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Total No. of Pages: 48

**THIRD RESTATEMENT OF BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF  
LAE NANI, INC.**

WHEREAS, LAE NANI, a Hawaii registered general partnership composed of VENTURA INVESTMENTS, LTD., a Hawaii corporation, VENTURA DEVELOPMENT CORP., a Hawaii corporation, and SBS BUILDING CORPORATION, a Louisiana corporation, the principal place of business and post office addresses of which are 412 Amfac Building, 700 Bishop Street, Honolulu, Hawaii, and 120 Exchange Place, Lafayette, Louisiana, respectively, hereinafter called "**Owner**", owned in fee simple all that certain real property containing an area of 4.60 acres, more or less, designated Fourth Division, Tax Map Key 4-3-2-10, and more particularly described in **Exhibit "A"** attached hereto and incorporated by reference herein; and

WHEREAS, Owner developed said property by constructing condominium units and other improvements thereon and recorded the plans and specifications of the apartment buildings in the Bureau of Conveyances of the State of Hawaii as Condominium Map No. 530 (hereinafter called the "**Condominium Map**"), incorporated by reference herein; and

WHEREAS, in order to create a condominium project consisting of said land and improvement (herein called the "**Project**") to be known as the LAE NANI, the Owner submitted the Project to a Horizontal Property Regime (now Condominium Property Regime)<sup>1</sup>, by a Declaration of Horizontal Property Regime recorded in the Bureau of Conveyances of the State of Hawaii on January 27, 1978 in Liber 12692 at Page 291 ("**Original Declaration**"), pursuant to the provisions of the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes, as amended (now known as Chapter 514B, Hawaii Revised Statutes), and

WHEREAS, the Original Declaration imposed divisions, limitations, restrictions, covenants and conditions on the Project and confirmed that it is to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions stated in the Original Declaration (as amended and restated), as the same may from time to time be amended in accordance with law, which declarations, restrictions and conditions shall constitute covenants running with the land and shall be binding on and for the benefit of the parties hereto, their successors and assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, heirs, executors, administrators and assigns.

WHEREAS, the Original Declaration was amended by (i) that certain Amendment of the Declaration of Horizontal Property Regime of Lae Nani dated December 6, 1980, recorded as aforesaid on February 9, 1981 in Liber 15341 at Page 424; (ii) that certain Amendment to Declaration of Horizontal Property Regime of Lae Nani dated June 2, 1984, recorded as aforesaid on June 12, 1984 in Liber 17937 at Page 181; (iii) that certain Amendment of the Declaration of Horizontal Property Regime and By-Laws of Lae Nani, recorded as aforesaid on May 31, 1985 in Liber 18681 at Page 354; (iv) that certain Amendment of the Declaration of Horizontal Property Regime and By-Laws of Lae Nani dated January 18, 1988, recorded as aforesaid on February 5, 1988 in Liber 21609 at Page 725; (v) that certain Amendment of the Declaration of Horizontal Property Regime of Lae Nani dated December 27, 1992, recorded as aforesaid on January 22, 1993 as Document No. 93-011049; and (vi) that certain Amendment of the Declaration of Horizontal Property Regime of Lae Nani dated June 9, 1993, recorded as aforesaid on June 29, 1993 as Document No. 93-104374; and restated by that certain Restated Declaration of Condominium Property Regime of Lae Nani dated October 13, 1994, recorded as aforesaid on October 28, 1994 as Document No. 94-177223, and was further amended by (vii) that certain Amendment of Restated Declaration of Condominium Property Regime of Lae Nani and Restated By-Laws of Association of Apartment Owners of Lae Nani, Inc., dated February 6, 1997, recorded as aforesaid on February 13, 1997 as Document No. 97-020482; (viii) that certain Amendment of Restated Declaration of Condominium Property Regime of Lae Nani and Restated By-Laws of Association of Apartment Owners of Lae Nani, Inc., dated April 9, 1999, recorded as aforesaid on April 20, 1999 as Document No. 99-060618; and (ix) that certain Amendment of Restated Declaration of Condominium Property Regime of Lae Nani and Restated By-Laws of Association of Apartment Owners of Lae Nani, Inc., dated November 15, 2002, recorded as aforesaid on November 26, 2002 as Document No. 2002-211344; and (x) that certain "Amendment and Restatement of Declaration of Condominium Property Regime of Lae Nani" dated February 26, 2003 (the "**Second Restated Declaration**"), recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2003-050477; and

WHEREAS, the By-Laws (hereinafter called the "**By-Laws**"), which were attached to the Original Declaration as Exhibit B and recorded simultaneously therewith, were restated by instrument dated October 13, 1994, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 94-177224, and by Amendment and Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc., dated February 26, 2003 (the "**Second Restated By-Laws**"), recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2003-050478; and

WHEREAS, the Second Restated Declaration and Second Restated By-Laws were amended by that certain Second Amendment to the Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc., dated March 19, 2008, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2008-071177, and by that certain Amendment to Restatement of Declaration of Condominium Property Regime of Lae Nani and Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc., dated April 24, 2014, recorded as aforesaid on May 5, 2014, as Document No. A-52380586; and

WHEREAS, the Second Restated Declaration was further amended by that certain First Amendment to Restated Declaration of Condominium Property Regime of Lae Nani, dated December 4, 2008, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2008-186334; and

WHEREAS, the Second Restated Declaration, as amended and restated, provided for the organization and operation of the ASSOCIATION OF APARTMENT OWNERS OF LAE NANI (the "**Association**") to operate and manage the Project in accordance with the By-Laws; and

WHEREAS, the Association was incorporated on December 11, 1992 under Chapter 415B, Hawai'i Revised Statutes, as the Association of Apartment Owners of Lae Nani, Inc.; and

WHEREAS, Section 514B-109, Hawaii Revised Statutes, authorizes boards of directors of condominium associations to restate their by-laws to include in them any amendments and to conform their provisions to the provisions of Chapter 514B, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by such boards; and

WHEREAS, at a duly held meeting on April 23, 2015, the Board of Directors of the Association of Owners of Lae Nani, Inc. (hereinafter called the "**Board of Directors**" or the "**Board**") resolved to restate the Second Restated By-Laws, as amended, pursuant to Section 514B-109, Hawaii Revised Statutes, in the manner stated herein;

NOW, THEREFORE, the Second Restated By-Laws, as amended, are hereby restated to read as follows:

The following By-Laws shall apply to the condominium project known as LAE NANI (herein called the "**Project**"), located at 410 Papaloa Road, Kapaa, Kauai, Hawaii 96746, as described in and created by said Declaration, and to all present and future owners, tenants and occupants of any units of the Project and all other persons who shall at any time use the Project:

## ARTICLE I

### MEMBERSHIP

Section 1. Qualification. All owners of units of the Project shall constitute the Association of Apartment Owners (herein called the “**Association**”). The owner of any unit acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such unit ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 2. Place of Meetings. Meetings of the Association shall be held at the address of the Project or such other suitable place within the State of Hawaii convenient to the unit owners as may be designated by the Board of Directors, provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State.<sup>2</sup>

