SECTION III

First Amendment to Bylaws of the Association of Unit Owners of Ālia at 888 Ala Moana 6.25.2024

ālia

4 AM

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
June 25, 2024 8:01 AM
Doc No(s) A - 89420320

/s/ LESLIE T KOBATA
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745 Fort Street, 17th Floor
Honolulu, Hawaii 96813
(808) 521-9500 (OTI)

TGA 731147961 8-S

Tax Map Key Nos. (1) 2-1-056: 017 (CPR Nos. 0001 thru 0458)

Total Pages: 4

FIRST AMENDMENT TO BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF ĀLIA AT 888 ALA MOANA

THIS FIRST AMENDMENT TO BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF ĀLIA AT 888 ALA MOANA is made this 23rd day of May, 2024, by **888 ALIA OWNER, L.P.**, a Delaware limited partnership ("**Developer**"), with its principal place of business and post office address at c/o 888 Ālia LLC, 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814.

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Ālia at 888 Ala Moana dated November 15, 2022 and recorded at the Bureau of Conveyances of the State of Hawaii ("**Bureau**") as Document No. A-83600884 (the "**Declaration**"), 888 Ālia LLC, a Delaware limited liability company ("**Original Developer**") and Landowner, as defined in the Declaration, submitted that certain property located at Kaakaukukui, Kaka'ako, Honolulu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" to the Declaration, plus all improvements thereon, to a condominium property regime known as "Ālia at 888 Ala Moana" (the "**Project**"); and

WHEREAS, Original Developer filed the Bylaws of the Association of Unit Owners of Ālia at 888 Ala Moana dated November 15, 2022, and recorded at the Bureau as Document No. A-83600886 (the "**Bylaws**"); and

WHEREAS, pursuant to Article IX, Section 3.B of the Bylaws, Developer has the right to amend the Bylaws as set forth in the Declaration; and

1054162.7

WHEREAS, pursuant to Article XXXVII of the Declaration, the rights reserved to Original Developer are freely assignable; and

WHEREAS, Article XXXVII further provides that every Owner of a Unit in the Project and all holders of liens affecting any of the Units and each and every other party acquiring an interest in the Project, to the extent designated by Original Developer, agrees to recognize any assignee as the developer under the Declaration and appoints Original Developer and its assigns his or her attorney-in-fact with full power of substitution to execute, deliver, and record such documents and instruments as may be necessary or convenient to effect the same; and

WHEREAS, pursuant to that certain Assignment of Developer's Reserved Rights dated May 23, 2024, recorded at the Bureau as Document No. Doc A 89420318 ____, Original Developer transferred, assigned, and conveyed to Developer, all of Original Developer's rights, as developer under the Declaration as if Developer were the original party to the Declaration; and

WHEREAS, Developer wishes to amend the Bylaws to note the change in developer;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby amend the Bylaws as follows:

1. References to "Developer" in the Bylaws shall mean and refer to 888 Alia Owner, L.P., a Delaware limited partnership, and shall also include any of its permitted successors and assigns as appropriate in context.

2. In all other respects, said Bylaws shall remain unchanged and in full force and effect.

3. Capitalized terms used herein, unless otherwise noted, shall have the meanings set forth in the Declaration or the Bylaws, as amended and as applicable.

(The remainder of this page has been intentionally left blank.)

IN WITNESS WHEREOF, the undersigned has executed these presents on the date first above written.

888 ALIA OWNER, L.P., a Delaware limited partnership

By: 888 Ālia LLC, a Delaware limited liability company
Its authorized agent

By: _____
Name: Alana Kobayashi Pakkala
Its: President

"Developer"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 10th day of April, 2024, before me appeared Alana Kobayashi Pakkala, 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.

MATTHEW WALTER PENNAZ NOTARY PUBLIC Comm. No. 08-481 STATE OF HAWAII

Print Name: Matthew Walter Pennaz
Notary Public, in and for said State

My commission expires: 10/12/2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: FIRST AMENDMENT TO BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF ĀLIA AT 888 ALA MOANA

Document Date: 5/23/2024 ~~or Undated at time of notarization~~.

No. of Pages: 36 Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

4/10/24
Date of Notarization and Certification Statement

Matthew Walter Pennaz
Printed Name of Notary

My commission expires: 10/12/2024

MATTHEW WALTER PENNAZ NOTARY PUBLIC Comm. No. 08-481 STATE OF HAWAII

(Official Stamp or Seal)

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Bylaws of the Association of Unit Owners of Ālia at 888 Ala Moana 11.21.2022

ālia

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BYLAWS OF THE ASSOCIATION

OF UNIT OWNERS OF

ĀLIA AT 888 ALA MOANA

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BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF ĀLIA AT 888 ALA MOANA

THESE BYLAWS are made this 15th day of November, 2022, by **888 Ālia LLC**, a Delaware limited liability company (**"Developer"**), with its principal place of business and post office address at 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814.

WITNESSETH:

WHEREAS, Developer is the developer of the "Ālia at 888 Ala Moana" condominium project (the **"Project"**); and

WHEREAS, Developer has undertaken to develop the real property identified in Exhibit "A" (the **"Land"**) and Improvements to be constructed thereon as a condominium project, as described in the Declaration of Condominium Property Regime of Ālia at 888 Ala Moana of even date herewith (the **"Declaration"**) and in accordance with the Condominium Map; and

WHEREAS, Developer desires 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 hereby declares 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, 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. **PURPOSE OF BYLAWS; COVENANTS TO RUN WITH THE LAND**. The Land and the Improvements are held and 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.

Section 3. **DEFINITIONS**. The terms used herein with initial capital letters shall have the meanings given to them in Section I.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**. 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 the Condominium Documents, including these Bylaws, as the same may be amended from time to time.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. **MEMBERSHIP**. The membership of the Association shall consist exclusively of all Owners. Developer, with respect to each Unit it owns, and each Owner, upon acquiring title to a Unit, 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. Notwithstanding anything to the contrary provided herein, during the Developer Control Period, Developer shall operate the Project in accordance with the Declaration and these Bylaws and, where necessary, take all actions on behalf of the Association upon such terms and conditions as they shall agree upon which are consistent with the terms of the Declaration and these Bylaws, subject to any required approvals by the Commercial Director or the Commercial Unit Owner(s), as applicable, as set forth herein or in the Declaration. For the duration of the Developer Control Period, Developer shall have the right to appoint and remove the Officers and Directors of the Association's Board, except for the Commercial Director who shall be appointed and removed by the Commercial Unit Class. Following termination of the Developer Control Period and the first election of a replacement Board in accordance with **Article III, Section 3** below, Developer shall be entitled to vote the interest of each Unit that it owns.

Section 2. **CLASSES**. The Association shall be comprised of the following two (2) Unit Classes: (a) the Commercial Unit Class and (b) the Residential Unit Class. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Unit Class to which such Owner's Unit belongs. Each Commercial Unit Owner shall be a member of, and all Commercial Unit Owners shall comprise, the Commercial Unit Class. Each Residential Unit Owner shall be a member of, and all Residential Unit Owners shall comprise, the Residential Unit Class. Each Unit Class shall vote on and determine issues affecting their Unit Class, with matters requiring a percentage vote of the Association requiring the approval of the same percentage vote of the affected Unit Class and matters requiring a percentage vote of the Board requiring the approval of the same percentage of Directors of the affected Unit Class. The Commercial Unit Class, for instance, may vote on and determine issues pertaining to only the Commercial Unit Class, subject to any approval rights of Developer or the Commercial Director, and the Residential Unit Class may vote on and determine issues pertaining to only the Residential Unit Class, subject to any approval rights of Developer. The number of Units comprising the Commercial Unit Class and/or the Residential Unit Class may increase or decrease if Commercial Units and/or Residential Units are consolidated and/or subdivided.

