12th day of March, 2019, before me appeared Rajan Watumull, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Shelley A. Kong
Print Name: Shelley A. Kong

Notary Public, in and for said State

My commission expires: 09/05/2019

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF SKY ALA MOANA

Document Date: undated or Undated at time of notarization.

No. of Pages: 31 Jurisdiction: First Circuit
(in which notarial act is performed)

Shelley A. Kong March 12, 2019
Signature of Notary Date of Notarization and Certification Statement

Shelley A. Kong
Printed Name of Notary



(Official Stamp or Seal)