Section 3. Annual Meetings. The first annual meeting of the Association was held not later than one hundred eighty (180) days after a certificate of occupancy for the Project was issued by the appropriate county agency. At such meeting, the owners elected a Board of Directors. The Board of Directors shall be elected by ballot of the owners in accordance with the requirements of these By-Laws. Thereafter, the annual meetings of the Association shall be held as determined by the Board of Directors, at least once per year.<sup>3</sup>

Section 4. Special Meeting. Special meetings of the Association may be held at any time upon the call of the President or of a majority of the Board, or upon a petition signed by at least twenty-five percent (25%) of the common interests and presented to the Secretary or Managing Agent. Upon receipt of such petition, the Secretary or Managing Agent shall send out notices of the meeting to all members of the Association. The meeting shall be held at any reasonable time within sixty (60) days of the receipt of such petition by the Secretary or Managing Agent. If the Secretary or Managing Agent fails to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the Association’s expense in accordance with the requirements of these By-Laws and Chapter 514B of the Hawaii Revised Statutes, as amended.<sup>4</sup>

Section 5. Notice of Meeting. The Secretary shall give written or printed notice of each annual and special meeting to every unit owner according to the Association’s record of ownership, at least sixty (60) days before the date set for the annual meeting and thirty (30) days before the special meeting (except as stated in Section 4, above), stating whether it is an annual or special meeting, the authority for the call thereof, the date, time and place of such meeting, the items on the agenda (including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws; provided that a unit owner shall be permitted to propose an amendment to the Declaration or Bylaws or to remove a member of the Board at any annual Association meeting),<sup>5</sup> in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his unit in the Project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association’s record of ownership, or (d) at the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.<sup>6</sup> A standard proxy form authorized by the Association, if any, shall be included with each such notice.<sup>7</sup> If notice is given pursuant to the provisions of this section, the failure of any unit owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any unit owner in person or by proxy at any meeting shall

be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof. Each owner shall keep the Board informed of any changes in address.

In the event the holder of any duly recorded Mortgage or Deed of Trust from any unit owner requests in writing for notice of meetings or other notices permitted or required to be given to said unit whose interest is subject to said Mortgage or Deed of Trust, the Secretary shall forward said notices to them.

A proxy form which accompanies a notice of meeting shall be valid for the meeting which the notice pertains and its adjournment only.

Section 6. Waiver of Notice. The presence of all the members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall, at the opening of such meeting, object to the holding of the same for noncompliance with the provisions of Section 5 of this Article I. Any meeting so held without objection shall, notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, be valid for any purposes, and at such meeting any general business may be transacted and any action may be taken.

Section 7. Quorum. The presence at any meeting in person or by proxy of a majority of unit owners shall constitute a quorum, and the acts of a majority of the unit owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "**majority of unit owners**" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration, and any other specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests.

Section 8. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each unit is entitled shall be the percentage of the common interests assigned to such unit in the Declaration. Votes may be cast in person or by proxy by the respective unit owners as shown in the record of ownership of the Association. An executor, administrator, 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 in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such unit in such capacity. 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, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership, in such unit.

Section 9. Proxies and Pledges. The authority given by any unit owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary or Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains and must contain at least: the name of the Association, the date of the meeting, the printed names and signatures of the person or persons giving the proxy, the unit or units for which the proxy is given, the printed name of

the person or entity to whom the proxy is given, and the date that the proxy is given; and contain boxes wherein the owner has indicated that the proxy is given: (a) for quorum purposes only; (b) to the individual whose name is printed on a line next to this box; (c) to the Board of Directors 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 and the vote to be shared with each Board member receiving an equal percentage.<sup>8</sup> Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of a majority of the Board.<sup>9</sup> Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any unit or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. Whenever any such interest is owned by two (2) or more persons, natural or legal, jointly, according to the records of said Office of the Assistant Registrar, the vote therefor may be exercised by any one of the owners present in the absence of protest by the other or others.

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 unit owner indicates. No proxy shall be irrevocable unless coupled with a financial interest in the unit;<sup>10</sup> provided that nothing in this section shall effect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.<sup>11</sup>

All official proxy forms authorized by the Board for use at any annual meeting or its adjournments shall contain a box wherein the owner may indicate that the owner wishes to obtain either a summary of the annual audit report or an unabridged copy of the annual audit report as required by Article III, Section 8 of these By-Laws.<sup>12</sup>

Proxies may be given to the Board; provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each Board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of a majority of the Board.

No officer or member of the Board shall use Association funds to solicit proxies except for the distribution of proxies as set forth below;<sup>13</sup> provided that this shall not prevent an individual member of the Board from exercising his right as an owner under the following provisions of this section.<sup>14</sup>

No resident manager or Managing Agent employed by the Association shall solicit, for use by such resident manager or Managing Agent, any proxies from any owner, nor shall any resident manager or Managing Agent employed by the Association cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Any Board of Directors that intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 514B-123(d)(3), Hawaii Revised Statutes, shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days prior to its distribution of proxies;<sup>15</sup> provided that if the Board receives within seven (7) days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board 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 shall not exceed one single-sided 8½" x 11" page, indicating the owner's qualifications to serve on the Board and reasons for wanting to receive proxies.<sup>16</sup>

A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.<sup>17</sup>

Section 10. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the unit owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 11. Order of Business. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order for the conduct of meetings.<sup>18</sup> The order of business at all meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of Board of Directors.
- (f) Report of committees.
- (g) Election of inspectors of election.
- (h) Election of directors.
- (i) Unfinished business.
- (j) New business.

Section 12. Minutes of Meeting. Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) days after the meeting, if authorized by the owners at an annual meeting. If 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) days after approval. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting. An owner shall be allowed to offer corrections to the minutes at an Association meeting.<sup>19</sup>

Section 13. Membership List. The resident manager, the Managing Agent of the Project or the Board shall keep an accurate and current list of the names and addresses of the members of the Association and the names and addresses of any vendees of a unit under an agreement of sale. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association or, in any case, to any member who furnishes to the resident manager, the Managing Agent or the Board, a duly executed and acknowledged affidavit stating that the list (1) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters, and (2) shall not be used by such owner or furnished to anyone else for any other purpose. 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 unit owners; provided that a Board may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board may prohibit commercial solicitations.<sup>20</sup>

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Number and Qualifications. Except as provided in Section 3 of this Article II, the affairs of the Association shall be governed by a Board of Directors composed of seven (7) persons. Every meeting of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order for the conduct of meetings.<sup>21</sup> All members of the Board shall be owners, co-owners, vendees under an agreement of sale, a trustee 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.<sup>22</sup> No more than one (1) representative from any one (1) unit shall serve on the Board.<sup>23</sup> No resident manager of the condominium shall serve on the Board of Directors. The directors shall serve without compensation, except that a person appointed to serve as an Ex-Officio Director as provided in Section 3 of this Article II may receive reasonable compensation for such service as determined by the Board.<sup>24</sup>