Section 3. **PURPOSE**. The Association shall be organized and operated for the purposes of administrative and fiscal management of the Project and managing, maintaining, acquiring, constructing, and caring for the Association property, which includes the Common Elements, any real property which is not part of the Common Elements but which the Association either owns or leases, any personal or moveable property owned or leased by the Association, and any fixtures owned or leased by the Association; provided, however, that unless otherwise provided in the Declaration or these Bylaws: (a) Limited Common Elements solely appurtenant to one Unit shall be managed and maintained by the Owner of the Unit to which such Limited Common Element is appurtenant; (b) Commercial Limited Common Elements and Commercial Unit Limited Common Elements shall be managed and maintained by the Commercial Unit Owners who own the Commercial Units to which said Limited Common Elements are appurtenant and the cost thereof charged as a Unit Class Expense or to the Owners of the Commercial Units to which the Commercial Unit Limited Common Element is appurtenant, as applicable; and (c) Residential Limited Common Elements and Residential Unit Limited Common Elements (except those Limited Common Elements solely appurtenant to one (1) Residential Unit) shall be managed and maintained by the Association and the cost thereof charged as a Residential Unit Class Expense or to the Owners of the Residential Units to which the Residential Unit Limited Common Element is appurtenant, as applicable.

Section 4. **VOTING**. Except with respect to those matters requiring voting by the Unit Classes set forth above, each Owner shall be entitled to that percentage of the total vote of all Owners which equals the percentage of the Common Interest appurtenant to such Owner's Unit as set forth in the Declaration. With respect to those matters requiring voting by Unit Class, each Owner shall have a vote equal to his or her Class Common Interest 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. The vendee of a Unit pursuant to an Agreement of Sale shall have the right to vote unless the vote is retained by the vendor as may be provided in said Agreement of Sale pursuant to Section 514B-124 of the Act. 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 deemed to be a majority agreement if any one (1) Owner 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, limited liability companies, and other legal entities 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, limited liability company, or other legal entity shall present satisfactory written evidence to the Secretary of his or her designation as representative not later than the commencement of the meeting.

Section 5. **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, the Commercial Unit Class, and the Residential Unit Class. The quorum for the foregoing shall be as follows:

A. **ALL OWNERS**. For all meetings of the Association with respect to all matters which may be voted on by all Owners, thirty-three percent (33%) of 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. **COMMERCIAL UNIT OWNERS**. With respect to those matters which affect the Commercial Units, the Commercial Limited Common Elements, or the Commercial Unit Limited Common Elements, which may only be voted on by, or which require a vote of only, the Commercial Unit Class Owners, fifty percent (50%) of the Commercial Unit Class must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws.

C. **RESIDENTIAL UNIT OWNERS**. With respect to those matters which may only be voted on by, or which require a vote of only, the Residential Unit Class, thirty-three percent (33%) of the Residential Unit Class must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws.

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

Section 6. **MAJORITY VOTE**. The vote of a Majority of the Common Interest or Class Common Interest present or represented at a meeting at which a quorum is present shall be binding upon all Owners, the Commercial Unit Class, and/or the Residential Unit Class, respectively, 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 Owners to which are appurtenant more than fifty percent (50%) of the total Common Interest or Class Common Interest with respect to the Unit Class; and (ii) where a vote requires a specific percentage of Owners, the specified percentage of Owners means Owners to which are appurtenant such percentage of the Common Interest (or Class Common Interest with respect to the Unit Class).

Section 7. **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.

A. A proxy, to be valid, must: (i) be delivered to the Secretary or the Managing Agent no later than 4:30 p.m. Hawaii Standard Time 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 where 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 the 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 where the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act.

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 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:

(i) If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in this Section, 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.

(ii) The Board or a Director may use Association funds to solicit proxies as part of the distribution of proxies. If a Director, as an individual, seeks to solicit proxies using Association funds, the Director shall proceed as an Owner under subpart (i) of this Subsection.

F. No Managing Agent, Site Manager, or Resident Manager, if any, or their employees, shall solicit, for use by the Managing Agent, Site Manager, or the Resident Manager, if any, any proxies from any Owner that retains the Managing Agent, Site Manager, or Resident Manager, if any, nor shall the Managing Agent, Site Manager, or Resident Manager, if any, 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 8. **PLACE OF MEETINGS**. All meetings of the Association shall be held at the Project, or elsewhere within the State 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.

Section 9. **ANNUAL MEETINGS.** The first annual meeting of the Association shall be held upon the earlier of: (a) one hundred eighty (180) calendar days from the recordation of the first Unit Deed conveying a Unit in the Project, provided that not less than forty percent (40%) of the Units in the Project have been sold and recorded (or if less than forty percent (40%) of the Units in the Project have been sold and recorded, then within one (1) year of the recordation of the first Unit Deed, provided that ten percent (10%) of Owners request, in writing, that the first annual meeting be held), (b) four (4) months after seventy-five percent (75%) of the Units of the Project have been conveyed by Developer to other Owners, or (c) five (5) years after the recordation of the first Unit Deed conveying a Unit in the Project. The terms "**recorded**" and "**recordation**" shall mean and refer to the recordation of a Unit Deed transferring a Unit to an Owner at the Bureau. Subject to the rights of Developer to appoint Directors contained in the Declaration and these Bylaws, at such meeting, Owners shall elect a Board. Prior to that time, the Association shall consist solely of Developer, which shall have authority to act in all matters as the Association and the Board and may act without formal meeting and without call or notice. 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. Hawaii Standard Time 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 10. **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 and dated by not less than twenty-five percent (25%) of Owners and presented to the Secretary or to the Managing Agent. The petition shall be valid only if submitted within one hundred twenty (120) days of the earliest signature. 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 manner provided in **Article II, Section 11** below. 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 sixty (60) calendar days from the date the call was received.

Section 11. **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 hand delivering such notice(s) and form, by mailing, postage prepaid to the mailing address of each Unit or any other address designated in writing by the Owner, or, 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, the holder of any duly recorded Mortgage or deed of trust from any Owner 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. The presence of any Owner or mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he or she shall, at the opening thereof, object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

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 12. **RECORD DATE FOR NOTICES AND VOTING.**

A. **PURPOSE OF THE RECORD DATE.** The "**Record Date**" is the date used to determine who is entitled to receive notice and to vote at Association meetings or on any action to be taken without a meeting. The Record Date is also used to determine who may object to and waive failure to receive notice and exercise other such rights for or as an Owner.

B. **SETTING THE RECORD DATE.** The Board may choose the Record Date. The Record Date for a meeting may not be more than ninety (90) calendar days before the meeting date. The Record Date for action without a meeting may not be more than thirty (30) calendar days before the ballot or request for consent or approval is sent. Unless the Board chooses another date, the Record Date will be the date and time when the mailing list is prepared, or, if notice is waived, then two (2) business days before the date of the meeting. If a meeting is adjourned and a new notice must be given, then a new Record Date must be set.

C. **EFFECT OF SETTING RECORD DATE.** When a Record Date is set, only Owners of Record, as hereinafter defined, on that date (or someone authorized to act for them) have the right to notice and to vote at a meeting or on a ballot or other request for consent or approval. This rule applies despite any issuance or transfer of a Unit in the records of the Association after the Record Date. A Person who is the Owner of a Unit as of the Record Date is considered to be the "**Owner of Record.**" A Person who becomes an Owner after the Record Date may act for the Owner of Record by obtaining a proxy from the Owner of Record. When these Bylaws refer to the "Owner" with respect to notice (including waivers of notice) and voting, it means the Owner of Record or someone authorized to act for the Owner of Record.

Section 13. **ADJOURNMENT OF MEETINGS.** If any meeting of the Association cannot be held because a quorum is not present, a Majority of 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 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 pursuant to **Article II, Section 11** herein. 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 14. **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 15. **INSPECTORS FOR VOTING AND PROXIES.**

A. **APPOINTMENT.** At least ten (10) business days before any meeting of the Association or before any ballot is sent to Owners, the Board may appoint inspectors of the voting at the meeting, including voting for the election of Directors. The Board may appoint either one (1) or three (3) inspectors of voting. If the Board fails or chooses not to do so, then the Managing Agent will be the inspector of the voting.

B. **DUTIES.** The voting inspectors will: (i) determine the authenticity, validity, and effect of proxies, pledges, and other documents purporting to give any person the right to represent, act, and vote for an Owner; (ii) receive votes, ballots, and consents; (iii) hear and determine all challenges, questions, and conflicts relating in any way to the right to cast votes; (iv) count and tabulate all votes and consents; (v) decide when the polls will close; (vi) determine the results of all votes and elections; and (vii) do anything else appropriate to conduct the vote or election fairly as to all Owners. The decision, act, or certificate of a majority of inspectors, if

there are three (3), or of a single inspector, if there is only one (1), will be effective. Any facts stated in any effective report or certificate is presumed to be accurate.

Section 16. **MINUTES OF ASSOCIATION MEETINGS**. Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, if authorized by 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 17. **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. During the Developer Control Period, two (2) Residential Directors and one (1) Commercial Director shall be appointed from time to time by Developer. Upon the termination of the Developer Control Period, the Board shall be comprised of nine (9) persons elected at the first annual meeting of the Association, who shall be selected by and from the Unit Classes as follows: one (1) Director, by and from the Commercial Unit Class; and eight (8) Directors, by and from the Residential Unit Class. In the event Owners decrease the number of Directors as permitted by the Act, the Board shall contain at least one (1) Commercial Director. Each Director shall be an Owner, co-Owner, a vendee under 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. 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. There shall not be more than one (1) Director from any one (1) Unit. 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 Management Agreement with such Managing Agent and shall be excluded from any executive session where such Managing Agent or Management Agreement will be discussed.

Section 2. **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 in accordance with the Project Quality Standard, 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 or the Commercial Director.

Section 3. **ELECTION AND TERM OF OFFICE**. During the Developer Control Period, the Board shall be appointed as set forth in **Article III, Section 1**, and the Residential Directors and Commercial Director so appointed shall serve until removed by Developer. Upon the termination of the Developer Control Period, the Commercial Director shall be elected and removed only by the Commercial Unit Class, and each Residential Director shall be elected and removed only by the Residential Unit Class. Election of Directors may be by secret ballot at each annual meeting and each special meeting called for that purpose. Cumulative voting shall not be permitted. Other than for the initial term set forth below, Directors shall hold office for a period not to exceed three (3) years and until their respective successors have been elected, subject to removal as herein provided. The term of office for the initial Directors shall be as follows: (a) the Commercial Director shall initially serve for three (3) years; (b) the four (4) Residential Directors with the highest number of votes shall serve for three (3) years; and (c) the remaining four (4) Residential Directors with the highest number of votes shall serve for two (2) years.

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. A vote to fill Director positions may be done through a motion passed by acclamation in situations where a formal vote is not necessary (i.e., where there are four (4) vacant Director seats and there are only four (4) candidates).

Section 4. **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 as follows:

A. During the Developer Control Period, Developer may remove and replace the Directors.

B. After the Developer Control Period, the removal and replacement of a Residential Director shall be by a vote of a Majority of the Residential Unit Class and in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of Directors. Any Residential Director whose removal has been proposed by the Residential Unit Class shall be given an opportunity to be heard at such meeting. Any Residential Director who shall miss three (3) consecutive meetings of the Board may be removed by the vote of a Majority of the remaining Residential Directors, as applicable, even though they may constitute less than a quorum; provided, however, that this right of removal shall be without prejudice to the Residential Unit Class' right to remove Residential Directors as provided in this Section. The replacement of the Residential Director so removed shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of Directors. Any Residential 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.

C. After the Developer Control Period, the removal and replacement of the Commercial Director shall be by the vote of a Majority of the Commercial Unit Class in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of Directors.

Section 5. **VACANCIES.**

A. 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.

B. Any Director vacancies during the Developer Control Period shall be filled by Developer.

C. Any vacancies of a Residential Director after the end of the Developer Control Period, 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 Residential 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 Residential Director whose seat is vacated.

D. Any vacancies for the Commercial Director after the end of the Developer Control Period, 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 vote of a Majority of the Commercial Unit Class at a special meeting of the Commercial Unit Class, and such person so elected shall serve until his or her successor is elected at the next annual meeting of the Association.

Section 6. **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, which must include the Commercial Director, shall be present thereat. At such meeting, the Board shall elect the Officers for the ensuing year.

Section 7. **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 8. **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 9. **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, as provided in **Article III, Section 11**; 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 10. **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 11. **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, Site Manager, or Resident Manager, if any, or a Director, 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 12. **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 in the County, 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 13. **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; provided that any action shall be subject to any applicable approval rights of the Commercial Director or Developer. If less than a quorum shall be present at any meeting of the Board, or the Commercial Director is unavailable for a meeting in which a matter involving the Commercial Unit Owners, Commercial Units, and/or the Limited Common Elements appurtenant thereto is being discussed, 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 and the Commercial Director can attend.

Section 14. **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; provided, however, that nothing herein shall limit the right of the Commercial Director to vote or to exercise any approval rights under the Declaration and these Bylaws. 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. If the Commercial Director has a conflict of interest, the Commercial Director shall appoint another Owner of a Commercial Unit to temporarily act as the Commercial Director.

Section 15. **EMPLOYEES; BACKGROUND CHECK**. Upon written authorization of an applicant for employment as a security guard, the Site Manager, the Resident Manager, or a position that would allow the employee access to the keys of, or entry into, the 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) 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 thirty (30) 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 fiduciary 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 shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board. The Board may appoint an assistant treasurer, 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 an Officer. An Owner who is an employee of the Managing Agent shall not act as an Officer.

Section 2. **ELECTION AND TERM**. The Officers 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 shall owe 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 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. **PRESIDENT**. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and 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 6. **VICE PRESIDENT**. The Vice President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

Section 7. **SECRETARY**. The Secretary shall attend and keep the minutes of all meetings of the Association and 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 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 duties incident to the office of Treasurer and all other duties assigned by the Board.

Section 9. **EXECUTION OF AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC**. Except where Developer shall be exercising its reserved rights, 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, Vice President, Secretary, or Treasurer, or by such other person or persons (including the Managing Agent) as may be stated in a resolution adopted 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 D&O Policy covering the Directors and Officers as provided in Section XII.E of the Declaration.

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 Director and Officer 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 a Director or Officer 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, and, in such instance, the Director or Officer shall be personally liable for his or her wrongful conduct. 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**. Subject to the limits described in **Article III, Section 2**, 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. **MAINTENANCE AND REPAIR OF UNITS**. The Board may perform maintenance and repairs on any Unit or Limited Common Element in the Project if;

(i) It is necessary to protect the Common Elements or any other Unit, and

(ii) The Owner of the Unit fails or refuses to perform the maintenance or repair within a reasonable time after the Board delivers written notice to him or her describing the maintenance and repairs needed.