Section 2. Powers and Duties. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these By-Laws directed to be exercised or done only by the unit owners. Each director shall owe the Association a fiduciary duty in the performance of such director's responsibilities.<sup>25</sup>

Section 3. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and any special meeting called for that purpose, provided that no secret ballot shall be necessary and voting can proceed by acclamation if there are the same numbers of candidates as there are vacant seats on the board.<sup>26</sup> Directors shall hold



office for a period of three (3) years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting following the effective date of this amendment, two (2) directors shall be elected for three (3) years and two (2) for two (2) years, with the candidates receiving the most votes being elected to the longer terms. Each member of the Board of Directors shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Association in case of delay in the election of a successor. During all times that the Association is incorporated as a nonprofit corporation under the laws of the State of Hawaii and the laws of the State of Hawaii require that at least one (1) director of such a corporation shall be a resident of the State of Hawaii and no such resident is elected as a director as provided herein, there shall be deemed to be a vacancy on the Board and the Board of Directors shall appoint such a person as an Ex-Officio Director in the manner provided hereinbelow to serve until the next annual meeting of the Association or until a resident of the State of Hawaii shall be elected or appointed as a director, whichever shall first occur. Notwithstanding anything herein: (a) if the effective date of this amendment shall be after the 1998 annual meeting of the Association, the directors elected at that meeting shall be deemed to have been elected in accordance herewith, and (b) except as provided in part (a) of this sentence, nothing herein shall affect the length of the term of any director serving as of the effective date hereof.<sup>27</sup>

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall serve (unless removed) as a director for the remainder of the term of the member whose vacancy he fills. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than ten (10) months, or his ceasing to be the sole owner or co-owner of a unit, or ceasing to be a vendee under an agreement of sale, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one (1) or more of the directors may be removed with or without cause by vote of a majority of unit owners and a successor shall then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the unit owners shall be given an opportunity to be heard at such meeting.

If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the owners as shown in the Association's record of ownership; and provided further that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting at the Association's expense in accordance with the requirements of these By-Laws and Chapter 514B of the Hawaii Revised Statutes.<sup>28</sup> Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with these By-Laws.<sup>29</sup>

Notwithstanding the foregoing or any other provision of these By-Laws, any Ex-Officio Director appointed by the Board of Directors pursuant to Section 3 of this Article II may be removed, with or without cause, and a successor appointed by the vote of a majority of the Board (not including such director).<sup>30</sup>

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one (1) such meeting shall be held during each calendar half<sup>31</sup> of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or by e-mail, at least fourteen (14) days prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least seven (7) days' notice to each director, given personally, in writing, by telephone, or by e-mail, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors. At the discretion of the President, such meetings may be held by telephonic conference call or by any computerized equipment that would allow all participants to be heard simultaneously. Participation by this means shall constitute presence in person at a meeting. Notice of Special meetings of the Board shall be given to all members of the Association as required by Section 18 of this Article, 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.<sup>32</sup>

Section 9. Executive Session. The Board, with approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters: (1) concerning personnel; (2) concerning litigation in which the Association is or may become involved; (3) necessary to protect the attorney-client privilege of the Association; or (4) 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.<sup>33</sup>

Section 10. Attendance of Meetings by Members. 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.<sup>34</sup>

Section 11. Minutes of Meetings. Minutes of meetings of the Board and the Association shall include the recorded vote of each Board member on all motions, except motions voted on in executive session. Minutes of meetings of the Board of Directors and Association of apartment owners shall be approved at the next succeeding meeting; provided that

for Board of Directors meetings, no later than the second succeeding meeting. Minutes of all meetings shall be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.<sup>35</sup>

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him 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 13. Quorum of Board. At all meetings of the Board of Directors four (4) directors other than any Ex-Officio Director appointed by the Board pursuant to Section 3 of this Article II shall constitute a quorum for the transaction of business, and the acts of a majority of the directors other than any such Ex-Officio Director present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.<sup>36</sup>

Section 14. Fidelity Bonds; Registration.

(a) The Board of Directors shall secure annually a fidelity bond as required by Section 514B-143(a)(3), Hawaii Revised Statutes, to cover all directors, officers, employees and agents of the Association handling or responsible for its funds.<sup>37</sup> The premiums on such bonds shall be paid by the Association. In addition, the Board of Directors shall obtain directors and officers liability coverage at a level deemed reasonable by the Board of Directors.<sup>38</sup>

(b) The Board of Directors shall register the Association with the Hawaii Real Estate Commission annually as required by Section 514B-103, Hawaii Revised Statutes.<sup>39</sup>

Section 15. Liability and Indemnity of the Board of Directors. The directors shall not be liable to the owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall indemnify each director against all costs, expenses and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of any past or future actions taken or authorized or approved by him or any omission to act as such director, whether or not he continues to be such director at the time of the incurring or imposition of such costs; except for costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such director. As to whether or not a director was liable by reason of gross negligence or willful misconduct toward the Association in

the performance of his duties as such director in the absence of such final adjudication of the existence of such liability, the Board of Directors and each director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of any other rights to which any such director 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 such director.<sup>40</sup>

Section 16. Voting. A director shall not cast any proxy vote at any Board meeting, nor vote at any Board meeting on any issue in which he has a conflict of interest as such terms are used in Section 514B-125,<sup>41</sup> Hawaii Revised Statutes, as amended. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.<sup>42</sup>

Section 17. Reimbursement. No member of the Board shall expend Association funds for their travel, directors' fees or per diem, unless the owners are informed and a majority approve of these expenses.<sup>43</sup> 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 may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the state, all other travel expenses incurred under this subsection shall be subject to the requirements of Section 514B-107(d), Hawaii Revised Statutes.<sup>44</sup>

Section 18. Posting of Notice. Whenever practicable, notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors.<sup>45</sup>

Section 19. Documents to be Given to Directors. The Association at its own expense shall provide all Board members with a current copy of the Declaration, these By-Laws, and the house rules, and, annually, a copy of Chapter 514B, Hawaii Revised Statutes, with amendments.<sup>46</sup>

### ARTICLE III

#### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by and in the case of the President, from the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board. No officer shall be eligible for more than two (2) consecutive terms in the same

office.<sup>47</sup>

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

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

Section 5. Vice-President. The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. He shall also have such other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors wherein resolutions shall be recorded, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all units, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary.<sup>48</sup> These duties may be assigned by the Board to the Managing Agent.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. These duties may be assigned by the Board to the Managing Agent.

Section 8. Auditor.