The Board will charge a special assessment to that Unit for the cost of the maintenance or repair and any attorneys' fees and other expenses incurred in charging and collecting the special assessment. Notwithstanding the foregoing, any such maintenance and repairs to be performed upon any Commercial Unit, Commercial Limited Common Element, or Commercial Unit Limited Common Element shall be subject to the approval of the Commercial Director, which consent shall not be unreasonably withheld or delayed.

C. **RESTORATION OF PROJECT**. The Board will rebuild, repair, and restore the Project in accordance with the provisions of the Declaration and these Bylaws after it is damaged or destroyed by a fire or other casualty or as a result of a condemnation.

D. **EMPLOYMENT OF PERSONNEL**. The Board may hire employees, including a Site Manager or Resident Manager and 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.

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

F. **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.

G. **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 **Article VI, Section 8.B(v)** 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.

(i) **Monetary Fine**. A monetary fine may be charged for any violation of the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project. The fine will be deducted from an Owner's Assessment in accordance with the priority of payment set forth in **Article VI, Section 7.C** herein.

(ii) **Hearing**. If requested by the Owner, the Board must hold a meeting and permit any Owner that receives a warning to present his or her case before it fines such Owner or imposes a penalty or takes any other disciplinary action. This provision does not apply, however, when an Owner is fined or penalized for failing to pay any Assessment on time. An Owner must submit an appeal to the Board within twenty (20) business days after the date of delivery or mailing to the Owner of the written warning. The delivery of notice to appeal shall not halt the accrual of any ongoing fine imposed for the violation, which is the subject of the appeal. The Board may waive or rescind all or a part of such fine for good cause at any time after the hearing.

All appeals shall be reviewed by the Board either by electronic mail, conference call, or at a physical meeting of the Board within ninety (90) calendar days after the notice of appeal has been delivered to the Board. A statement of facts upon which the fine and/or penalty was based should be delivered or mailed to the Owner at least ten (10) business days before the meeting. The Owner has the right to appear and to explain why the fine or penalty should not be imposed or why access and services should not be terminated. The Board and Owner may ask other persons to attend and present testimony at the hearing. A Majority of the Directors present will decide whether to impose the fine or penalty or to terminate access and services, if permitted pursuant to **Article V, Section 1.G** above. The Directors, however, cannot act unless a quorum is present and the meeting is held as provided in these Bylaws, and such actions against a Commercial Unit Owner shall be subject to the approval of the Commercial Director.

(iii) **When the Fine or Suspension Takes Effect**. The Board must give the Owner written notice of any disciplinary action taken and the reasons for such action. Any disciplinary action will take effect within twenty (20) business days of the date that the notice is delivered to the Owner.

(iv) **When Services will be Restored**. The Board will restore an Owner's access and services when the Owner pays all amounts due.

(v) **The Managing Agent's Role**. The Board may delegate to the Managing Agent the power to carry out any disciplinary actions imposed by the Board.

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

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

J. **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.

K. **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.

L. **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, with respect to the Commercial Limited Common Elements will be a Commercial Unit Class Expense, subject to the approval of the Commercial Director, and with respect to the Residential Limited Common Elements shall be a Residential Unit Class Expense. The Association may also borrow money for the purchase of the Resident Manager Unit or other Unit; provided that any loan for such purchase is approved by a Majority of the Residential Unit Class. To the extent permitted by law, such loan payment for the purchase of the Resident Manager's Unit or other Unit shall be a responsibility of the Residential Unit Owners and a Residential Unit Class Expense. The Commercial Unit Owners shall not be responsible for the payment of any such loan for the acquisition of the Resident Manager Unit, or any other Unit in the Project.

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

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

O. **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.

P. **PURCHASE OF GOODS**. Subject to any limitations contained within the Condominium Documents or by law, and if required by the Condominium Documents or by law, or if it is necessary or proper, in the Board's opinion, to operate the Project or to enforce the Condominium Documents, the Board may:

(i) Buy, lease, or otherwise procure any other materials, equipment, supplies, furniture, labor, and services,

(ii) Make repairs and structural alterations, and

(iii) Pay taxes and assessments and other Common Expenses.

If any materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, or assessments are required because of the acts, misuse, or negligence of Owners or Occupants of a particular Unit, the Board will charge the costs of it as a special assessment to that Unit to the extent permitted by **Article VI, Section 3.B**.

Q. **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.

R. **PURCHASING UNITS**. Except as otherwise caused by the exercise of a Developer's Reserved Right to transfer Units to the Association, with the affirmative vote of sixty-seven percent (67%) of the Association, the Board may buy, lease, or otherwise acquire any Residential Unit on behalf of the Association, and obtain financing in connection therewith, the cost of which shall be a Residential Unit Class Expense; provided that the purchase of the Resident Manager Unit may be done by the Board without the vote of the Association pursuant to the Act. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title.

S. **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 a 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 a 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: (i) all claims regarding the design or construction of any part of the Project shall be resolved pursuant to Article XLVI of the Declaration, (ii) 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, and (iii) any claim raised or action brought on behalf of the Association, where the total amount in controversy is greater than TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00), shall first require the approval of at least seventy-five percent (75%) of Owners.

T. **MASTER ASSOCIATION**. The Project will be one of multiple projects located in "**Kaiāulu 'o Kaka'ako**" or the "**Community**." The Master Charter, Master Bylaws, and the other "Governing Documents" as defined in the Master Charter ("**Master Governing Documents**"), as the same may be amended and/or supplemented from time to time, create rules and regulations for operations and being a part of the Community, including, without limitation, any assessments, voting rights, design restrictions, and the design review process set forth therein, if applicable. By acquiring an interest in the Project, each Owner agrees to carefully review, observe, and comply with all covenants, conditions, restrictions, and other requirements to which the Project is subject under the Master Charter, Master Bylaws, and other Master Governing Documents, including a payment of such sums as may be assessed pursuant to such Master Charter or Master Bylaws ("**Master Assessments**"). Further, Developer shall have the reserved right, without the consent of any Owners or such Owners' mortgagees, to amend the Declaration, these Bylaws, and to enter into any agreements and to grant easements and to do all things necessary and convenient to effect and implement the purposes of the Master Charter, Master Bylaws, and other Master Governing Documents and to execute, record, and deliver any and all documents necessary to effect the same, including, but not limited to, any amendment to the Declaration, these Bylaws, and to the Condominium Map. In the event of a conflict between the Declaration, these Bylaws, and the Master Charter, Master Bylaws, and/or the other Master Governing Documents, the Master Charter, Master Bylaws, and/or other Master Governing Documents, as applicable, shall control. The Declaration, these Bylaws, and the Condominium Map and the Project shall be subordinated and subject to the Master Charter and the Master Bylaws, together with such rules and regulations promulgated pursuant thereto.

Individual Unit Owners will not become members of the Kaiāulu 'o Kaka'ako Owners Association ("**Master Association**") and, in most instances, will not have direct voting rights in the Master Association. The Association will be the member of the Master Association for the Project. The Association and the Owners shall be responsible for certain shared costs for the maintenance and upkeep of any Community common areas and other services and use areas shared among the projects in the Community and described in the Master Charter and Master Bylaws. The Master Association has the right to lien a Unit in the event of nonpayment of any Master Assessments by the Association or the Unit Owner.

Section 2. **MANAGING AGENT.**

A. **MANAGING AGENT.** No later than after the termination of the Developer Control Period: (i) 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 and Limited Common Elements appurtenant to more than one (1) Unit, excluding any Limited Common Elements exclusively appurtenant to Commercial Units to the exclusion of any Residential Unit, the cost of which shall be a Residential Unit Class Expense. The Commercial Unit Class, may in its sole discretion and expense, employ a separate managing agent to perform the physical management of the Commercial Unit(s), Commercial Limited Common Elements, and/or Commercial Unit Limited Common Elements.

B. **QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State 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 Management Agreement with the Association. Subject to the requirements of the Act:

(i) **Powers and Duties.** The 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.

(ii) **Term.** The 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 Management Agreement is sent by either party to the contract at least sixty (60) calendar days before its expiration.

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

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

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

(iii) **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 Management Agreement must provide that the Managing Agent has the right to cancel the 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.

H. **PROJECT QUALITY STANDARD**. The Management Agreement shall contain a requirement that the Managing Agent operate the Project at a Project Quality Standard and further provide for the right of the Board to terminate the Management Agreement if the Project is not operated or maintained at such standard by the Managing Agent.

Section 3. **EMPLOYMENT OF SITE MANAGER OR RESIDENT MANAGER**. The Board may also contract with or employ a Site Manager or Resident Manager who may or may not be the Managing Agent. The Board will set the compensation of any Site Manager or Resident Manager. The Board may delegate to the Site Manager or Resident Manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. The Site Manager or Resident Manager shall be held to the same standard as the Managing Agent and shall operate the Project at the Project Quality Standard and further provide for the right of the Board to terminate any agreement with the Site Manager or Resident Manager if the Project is not operated or maintained at such standard by the Site Manager or Resident Manager. The cost of the Site Manager and/or Resident Manager shall be a Residential Unit Class Expense.

Section 4. **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, subject to any applicable consent rights of the Commercial Director. This rule does not apply, however, to:

A. The 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, escalator, photovoltaic systems, 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 5. **LIMITS ON ASSOCIATION AUTHORITY**. The Association shall not:

A. Incur expenditures for Capital Upgrades (discussed in Article VII of the Declaration) without following the requirements set forth in Sections VII.C and VII.D of the Declaration; or

B. Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

C. Take any action which is inconsistent with any and all limitations imposed upon the Association by the Condominium Documents.

D. Exercise its authority herein without the approval of the Unit Class Director(s), Developer, and/or Owner, as applicable, where such approval is expressly required under the Condominium Documents.

Section 6. **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 Owners as required by the Act.

Section 7. **HOUSE RULES**. The Board may adopt, publish, and enforce fair and reasonable House Rules governing the operation and use of the Common Elements, Residential Limited Common Elements, Residential Unit Limited Common Elements, and Residential Units. Developer may adopt the initial House Rules. The Board may revise the House Rules from time to time; provided that any revision impacting the Commercial Units, Commercial Limited Common Elements, or Commercial Unit Limited Common Elements may only be adopted with the approval of the Commercial Director. The House Rules must be consistent with the Declaration, these Bylaws, the Act, and the HAR. The Board shall enforce the House Rules in accordance with the Declaration and these Bylaws.

Section 8. **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.F of the Declaration.

B. **THE BOARD MAY ENTER A UNIT**. The rights of the Board and the Managing Agent under **Article V, Section 8.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.F 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 **Article V, Section 8.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; provided that any disposition of personal property abandoned in the Commercial Limited Common Elements or Commercial Unit Limited Common Elements appurtenant to more than one (1) Commercial Unit shall be subject to the approval of the Commercial Director. 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 Owners. The budget must contain any information required by the Act and the HAR. The Commercial Director must submit the proposed budget for the Commercial Units and their Limited Common Elements, including replacement reserves, at least thirty (30) calendar days prior to the date the Association shall present the budget to Owners as required by the Act.

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.**

(i) **Replacement Reserves**. The Association must establish replacement reserves for Capital Upgrades, as required by law. The Association may set up any additional replacement reserves 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 not otherwise designated as a Limited Common Element, a Limited Common Element appurtenant to all Commercial Units, a Limited Common Element appurtenant to all Residential Units, 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 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. The Commercial Director shall assume the responsibility of the Board to establish replacement reserves for Commercial Limited Common Elements as a Commercial Unit Class Expense and the Residential Directors shall assume the responsibility of the Board to establish replacement reserves for Residential Limited Common Elements as a Residential Unit Class Expense; provided that any replacement reserves budgeted for any shared areas that serve the entire Project, if any, shall be coordinated by the Board to ensure consistency and efficient use of Association funds. Replacement reserves for the Common Elements that are not otherwise designated as Limited 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 Condominium Documents that relate to upgrading the Common Elements, such as additions, Improvements, and alterations to the Common Elements.

(ii) **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 the Unit Class affected. Prior to the imposition or collection of an Assessment under this Section that has not been approved by a Majority of the affected Unit Class, 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 Owners with the notice of Assessment.

(iii) **Operating Reserves**. Subject to **Article VI, Section 4.B(iv)** of these Bylaws, the Board may establish and maintain an operating reserve by monthly Assessment against (and payment by) all Owners for operating expenses in proportion to their respective Common Interests, Class Common Interests, or as may be required by sub-metering pursuant to Section XI.E of the Declaration; provided that, the Commercial Director shall assume the responsibility of the Board to establish operating reserves for Commercial Limited Common Elements as a Commercial Unit Class Expense, and the Residential Directors shall assume the responsibility of the Board to establish operating reserves for Residential Limited Common Elements as a Residential Unit Class Expense. 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 operating reserves for the Association will be liable if that estimate later proves incorrect. The reserves shall be set forth in the Association budget.

(iv) **Other Reserves**. The Association may establish working capital reserve Improvement funds and other reserve funds that the Board deems necessary; provided that, any funds established that impact the Commercial Units shall be subject to the consent of the Commercial Director.

(v) **Limitation**. Operating reserves collected for Commercial Unit Class Expenses may not be expended for any other purpose and are subject to the consent of the Commercial Director.

(vi) **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 expressed in the deed or other transfer document.

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:

(i) **Unit and Limited Common Element Expenses**. All charges, costs, and expenses incurred by the Association directly attributable to one (1) or more Unit(s) or any Limited Common Elements appurtenant to one (1) or more Unit(s), 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, (other than Commercial Unit Class Expenses and Residential Unit Class Expenses), shall constitute Limited Common Element Expenses of the Project for which only Owners of the such Unit or Units shall be liable. The share of Limited Common Element Expenses attributable to each such Unit will be in proportion to each Unit's relative Common Interest set forth in the Declaration. The Board may arrange to handle the maintenance and upkeep of any Limited Common Element appurtenant to one (1) or more Unit(s) and may require the Owner(s) pay for such cost.

(ii) **Commercial Unit Class Expenses**. All charges, costs, and expenses incurred by the Association directly attributable to the Commercial Limited Common Elements, including, but not limited to, utility costs, all costs of maintenance, repair, replacement, additions, and Improvements thereto, and reserves therefor, as well as any other items designated as Commercial Unit Class Expenses by the Declaration or these Bylaws shall constitute Commercial Unit Class Expenses of the Project for which only the Commercial Unit Class shall be liable. The share of Commercial Unit Class Expenses attributable to each Commercial Unit will be equal to the Commercial Class Common Interest of that Unit.

(iii) **Residential Unit Class Expenses**. All charges, costs, and expenses incurred by the Association directly attributable to the Residential Limited Common Elements, including, but not limited to, utility costs, all costs of maintenance, repair, replacement, additions, and Improvements thereto and reserves therefor, as well as any other items designated as Residential Unit Class Expenses by the Declaration or these Bylaws shall constitute Residential Unit Class Expenses of the Project for which only the Residential Unit Class shall be liable. The share of Residential Unit Class Expenses attributable to each Residential Unit will be equal to the Residential Class Common Interest of that Unit.