(a) The Association shall appoint annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any unit, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors, and to conduct no less than one (1) yearly unannounced verification of the Association's cash balance.<sup>49</sup>

(b) The Board shall make available a copy of the annual audit to each owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year; provided, however, that the Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to an owner if the owner did not mark the box on an annual meeting proxy sent by the Association to the owner indicating that the owner wishes to obtain such a summary or report. If the annual audit has not been completed by that date, the Board shall make available:

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

(2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.<sup>50</sup>

Section 9. Officers Shall Not Be Employees of the Managing Agent. No unit owner who is an employee of the Managing Agent shall serve as an officer of the Association.<sup>51</sup>

Section 10. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

#### ARTICLE IV

##### ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the Project and have such powers and duties as may be necessary or proper therefor including without limitation the following:

- (a) Supervision of its immediate management and operation;
- (b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;
- (c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements;
- (d) Provision at each unit of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such unit or as a common expense as determined by the Board;
- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project;
- (f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year, subject to the requirements of Paragraph Q of the Declaration and Section 514B-148, Hawaii Revised Statutes, as amended and restated;<sup>52</sup>
- (g) Determination and collection of common charges and all installments of assessments levied and payment of all common expenses authorized by the Board;<sup>53</sup>
- (h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the Declaration and Section 514B-143, Hawaii Revised

Statutes, and such other insurance and bonds as may be required or authorized by the Declaration or the Board;<sup>54</sup>

(i) Custody and control of all funds of the Association (subject to the requirements of Section 514B-149, Hawaii Revised Statutes, as amended), maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;<sup>55</sup>

(j) Notification of all persons having any interest in any unit according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such unit;

(k) Establish such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By-Laws and the house rules adopted pursuant to Article V, Section 5, of these By-Laws; provided such penalties and fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such penalties and fines against any unit owner shall constitute a lien against his interest in his unit which may be foreclosed by the Board or Managing Agent in the same manner as provided in the Condominium<sup>56</sup> Property Act for common expenses; and

(l) Notwithstanding anything to the contrary contained in these By-Laws:

(1) The Board of Directors shall have the authority, on behalf of the Association, to borrow such funds, from one (1) or more financial institutions, as it deems appropriate or necessary to purchase Unit 621 and shall be further empowered to do all other things and sign all documents incidental to the purchase of Unit 621 and/or the procurement of such a loan.

(2) If the Board of Directors purchases Unit 621, the Association shall be liable for the common expenses assessed against the unit and the common interest appurtenant to each owner's unit shall not be altered on account of such purchase.

(3) The Board of Directors is authorized to purchase Unit 621 on behalf of all unit owners, for use by the resident manager, if any, or any other use deemed appropriate by the Board of Directors, and to thereafter sell, lease, mortgage, vote the common interest appurtenant thereto, and otherwise deal with such unit.<sup>57</sup>

(4) The Board of Directors may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation or administration of the common elements and personal property of the Project, or the making of any additions, alterations and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees and other expenses payable with respect to such borrowing, shall be a common expense of the Project; provided that owners representing fifty percent (50%) of the common interest vote or give written consent to such borrowing, having been first notified of the purpose and use of the funds.<sup>58</sup>

## Section 2. Association Funds; Handling and Disbursement.

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, if any, nor shall the Managing Agent, if any, commingle any Association funds with the Managing Agent's own funds.<sup>59</sup>

(b) All funds collected by the Association or by the Managing Agent for the Association, shall be:

(1) Deposited in a financial institution, including a federal or community credit union, located in the State of Hawaii and whose deposits are insured by an agency of the United States government;

(2) Held by a corporation authorized to do business under Article 8 of Chapter 412 of the Hawaii Revised Statutes, as amended;

(3) Held by the United States Treasury;

(4) Purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State of Hawaii, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; or

(5) Placed through a federally insured financial institution located in the State of Hawaii for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured institutions located in the United States.

All funds collected by the Association or the by Managing Agent shall be invested only in:

(1) Demand deposits, investment certificates, and certificates of deposit;

(2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the Association or by written consent of a majority of the unit owners;

(3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the Association or by written consent of a majority of the unit owners; or



(4) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository.

Notwithstanding anything herein to the contrary, before any investment longer than one (1) year is made by the Association, the Board must approve the action. In addition, the Board must clearly disclose to unit owners all investments longer than one (1) year at each year's Association annual meeting.<sup>60</sup>

(c) The Managing Agent or the Board shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.<sup>61</sup>

(d) The Managing Agent shall keep and disburse funds collected on behalf of the unit owners in strict compliance with any agreement made with the unit owners, Chapter 467 of the Hawaii Revised Statutes, as amended, the rules of the Hawaii Real Estate Commission (the "**Real Estate Commission**"), and all other applicable laws.<sup>62</sup>

(e) Any person who embezzles or knowingly misapplies Association funds received by the Managing Agent or Association shall be guilty of a class C felony.<sup>63</sup>

Section 3. Managing Agent. The Board of Directors shall annually employ a responsible Hawaii corporation as Managing Agent to manage and control the Project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish, subject to prior approval of every such employment contract by a majority of unit owners.

Section 4. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two (2) or more unit owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one unit, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any unit owners individually to appear, sue or be sued. Service of process on two (2) or more unit owners in any such action, suit or proceeding may be made on the President or Managing Agent. Every Managing Agent shall also be the agent of the respective owners under any unit leases filed with the Board for the collection, custody and payment of all taxes, assessments and other charges thereunder payable.

Section 5. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-president and by the Treasurer or Secretary.

Section 6. Insurance. The Association is responsible for providing insurance coverages, including such deductibles, co-insurance, and self-insurance amounts as the Board deems reasonable and prudent in its sole discretion and sound business judgment, for property

and improvements installed in accordance with the original plans and specifications for Lae Nani, including, but not limited to: fixtures, such as light fixtures, window treatments, installed cabinets, counter tops and bathroom fixtures; appliances, such as ranges, refrigerators, ovens, microwaves, and washers and dryers; and floor and wall coverings, such as carpets, vinyl, tile and wood floors, paint and wallpaper.<sup>64</sup>

The Association shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration. Exterior glass may be insured at the option of the Association. The insurance coverage shall be written on the property in the name of the Association. Premiums shall be common expenses. Provision for the insurance shall be without prejudice to the right of each unit owner to insure the owner's own unit for the owner's benefit.<sup>65</sup>

The Association shall purchase and maintain directors' and officers' liability insurance with minimum coverages in such amount as shall be determined by the Board, and premiums shall be common expenses.<sup>66</sup> The Association may also procure insurance against such additional risks as the Association may deem advisable for the protection of the owners of a character normally carried with respect to properties of comparable character and use.<sup>67</sup>

Section 7. Annual Operating Budget.

(a) The Board shall prepare and adopt an annual operating budget and distribute it to the owners. At a minimum, the budget shall include the following:<sup>68</sup>

- (1) The estimated revenues and operating expenses of the Association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the property based upon a reserve study performed by the Association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the Association must

collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).<sup>69</sup>

(b) The Association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year reserves, as determined by the Association's plan.<sup>70</sup>

(c) The estimated replacement reserves shall be computed by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required by law for each part of the property. The estimated replacement reserves shall include:

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

(2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed Ten Thousand and No/100 Dollars (\$10,000.00). Parts of the property for which capital expenditures or major maintenance will not exceed Ten Thousand and No/100 Dollars (\$10,000.00) may be aggregated in a single designated reserve.

(d) Neither the Association nor any unit owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.<sup>71</sup>

(e) Except in emergency situations or with the approval of a majority of the unit owners, 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. Prior to the imposition or collection of an assessment under this paragraph that has not been approved by a majority of the unit owners, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the owners with the notice of assessment.<sup>72</sup>

(f) The requirements of this section shall override any requirements in the Declaration, these By-Laws, or any other Association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

(1) any requirements in the Declaration, these By-Laws, or any other Association documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

(2) any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.<sup>73</sup>

(g) Subject to the procedures of Section 514B-157, Hawaii Revised Statutes, and any rules adopted by the Real Estate Commission, any unit owner may enforce compliance with any provision hereof by the Board. In any proceeding to enforce compliance, the Board shall have the burden of proving it has complied with this Section 7 if it has not prepared an annual operating budget and reserve study.<sup>74</sup>

(h) As used herein:

**“Capital expenditure”** means an expense which results from the purchase or replacement of an asset whose life is greater than one (1) year, or the addition of an asset which extends the life of an existing asset for a period greater than one (1) year.

**“Emergency situation”** means any of the following:

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain any part of the property for which the Association is responsible where a threat to personal safety on the property is discovered;

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

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

(5) An extraordinary expense necessary for the Association to obtain adequate insurance for the property which the Association must insure.<sup>75</sup>

**“Major maintenance”** means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one (1) year.

**“Replacement reserves”** means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain.<sup>76</sup>

Section 8. Selling or Renting Units. The Association’s employees shall not engage in selling or renting units in the condominium in which they are employed except Association-owned units, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the membership.<sup>77</sup>

ARTICLE V

OBLIGATIONS OF UNIT OWNERS

Section 1. Assessments.

(a) All unit owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective units for common expenses of the Project in accordance with the Declaration and also, with respect to any lease of any unit filed with the Board of Directors, a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all taxes, assessments and other charges thereunder payable by the owner of such unit, unless such sums are required to be paid and accumulated by the mortgagee under any mortgage of such unit lease filed with the Board.

(b) No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.<sup>78</sup>

(c) No owner shall withhold any assessment levied 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;

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

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

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

(7) An owner who pays the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If an owner and the Association are unable to resolve the dispute through mediation,

either party may file for arbitration under Section 514B-162, Hawaii Revised Statutes, as amended,<sup>79</sup> provided that an owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the owner pays all Association assessments within thirty (30) days of the date of suspension, the owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the thirty (30) day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The owner shall be entitled to a refund of any amounts paid to the Association which are not owed.<sup>80</sup>

(d) The Board or Managing Agent shall notify the unit owners in writing of maintenance fee increases thirty (30) days prior to such an increase.<sup>81</sup>

## Section 2. Priority of Lien.

(a) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any unit constitute a lien on the unit prior to all other liens, except:

(1) Liens for taxes and assessments lawfully imposed by governmental authority against the unit; and

(2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the Association, except as provided in Section 514B-146(g), Hawaii Revised Statutes, as amended,<sup>82</sup> and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the Association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667 of the Hawaii Revised Statutes, by the Managing Agent or Board, acting on behalf of the Association, in like manner as a mortgage of real property. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit, if so provided in these By-Laws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The Managing Agent or Board of Directors, acting on behalf of the Association, unless prohibited by the Declaration, may bid on the unit at the foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.<sup>83</sup>

(b) Except as provided in Section 514B-146(g),<sup>84</sup> Hawaii Revised Statutes, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to the unit which became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of

record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

- (1) Thirty-six (36) days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty (60) days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty (30) days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to Chapter 667, Hawaii Revised Statutes; or<sup>85</sup>
- (4) Upon the recording of the deed,

whichever occurs first.<sup>86</sup>

(c) In conjunction with<sup>87</sup> or as an alternative to foreclosure proceedings under subsection (a) of this Section 2, where a unit is owner-occupied, the Association may authorize its Managing Agent or Board to, after sixty (60) days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments. Before the Board or Managing Agent may take such actions, the Board must approve a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the Association or by the written consent of a majority of the unit owners.<sup>88</sup>

(d) In a voluntary conveyance the grantee of a unit is jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee is entitled to a statement from the Managing Agent or Board of Directors setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty (30) day period immediately preceding the date of such statement, the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.<sup>89</sup>

Section 3. Maintenance of Units. (a) Every unit owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his unit, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, lights and all other fixtures and accessories belonging to such unit and the interior decorated or finished surfaces of all walls, floors and ceiling of such unit, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the

Managing Agent. Every unit owner and occupant shall 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 thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

(b) Notwithstanding anything in the Declaration or these By-Laws, every unit owner shall be responsible for cleaning and maintaining the perimeter and lanai windows and glass doors belonging to such owner's unit (other than replacing broken glass and mounting hardware), and if such owner shall fail to do so after reasonable notice to perform, shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent.<sup>90</sup>

#### Section 4. Use of Project.

(a) Subject to the following sentence with respect to Unit 621, the units of the Project shall be used only for residential purposes and for no other purpose, provided that no unit shall be leased for a period of less than three (3) consecutive nights.<sup>91</sup> Notwithstanding the foregoing, as long as Unit 621 is owned by the Association, Unit 621 may be rented, leased or used for any residential or business purpose determined by the Board to be in the best interest of the Association.<sup>92</sup>

(b) All common elements of the Project shall be used only for their respective purposes as designed.

(c) No unit owner or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(d) Every unit owner and occupant shall at all times keep his unit in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Project.

(e) No unit owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his unit or the Project nor alter or remove any furniture, furnishings or equipment of the common elements.

(f) No unit owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any additions or alterations to any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect if so required by the Board and approved by the Board and a majority of unit owners (or such larger percentage required by law or the Declaration) including all owners of units thereby directly affected. No owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of sixty-seven percent (67%) of the owners,<sup>93</sup>



together with the consent of all owners whose units or limited common elements appurtenant thereto are directly affected, being first obtained; provided that non-material structural additions to the common elements, including, without limitation, the installation of solar energy devices or additions to or alterations of a unit made within such unit or within a limited common element appurtenant to and for the exclusive use of the unit shall require approval only by the Board and such percentage, number, or group of owners as may be required by the Declaration or these By-Laws. **“Nonmaterial structural additions to the common elements”**, as used herein, shall mean a structural addition to the common elements which does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the Project, interfere with or deprive any non-consenting owner of the use or enjoyment of any part of the property, or directly affect any non-consenting owner. For purposes of this section, **“solar energy device”** means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it must be installed in place and ready to be made operational in order to qualify as a **“solar energy device”**.<sup>94</sup>

(g) No unit owner shall decorate or landscape any entrance, hallways, planting area or lanai appurtenant to his unit, including without limitation the installation of any tile, carpet, or other floor covering, except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board and in accordance with subsection (p) of this Section 4. Notwithstanding anything herein or elsewhere, the Association shall be solely responsible for maintenance, repair, and replacement of all entry decks, including without limitation any tile, carpet, or other floor coverings.<sup>95</sup>

(h) All occupants shall avoid making noises and using musical instruments, radios, televisions and amplifiers in such manner as may disturb other occupants.