Special Costs shall be apportioned pursuant to an Alternative Allocation among and/or between the Commercial Unit Class and the Residential Unit Class based on a fair and equitable apportionment in accordance with Section 514B-41 of the Act, subject to the unanimous approval of the Board.

B. **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 Occupants, 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 **Article VI, Section 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 during the Developer Control Period. 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 the date specified in a written notice from Developer as permitted by Section 514B-41(b) of the Act. Developer shall mail the written notice to Owners, the Association, and the Managing Agent, if any, at least thirty (30) calendar days before the specified date. Prior to such date, Developer shall assume all the actual expenses in the Project pursuant to the provisions of Section 514B-41(b) of the Act. After the date specified in the notice, 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.**

(i) **Regular Assessment**. Each year the Board will set the amount of the "**Regular Assessments**" based on the Common Expenses for each Unit established by the budget and the requirements of the Condominium Documents. The Board may increase the amount of the Regular Assessments during the year.

(ii) **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 (a) increase the next year's budget, or (b) 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.

(iii) **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.

(iv) **Limits on Assessments**.

(a) Assessments are limited by the budget limitation set forth in **Article VI, Section 2.B(ii)** herein.

(b) Assessments related to Capital Upgrades are governed by Sections VII.C and VII.D of the Declaration and Assessments related to Extraordinary Actions are governed by Section VII.E of the Declaration.

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 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 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 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 Common Expenses (less any Unit Class Expenses), then to Unit Class Expenses, then to attorneys' fees, costs and expenses, then to late charges, then to interest.

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:

(i) 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

(ii) 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 (as hereinafter defined).

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:

(i) **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 file or 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 filed or 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.

(ii) **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, by filing a lawsuit for foreclosure, or 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.

(iii) **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.

(iv) **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, any costs of enforcement, and attorneys' fees) and the Owner asks for the cancellation document and pays a reasonable fee for such document.

(v) **Termination of Right to Use Common Elements**. Pursuant to the procedures, requirements, and rights specified in Section 514B-146(h) and (i) 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(d) 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 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(u) 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. Any such taxes or assessments which may be a lien on the Common Elements shall be Common Expense, any such taxes or assessments that may be a lien on the Commercial Limited Common Elements shall be a Commercial Unit Class Expense, and any such taxes or assessments that may be a lien on the Residential Limited Common Elements shall be a Residential Unit Class Expense. 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. 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 under **Article VI, Section 8.A** 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 a Unit Class or the Limited Common Elements appurtenant thereto shall be separately metered from the utilities servicing another Unit Class and the Limited Common Elements appurtenant thereto and the Common Elements 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 the Commercial Limited Common Elements is a Commercial Unit Class Expense, and the cost of utility for the Residential Limited Common Elements is a Residential Unit Class Expense.

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). If utility services are separately metered, sub-metered, or check metered to a group of Units (for example, to all Commercial Units or to all Residential Units), the share of the costs and expenses allocated to and payable by each Unit in the metered group shall be based upon each Unit's actual usage of the group metered utilities; provided, however, that if it is not reasonably possible to determine accurately each Unit's actual usage of the metered utilities relative to the other Units in the group, then each Unit's share of the group metered utility costs and expenses shall be calculated based upon relative Class Common Interest if metered solely within a Unit Class or by relative Common Interest if metered to one or more Units in the Residential Unit Class and Commercial Unit Class. Unless otherwise permitted or required by the utility service provider(s), 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 utility or other services (including, by way of example but not limitation, television cable, internet, and digital telephone service) are purchased by the Association as a bundled utility package at a negotiated but adjustable flat rate and provided to some or all of the Units, each Unit that is designated to receive such utilities or services shall be assessed separately, an equal share of the flat rate charged by the provider to the Association.

C. For all utility and other service expenses billed to the Association for Limited Common Elements appurtenant to more than one (1) Unit and not separately metered, sub-metered, or check metered, or not provided as part of a bundled utility package for which the Association pays a flat rate, the Board shall allocate a share of such utility or service expenses as provided in the Declaration.

D. 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; provided, that for Commercial Units, any right for collection of a tenant shall be subject to any lease and the consent of the Commercial Director, which consent shall not be unreasonably withheld or delayed. 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 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:

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

(ii) **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 Commercial Director must submit their annual report to the Association at least sixty (60) calendar days after the end of the fiscal year to be incorporated into the Project annual report. 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

MAINTENANCE AND REPAIR AND USE

Section 1. **MAINTENANCE AND REPAIR OF UNITS**. Except as otherwise provided by law or in these Bylaws or in the Declaration:

A. **OWNERS' RESPONSIBILITIES**. At his or her own expense, the Owner must maintain and repair his or her Unit, and the Limited Common Elements solely appurtenant thereto, and keep them in good order and condition at all times.

(i) This duty includes, for example, the obligation to repair and maintain and keep in good order and condition:

(a) The interior decorated or finished surfaces of all walls, floors, and ceilings of a Unit and any lanai and Improvements thereon, and

(b) All installations for water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, and all other fixtures and accessories. This applies only to installations, fixtures and accessories that are part of the Unit or the Limited Common Elements appurtenant solely to such Unit.

(c) All mechanical, electrical, and plumbing components of his or her Unit and the Improvements therein in strict accordance with all applicable maintenance requirements, operating

standards, and guidelines (i) of or promulgated by any governmental agency, (ii) set forth in any manufacturer's or supplier's operating manuals or maintenance and care documents for said fixtures and equipment, and (iii) as may be set forth from time to time in the Condominium Documents.

(ii) Each Owner of a Unit shall be responsible for performing the following with respect to the Unit and any Limited Common Elements solely appurtenant thereto in order to prevent or eliminate the occurrence of mold growth in the Unit and at the Project:

(a) Maintain and properly service the Owner's air conditioning system and keep it in full working condition.

(b) Promptly clean up spills, condensation, and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in the Unit or on the Limited Common Elements appurtenant solely to the Unit. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.

(c) Inspect for leaks on a regular basis. Look for discoloration or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditions) for mold growth. Take notice of musty odors and any visible signs of mold.

(d) Should mold develop, thoroughly clean the affected area with a mild solution of bleach or other appropriate mold-killing agent. Discard affected porous materials, such as fabric, upholstery or carpet. Should the mold growth be severe, call on the services of a qualified professional cleaner.

(iii) Each Owner is liable for all loss or damage caused by his or her failure to perform any such work diligently. If the Owner fails to perform such work after reasonable notice from the Association, the Association may undertake and charge the cost of performing such work to the Owner pursuant to Section XI.F of the Declaration.

(iv) Each Owner will take such steps as may be required to prevent excessive oil spills upon the parking stall that is a Limited Common Element appurtenant to such Owner's Unit.

(v) Each Owner will take such steps as may be required to prevent pests, such as roaches and ants, from infesting such Owner's Unit.

B. **DAMAGE TO COMMON PROPERTY**. Every Owner:

(i) Must reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the Common Elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or by any person under such Owner to the extent permitted under Section XI.F of the Declaration, and

(ii) Must give to the Managing Agent notice of any such loss or damage or other defect in the Project promptly after discovering it.

Section 2. **COMMON ELEMENTS**.