(i) No garments, rugs or other objects shall be hung from the windows or facades of the Project or otherwise displaced in public view.

(j) No rugs or other objects shall be dusted or shaken from the windows or doors of any unit or cleaned by beating or sweeping on any walkways, patios, entries or other exterior part of the Project.

(k) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the disposal facilities provided for such purpose.

(l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the house rules, and subject to reasonable administrative requirements as set forth in the house rules, occupants may keep certified guide dogs, signal dogs, or other animals upon which they depend for assistance, and such animals shall be allowed to walk throughout the common elements while carried or on a leash. This exception shall also apply to certified guide dogs, signal dogs, or other animals depended upon by handicapped guests of occupants.<sup>96</sup>

(m) No unit owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any buildings of the Project or protruding through the walls, windows or roofs thereof.

(n) No unit owner or occupant, without the prior written consent of the Board, shall erect, place or maintain any television or other antennas on the Project visible from any point outside of his unit. The foregoing shall not apply to the extent that such consent is prohibited for a device covered by 47 C.F.R. Section 1.4000 (Over-the-Air Reception Device Rule) as the same may be amended from time to time ("**Covered Device**").

If maintenance of the Project requires temporary removal of a Covered Device, the Board shall provide the unit owner or occupant with ten (10) days' written notice. The unit owner shall be responsible for removing or relocating the Covered Device before maintenance begins and replacing such afterward. If the Covered Device is not removed in the required time, the Board may do so at the unit owner's expense. The Board is not liable for any damage to the Covered Device caused by Board removal and the Board is not responsible for reinstalling the removed Covered Device.

If such Covered Device poses an immediate threat to any unit owner or Association personnel or their property, then the Board has the right to remove the Covered Device. The Board is not liable for any damage to the Covered Device caused by this removal.<sup>97</sup>

(o) Nothing shall be allowed, done or kept in any units or common elements of the Project which would overload or impair the floors, walls, or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(p) Notwithstanding anything in this Article V or elsewhere, unit owners may install tile or carpeting on the lanais appurtenant to their units in accordance with the following procedures:

(i) Upon the request of a unit owner and payment by such owner of an amount sufficient to pay the cost thereof, the Board shall contract for the installation of tile or carpet in accordance with the standard plans and specifications approved by the Board.

(ii) All maintenance (other than routine cleaning), repair, and replacement of lanai floor coverings as may be necessary to prevent damage to the common elements or other units and to preserve the appearance of the Project shall be performed by the Association at the cost of the unit owner, provided that if the Board determines that removal or replacement of the floor covering is required in order to protect the common elements or other units or to preserve the appearance of the Project, the unit owner may elect whether to have the floor covering removed or replaced. If the unit owner elects removal, the floor covering shall be removed at the unit owner's expense and the lanai shall be restored in accordance with the Association's standard specifications for uncovered lanai surfaces at the Association's common expense.

Otherwise, the floor covering shall be replaced at the owner's expense in the same manner as an initial installation. Subject to the foregoing, the Board and/or workers approved by the Board shall be authorized to make any such repairs and/or replacements as it deems necessary and shall have the right to enter such owner's unit in order to make such repairs and/or replacements without thereby being deemed guilty in any manner whatsoever of trespass, and the unit owner shall promptly pay to the Association upon demand all sums expended by the Association for such purpose, which sums shall become a lien upon the unit in the same manner as the lien for unpaid common expenses.

(iii) In the event of any damage, destruction, injury, or diminution in value to any unit, common element, or limited common element of the Project caused by such owner or such owner's tenants, guests, or invitees, including without limitation any such damage or loss caused by such owner's, tenants', guests', or invitees' abuse or neglect with respect to any lanai floor covering or any lanai floor covering installation by any party other than the Association, the Board and/or workers approved by the Board shall be authorized to make any such repairs and/or replacements as it deems necessary to repair any such damage, destruction, injury, or diminution in value so that the affected unit, common element, or limited common element is returned to a condition equivalent to its condition immediately preceding said damage, destruction, injury, or diminution in value, and shall have the right to enter such owner's unit without thereby being deemed guilty in any manner whatsoever of trespass in order to make such repairs and/or replacements. The unit owner shall save, indemnify, and hold harmless the Association, its officers, directors, agents, employees, and members from and against any and all claims whatsoever arising out of or related to such damage, destruction, or diminution in value. The unit owner shall promptly pay to the Association upon demand all sums expended by the Association for such purpose, which sums shall become a lien upon the unit in the same manner as the lien for unpaid common expenses.

(iv) In the event that the removal of the lanai floor covering is required in order for the Association to maintain, repair, or replace any common element or limited common element for any reason not caused by such owner or such owner's tenants, guests, or invitees, the Board and/or workers approved by the Board shall be authorized to remove such lanai floor covering at the Association's common expense and shall have the right to enter such owner's unit in order to make such removal and repairs and/or replacements to the common elements and limited common elements without thereby being deemed guilty in any manner whatsoever of trespass. Following such removal, the unit owner may elect to replace the floor covering at such owner's expense (except that the Association shall pay for the undepreciated value of the removed floor covering and its installation costs) or not to have the floor covering replaced, in which case the lanai shall be restored in accordance with the Association's standard specifications for uncovered lanai surfaces at the Association's common expense.<sup>98</sup>

(q) No smoking of any substance, including but not limited to cigarettes, pipes, and cigars, is permitted on the lanais or within the units. Smoking shall be permitted outdoors, in smoking areas designated by the Board, provided that smokers take precautions to prevent smoke from traveling to units or the enclosed common elements. The Board shall have the authority to adopt or amend house rules and policies pursuant to Article V, Section 5 and

Article VI, Section 1 of these By-Laws to fully implement this provision.<sup>99</sup>

Section 5. House Rules. The Board of Directors, upon giving notice to all unit owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these By-Laws.

Section 6. Expenses of Enforcement.

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

- (1) Collecting any delinquent assessments against any owner's unit;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the Declaration, these By-Laws, the house rules, and the Condominium Property Act; or

(4) The rules and regulations of the Real Estate Commission; against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.