A. **BOARD**. Subject to any approvals required under the Declaration, the Board may arrange for painting or repair of the Residential Limited Common Elements and Residential Unit Limited Common Elements, including, but not limited to, any walls or ceilings surrounding any lanai, outside doors, windows, trim, walls, railings, and other parts of the Residential Limited Common Elements and Residential Unit Limited Common Elements and may also choose the type and color of paint to be used. The Board shall assess each Residential Owner for his or her proportionate share of the painting and repairs or the Board may pay for it using the reserve funds designated for such purpose. However, the cost of painting and repairs due to negligence, misuse, or neglect of an Owner or other Occupant, or someone under either of them, may be charged as a special assessment pursuant to Section XI.F of the Declaration.

B. **COMMERCIAL DIRECTOR**. The Commercial Limited Common Elements and Commercial Unit Limited Common Elements shall be maintained, repaired, and replaced through the Commercial Director or a managing agent designated by the Commercial Unit Class as and to the extent set forth in Section VII.B of the Declaration until the Commercial Director notifies the Board in writing to the contrary and upon such notice the Board shall be responsible for such maintenance, repair, and replacement of such Project components designated by the Commercial Director in such notice; provided that any costs or expenses associated with such maintenance, repair, and/or replacement shall be a Commercial Unit Class Expenses, unless otherwise determined to be a Special Cost and Alternative Allocation.

C. **RESIDENTIAL DIRECTORS**. The Residential Limited Common Elements and Residential Unit Limited Common Elements appurtenant to two (2) or more Residential Units shall be maintained, repaired, and replaced by the Association, and any costs or expenses associated with such maintenance, repair, and/or replacement shall be a Residential Unit Class Expense, unless otherwise determined to be a Special Cost and Alternative Allocation.

Section 3. **MOLD PREVENTION**. The Board shall be responsible for doing the following with respect to the Common Elements and Limited Common Elements, excluding Limited Common Elements appurtenant solely to Commercial Units, in order to prevent or eliminate the occurrence of mold growth at the Project, the cost of which shall be a Residential Unit Class Expense: (a) regularly clean and repair roof gutters and correct any grading which does not slope away from the building foundation; (b) maintain and properly service Common Element and Limited Common Element air conditioning systems, if any, and keep them in proper working condition; provided that where a Limited Common Element air conditioning system services only one (1) Unit, the Owner of such Unit shall be responsible for such maintenance and service; (c) promptly clean up spills, condensation, and other sources of moisture; (d) thoroughly dry any wet surfaces or material and replace any materials that cannot be thoroughly dried, such as drywall or insulation; (e) inspect for leaks on a regular basis; repair any leaks promptly; (f) inspect condensation pans (refrigerators and air conditions) for mold growth; (g) should mold develop, thoroughly clean the affected area with a mild solution of bleach or other appropriate mold-killing agent; (h) discard affected porous materials, such as fabric, upholstery, or carpet and; (i) should the mold growth be severe, call on the services of a qualified professional cleaner. The Board and the Association, however, shall not be liable for mold growth at the Project or any efforts to clean and repair areas of the Project to reduce or eliminate mold or moisture.

Section 4. **ALTERATIONS AND ADDITIONS BY OWNERS**.

A. **PERMITTED ALTERATIONS**. An Owner may make additions, alterations, or Improvements solely within the Owner's Unit or within the Limited Common Element appurtenant to and for the exclusive use of the Owner's Unit as set forth in Article X of the Declaration.

B. **PROHIBITED ALTERATIONS**. Subject to the provisions of the Declaration and the Act, no Owner may make any alteration or addition to: (i) the Owner's Unit that adversely affects the Common Elements or (ii) any of the Common Elements including, without limitation, Common Elements within, encompassing or adjacent to the Owner's Unit.

C. **BOARD APPROVAL**. An Owner must not begin work on any alterations, additions, or Improvements that require Board approval as set forth in Sections X.D and X.F of the Declaration until such approval has been obtained.

Section 5. **ALTERATION OF THE PROJECT**. Except for Limited Common Elements to be maintained by Owners of Units to which they are appurtenant, whenever in the judgment of the Board, the Common Elements need additions or alterations, the Board can make the additions or alterations, provided that any alterations to the Commercial Limited Common Elements or Commercial Unit Limited Common Elements are subject to the approval of the Commercial Director, and provided further, that any consents required by Section X.F of the Declaration are obtained, in writing, in advance. The cost will be a Common Expense, except that the cost of any such work performed on any Commercial Limited Common Element shall be charged to the Commercial Unit Class, any such work performed on any Residential Limited Common Element shall be charged to the Residential Unit Class, and any such work performed on Unit Limited Common Elements shall be charged to the Owner(s) of the Unit(s) to which the Unit Limited Common Elements are appurtenant. Notwithstanding anything to the contrary

herein, but subject to the provisions of Section X.F of the Declaration, the Board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the Common Elements; provided that the same shall not be installed upon any Limited Common Element solely appurtenant to one (1) Unit without the consent of the Owner(s) of said Unit or upon any Commercial Limited Common Element without the consent of the Commercial Director. The installation of antennas, conduits, chases, cables, wires, and other television and telecommunications equipment upon the Common Elements by the Board shall not be deemed to alter, impair, or diminish the Common Interest and Common Elements appurtenant to each Unit or be a structural alteration or addition to any building different in any material respect from the Condominium Map; provided that no such installation shall directly affect any non-consenting Owner. Further, the Board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence (which determination shall be within the Board's sole discretion) or to provide an equivalent function by different means or methods; and the abandonment or change of use of any television signal distribution or telecommunications equipment by the Board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to each Unit or to be a structural alteration to any building different in any material respect from the Condominium Map. For the purposes of this Section: (a) "**directly affects**" means the installation of television signal distribution and telecommunications equipment in a manner which would specifically, personally, and adversely affect an Owner in a manner not common to Owners as a whole, and (b) "**television signal distribution**" and "**telecommunications equipment**" shall include all present and future forms of communications technology.

Section 6. **OWNER APPROVAL.** Maintenance, repair, or replacement of any portion of the Project for which the Association is responsible costing in excess of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00) in any one instance may be made by the Board only after obtaining approval of a Majority of Owners and each affected Commercial Unit Owner. This rule does not apply to Capital Upgrades which are governed by Sections VII.C and VII.D of the Declaration and shall not apply to maintenance, repairs or replacements:

A. Required by law or by the Declaration or these Bylaws;

B. Required due to an emergency threatening immediate and substantial damage to person or property;

C. Required to maintain or repair the Project as originally designed or constructed, or in accordance with any duly authorized changes to the Project or required by law;

D. For which replacement reserve funds have been established and substantially funded to cover at least ninety percent (90%) of the cost; or

E. Made by Developer when exercising the Developer's Reserved Rights, subject to the approvals set forth in the Declaration and these Bylaws.

ARTICLE VIII

ASSOCIATION RECORDS

Section 1. **CONDOMINIUM DOCUMENTS.** The Association must keep at the Site Manager's, Resident Manager's, or Managing Agent's office an accurate copy of the Declaration, these Bylaws, the House Rules, a sample original Unit Deed for a Residential Unit, 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 Site Manager, Resident Manager, Managing Agent, or Board must keep an accurate and current list of names, addresses, mobile phone numbers, and email addresses of 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, Site Manager, or Resident Manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the Board. All membership lists are the property of the Association and any membership lists contained in the Managing Agent's, Site Manager's, or Resident Manager's records are subject to this Section. The Managing Agent, Site Manager, Resident Manager, 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:

(i) The Owner requesting the list must furnish to the Site Manager, Resident Manager, Managing Agent, or Board a duly executed and acknowledged affidavit stating that (a) 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 (b) the list will not be used by that Owner or furnished to anyone else for any other purpose.