(b) If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, these By-Laws, the house rules, or Chapter 514B, Hawaii Revised Statutes, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

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

If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or the Board of Directors to enforce any provision of the Declaration, these By-Laws, the house rules, or Chapter 514B, Hawaii Revised Statutes, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court or prior to

filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under part VI, subpart D of Chapter 514B, Hawaii Revised Statutes, and made a good faith effort to resolve the dispute under any of those procedures.<sup>100</sup>

Section 7. Record of Ownership. Every unit owner shall promptly cause to be duly recorded or filed of record the deed or other conveyance to him of such unit or other evidence of his title thereto and shall file such deed with and present such other evidence of his title to the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 8. Mortgages. Any unit owner who mortgages his unit or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any unit or interest therein shall report to such person the amount of any assessments against such unit then due and unpaid. The Board of Directors or Managing Agent shall provide any mortgagees listed on the record of ownership of the Association of the unit owner involved, a copy of any notices regarding defaults of any kind provided to such unit owner. Furthermore, notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any unit and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of, the holder of any indebtedness secured by any recorded mortgage under such interests made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such unit if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the manner as provided by law.

(b) No amendment to this Section 8 shall affect the rights of the holder under any such mortgage recorded in the Bureau of Conveyances of the State of Hawaii prior to the filing of such amendment who does not join in the execution thereof.

Section 9. Collection from Tenant. If the owner at any time rents or leases his unit and defaults for a period of thirty (30) days or more in the payments of the owner's share of the common expenses, the Board or its agents may, so long as such default continues, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the owner occupying the unit the rent due or becoming due from such lessee to the owner up to an amount sufficient to pay all sums due from the owner, including interest and costs of enforcement if any; and any such payment of such rent to the Board or its agents by the lessee shall be a full and sufficient discharge of such lessee as between such lessee and the owner to the extent of the amount so paid; but no such demand or acceptance of rent from any lessee shall 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 hereunder remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. If the Board or its agents makes any such demand upon the lessee, the lessee shall not have the right to question the right of the Board or its agents to make such demand, but shall be obligated to make such payments to the

Board or its agents as demanded by the Board or its agents with the effect as aforesaid; provided, that the Board or its agents may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.<sup>101</sup>

## ARTICLE VI

### GENERAL PROVISIONS

Section 1. Rules and Regulations. Each owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations (herein called "**Rules and Regulations**") as the Board may deem necessary for the management and control of the units and the common elements and limited common elements and each owner agrees that his rights under this instrument shall be in all respects subject to the appropriate Rules and Regulations which shall be taken to be a part hereof; and each owner agrees to obey all such Rules and Regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by his invitees, guests, employees, and under-tenants; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the units.

Section 2. Abatement and Enjoinment of Violations by Unit Owners. The violation of any rule or regulation adopted by the Board of Directors, or the breach of any By-Law contained herein or the breach of any provision of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in these By-Laws:

(a) to enter the unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be borne by the defaulting unit owner.

Section 3. Maintenance and Repair of Units. All maintenance of and repairs to any unit (other than maintenance of and repairs to any common elements contained therein, and not necessitated by the negligence, misuse or neglect of the owner of such unit) shall be made by the owner of such unit.

Section 4. Maintenance and Repair of Common Elements. All maintenance, repairs and replacements to the common elements, whether located inside or outside of the units, shall be made by the Board of Directors and be charged to all the owners as a common expense, unless necessitated by the negligence, misuse or neglect of a unit owner, in which case such expense shall be charged to such unit owner.

Section 5. Additions or Alterations by Board of Directors. Whenever in the judgment of the Board of Directors the common elements shall require additions or alterations

costing less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00), the Board of Directors may proceed with such additions or alterations and shall assess all owners for the cost thereof as a common expense. Any additions or alterations costing in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) may be made by the Board of Directors only after obtaining approval of the owners of at least sixty-seven (67%) of the units. If such approval shall be obtained, the cost thereof shall constitute part of the common expenses.<sup>102</sup>

Section 6. Additions or Alterations By Unit Owners. No owner shall make any addition or alteration in or to his unit which may affect the common elements or change the exterior appearance of the buildings, without the prior written consent thereto of the Board of Directors. The Board of Directors shall have the obligation to answer any written request by a unit owner for approval of a proposed addition or alteration in such unit within thirty (30) days after the next regularly scheduled Board of Directors meeting following the Board's receipt of such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed addition or alteration; provided, however, that such consent shall not be deemed or construed to authorize any addition or alteration in violation of the Declaration, these By-Laws, the Condominium Property Act or any other statute, ordinance, rule, or regulation of any governmental authority applicable thereto or to preclude the Association from seeking the removal of any such illegal addition or alteration.<sup>103</sup>

Section 7. Right of Access. The unit owners shall have the irrevocable right, to be exercised by the Board, to have access to each unit from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units.<sup>104</sup>

Section 8. Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a nonprofit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the voting owners. The formation of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect. During all such times that the laws of the State of Hawaii require that at least one director of such a corporation shall be a resident of the State of Hawaii and no such resident is elected as a director as provided in Article II, Section 3 of these By-Laws, there shall be deemed to be a vacancy on the Board and the Board of Directors shall appoint such a person as a director in the manner provided in Article II, Section 3 of these By-Laws.<sup>105</sup>

Section 9. Notices. All notices hereunder shall be sent by registered or certified mail to the Board of Directors care of the Managing Agent, or if there be no Managing Agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all owners and to all mortgagees of units. All notices to any owner shall be sent by registered or certified mail to the building or to such other address as may have been designated by them from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

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

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

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

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

Section 14. Amendment. The provisions of these By-Laws may be amended by the vote or written consent of owners of at least sixty-seven (67%) of the common interests, which amendment shall be effective upon filing in the Bureau of Conveyances of the State of Hawaii, of an instrument in writing, signed and acknowledged by such owners or by the proper officers of the Association; provided, however, each one of the particulars set forth in Section 514B-108(b), Hawaii Revised Statutes, shall always be embodied in these By-Laws.<sup>106</sup>

Section 15. Proposed Amendments. Any proposed by-laws with the rationale for the proposal may be submitted by the Board or by a volunteer owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the owners as shown in the Association's record of ownership. The proposed by-laws, rationale, and ballots for voting on any proposed by-law shall be mailed by the Board to the owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt such a proposed by-law shall be sixty-seven percent (67%)<sup>107</sup> of all owners; provided that the vote or written consent must be obtained within three hundred sixty-five (365) days after mailing for a proposed by-law submitted by either the Board or a volunteer unit owners' committee. In the event that the by-law is duly adopted, then the Board shall cause the by-law amendment to be recorded in the Bureau of Conveyances of the State of Hawaii. The volunteer owners' committee shall be precluded from submitting a petition for a proposed by-law which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board; provided, however, that this provision shall not preclude any owner or voluntary owners' committee from proposing any by-law amendment at any annual Association meeting.<sup>108</sup>

Section 16. Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto, the Condominium<sup>109</sup> Property Act (Chapter 514B<sup>110</sup>, Hawaii Revised Statutes, as amended) and the Hawaii Administrative Rules, Title 16, Chapter 107,<sup>111</sup> which shall control in case of any conflict. All terms herein (except



where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium<sup>112</sup> Property Act.