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

(iii) All other lawful conditions adopted by the Board pursuant to **Article VIII, Section 7.F** have been fully satisfied.

Section 3. **NOTICE TO BOARD/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 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 owed 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 **Article VIII, Section 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 Association meetings and of Board meetings shall be available as set forth in **Article II, Section 16** and **Article III, Section 16**, respectively. 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:

(i) 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

(ii) Owners pay for administrative costs in excess of eight (8) hours per Owner 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:

(i) 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

(ii) Owners pay for administrative costs in excess of eight (8) hours per Owner 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 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 IX

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 (2) 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:

(i) For any amendment that affects the Commercial Units, Commercial Unit Owners, Commercial Limited Common Elements, or Commercial Unit Limited Common Elements, such vote or written consent of sixty-seven percent (67%) of all Owners shall include the vote or written consent of all Commercial Unit Owners;

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

(iii) Such amendment shall be subject to all limitations and requirements regarding amendments to the Condominium Documents contained in the Declaration, including, but not limited to Sections XV.C and XV.D of the Declaration; and

(iv) No amendment that is material and adverse in nature to mortgagees shall be effective without the written consent of mortgagees representing at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages.

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 Owners as shown in the Association's records of ownership maintained by the Board as provided in **Article VIII, Section 2.A**. The proposed amendment, the rationale, and the ballots for voting on the amendment must be mailed by the Board to 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 **Article IX, Section 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 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:

(i) To restate these Bylaws to set forth all amendments to them; and

(ii) 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 **Article II, Section 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 **Article II, Section 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.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Developer, acting as the initial Association, hereby adopts the foregoing Bylaws as the Bylaws of the Association of Unit Owners of Ālia at 888 Ala Moana on the date first above stated.

888 ĀLIA LLC,
a Delaware limited liability company

By _____
Name: Alana Kobayashi Pakkala
Title: President

"Developer"

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 15th day of November, 2022, before me appeared ALANA KOBAYASHI PAKKALA, 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.

MATTHEW WALTER PENNAZ NOTARY PUBLIC Comm. No. 06-481 STATE OF HAWAII

(Official Stamp or Seal)

Print Name: Matthew Walter Pennaz
Notary Public, in and for said State, First Circuit

My commission expires: 10/12/2024

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF ĀLIA AT 888 ALA MOANA

Document Date: Undated at time of notarization.

No. of Pages: 44 Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

11/15/22
Date of Notarization and Certification Statement

Matthew Walter Pennaz
Printed Name of Notary

My Commission Expires:10/12/2024

MATTHEW WALTER PENNAZ NOTARY PUBLIC Comm. No. 06-481 STATE OF HAWAII

(Official Stamp or Seal)

FEE OWNER CONSENT

The Trustees of the Estate of Bernice Pauahi Bishop, deceased, with full powers to sell, mortgage, lease, or otherwise deal with the Land (the "**Fee Owner**"), whose address is c/o Kamehameha Schools, Commercial Real Estate Division, Kawaiaha'o Plaza, Suite 200, 567 South King Street, Honolulu, Hawaii 96813, as the fee simple owner of the property described in the Declaration of Condominium Property Regime of Ālia at 888 Ala Moana (the "**Declaration**"), DO HEREBY consent to the recordation of the Bylaws of Association of Unit Owners of Ālia at 888 Ala Moana (the "**Bylaws**") against the Land.

The Fee Owner, however, is not the developer of the Project and the Fee Owner's consent shall not, in any way or for any purpose, be construed to mean that the Fee Owner is the developer of the Project or a partner with Developer in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Developer. The Fee Owner makes no representations or warranties of any kind, express or implied, with respect to any aspects of the Project. The statements set forth in the Bylaws are solely those of Developer and are not and should not be construed as statements made by or representations of the Fee Owner. Developer, and not the Fee Owner, shall be solely responsible for all aspects of the Project, including, without limitation, the development and construction of the Project and the marketing and sales of the Residential Units and the Commercial Units. The Fee Owner shall not be liable for the statements or the conduct of Developer relating to the sale and conveyance of the Residential Units or the Commercial Units or the development of the Project. The Fee Owner is not assuming any such liability in any way by its execution of this consent.

Developer and each Unit Owner acknowledges and agrees that the Fee Owner shall not be liable for the actual, special, incidental, or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence, or any other legal theory with respect to the terms and provisions of the Bylaws, the Project, or any acts or omissions of Developer. Developer, on behalf of itself and its successors and assigns, and each Unit Owner, on behalf of itself and its family members, tenants, invitees, licensees, and mortgagees, hereby release the Fee Owner and its trustees, officers, directors, partners, affiliates, subsidiaries, successors in trust, and assigns from and against any and all claims, actions, damages, causes of action, liabilities, and expenses (including, without limitation, attorneys' fees and costs of enforcing this release) for any damages, costs, expenses, or losses whatsoever, relating to the terms and provisions of the Bylaws, the Project, or any acts or omissions of Developer.

Capitalized terms used herein shall have the meaning set forth in the Declaration.

This instrument has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

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IN WITNESS WHEREOF, the undersigned have executed this Fee Owner Consent as of the 15th day of November, 2022.

Approved as to Content, Authority, and Compliance with KS Policy:

Melanie Hara

Manager

Vice President/Director

Approved as to Form:

Legal Group

Retained Counsel Cades Schutte LLP

TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, AS AFORESAID

By

Name: MALIA S.L. DAY, Senior Counsel

Their Attorney-in-Fact

By

Name: KAREN M. WINTER, Senior Counsel

Their Attorney-in-Fact

STATE OF HAWAI'I)
) SS.
CITY AND COUNTY OF HONOLULU)

On NOV 1 5 2022 before me personally appeared MALIA S.L. DAY, Senior Counsel and KAREN M. WINTER, Senior Counsel, to me personally known, who being by me duly sworn, did say that they are two of the attorneys-in-fact for LANCE KEAWE WILHELM, ELLIOT K. MILLS, ROBERT K. W. H. NOBRIGA, CRYSTAL KAUILANI ROSE, and JENNIFER NOELANI GOODYEAR-KA'ŌPUA, as Trustees of the Estate of Bernice Pauahi Bishop, duly appointed under Limited Power of Attorney effective as of April 25, 2022, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-81670460, and in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. T-11819168, and that the foregoing instrument was executed in the name and on behalf of LANCE KEAWE WILHELM, ELLIOT K. MILLS, ROBERT K. W. H. NOBRIGA, CRYSTAL KAUILANI ROSE, and JENNIFER NOELANI GOODYEAR-KA'ŌPUA, as Trustees of the Estate of Bernice Pauahi Bishop, by such persons in their capacities as attorneys-in-fact; and they acknowledged the instrument to be the free act and deed of the Trustees of the Estate of Bernice Pauahi Bishop, as aforesaid.

CHANTAL CRUZ NOTARY 21-74 PUBLIC STATE OF HAWAII

(Official Stamp or Seal)

Print Name: Chantal Cruz
Notary Public, in and for said State

My commission expires: AUG 0 8 2025

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: FEE OWNER CONSENT TO BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF ĀLIA AT 888 ALA MOANA

Document Date: NOV 1 5 2022 or Undated at time of notarization.

No. of Pages: 44 Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

NOV 1 5 2022
Date of Notarization and Certification Statement

CHANTAL CRUZ NOTARY 21-74 PUBLIC STATE OF HAWAII

(Official Stamp or Seal)

CHANTAL CRUZ
Printed Name of Notary

My Commission Expires: AUG 0 8 2025