Section 17. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

Section 18. Examination of Books and Records. Financial statements, general ledgers, the accounts receivable and payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year, and a list of delinquencies of ninety (90) days or more shall be available for examination by owners at convenient hours at a place designated by the Board, provided that: (i) the Board may require such owners to furnish a duly executed and acknowledged affidavit stating that the information is requested in good faith and for the protection of the interests of the Association or its members or both, and (ii) that such owners pay for administrative costs in excess of eight hours per year incurred by the Association with respect to such examination. Copies of these items shall be provided to any owner upon such owner's request, subject to such owner's payment of a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request; provided, however, that the Association's most current financial statement shall be available to any owner at no cost or on twenty-four hour loan at a convenient location designated by the Board.<sup>113</sup>

The minutes of meetings of the Board of Directors and the Association for the current and prior year shall be available for examination by owners at convenient hours at a place designated by the Board. Minutes of meetings shall include the recorded vote of each Board member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request;<sup>114</sup> provided, however, that the Association's most current minutes of the Board of Directors' meetings, once approved, shall be available to any owner at no cost or on twenty-four hour loan, at a convenient location designated by the Board.<sup>115</sup>

Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty (30) days following any Association meeting, provided that: (a) the Board may 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 interests of the Association or its members or both, and (b) that owners pay for administrative costs in excess of eight (8) hours per year.

Proxies and ballots may be destroyed following the thirty (30) day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.<sup>116</sup>

Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.<sup>117</sup>

No unit owner who requests legal or other information from the Association, the Board, the Managing Agent, or their employees or agents, shall be charged for the cost of providing the information unless the Association notifies the unit owner that it intends to charge the unit owner for the cost. The Association shall notify the unit owner in writing at least ten (10) days prior to incurring the cost of providing the information, except that no prior notice shall be required to assess the cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the Association's governing documents.<sup>118</sup>

Section 19. Records; Examination; Disposal.

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

(b) All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board of Directors.

(c) A Managing Agent employed or retained by one (1) or more condominium associations may dispose of the records of any condominium association which are more than five (5) years old without liability if the Managing Agent first provides the Board of Directors of the condominium association affected with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board of Directors within sixty (60) days, which notice shall include an itemized list of the records which the Managing Agent intends to dispose of.

(d) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of the Managing Agent or Association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of the Managing Agent or the Association.<sup>119</sup>

Section 20. Project Documents. An accurate copy of the Declaration, these By-Laws, the house rules, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of those documents pursuant to this Section and Sections 514B-152, 514B-153 and 514B-154, 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.<sup>120</sup> In addition, the Managing Agent, Board or Association shall make available to any unit owner and the owner's authorized agent documents, records, and information pursuant to Section 514B-154.5, Hawaii Revised Statutes.<sup>121</sup>

Section 21. Prohibition of Employment of Officers by Managing Agent. No owner shall act as an officer of the Association and an employee of the Managing Agent at the same time.<sup>122</sup>

Section 22. Exemptions for Handicapped Persons. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the house rules, and subject to reasonable administrative requirements as set forth in the house rules, handicapped residents shall: (1) be permitted to make reasonable modifications to their units and/or the common elements, at their expense (including without limitation the cost of obtaining any bonds required by the Declaration or these By-Laws), if such modifications are necessary to enable them to use and enjoy their units and/or the common elements, as the case may be; and (2) be allowed reasonable exemptions from the Declaration, these By-Laws, and the house rules, when necessary to enable them to use and enjoy their units and/or the common elements.<sup>123</sup>

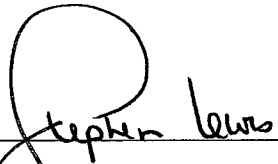
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IN WITNESS WHEREOF, the undersigned have executed this instrument this  
29 day of March, 2016.

ASSOCIATION OF APARTMENT  
OWNERS OF LAE NANI, INC.,  
a Hawaii nonprofit corporation

By Suzanne L. Baird  
(Print Name): SUZANNE L. BAIRD  
Title: President


ASSOCIATION OF APARTMENT  
OWNERS OF LAE NANI, INC.,  
a Hawaii nonprofit corporation


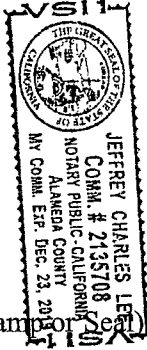
By   
(Print Name): STEPHEN J. LEWIS  
Title: Treasurer

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF ALAMEDA )

On this 29 day of March, 2016, before me personally appeared SUZANNE L. BAIRD, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the President of the Association of Apartment Owners of Lae Nani, Inc., a Hawai'i Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Third Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc.", as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated March 29, 2016 and contained 48 pages at the time of this acknowledgment/certification.

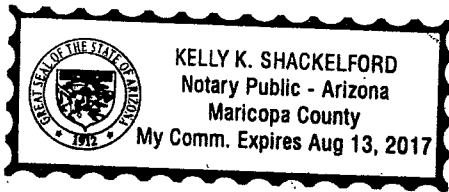
  
\_\_\_\_\_  
Print Name: Jeffrey C. Lee  
Notary Public, State of California  
My Commission Expires: 12/23/2019

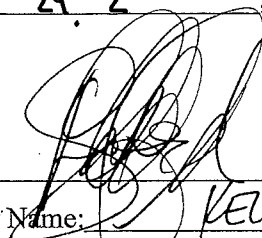
NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Third Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc.</u> (Put title of document, together with Apt. No. and Name of Project)	
Document Date: <u>03/29/2016</u>	
No. of Pages: <u>48</u>	Jurisdiction: State of California, County of Alameda (in which notarial act is performed)
 _____ Signature of Notary	<u>03/29/2016</u> Date of Notarization and Certification Statement
<u>Jeffrey C. Lee</u> Printed Name of Notary	(Official Stamp or Seal) 

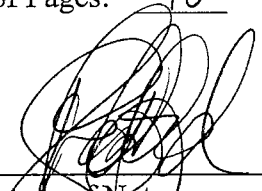
STATE OF ARIZONA )  
 ) ss.:  
COUNTY OF MARICOPA )

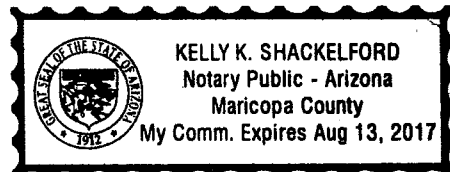
On this 29<sup>th</sup> day of MARCH, 2016, before me personally appeared STEPHEN J. LEWIS, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the Treasurer of the Association of Apartment Owners of Lae Nani, Inc., a Hawai'i Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Third Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc.", as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated MARCH 29 2, 2016 and contained 48 pages at the time of this acknowledgment/certification.



  
Print Name: KELLY SHACKELFORD  
Notary Public, State of Arizona  
My Commission Expires: 8/13/17

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Third Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc.</u> (Put title of document, together with Apt. No. and Name of Project)	
Document Date: <u>3/29/16</u>	
No. of Pages: <u>48</u>	Jurisdiction: State of Arizona, County of Maricopa (in which notarial act is performed)
 Signature of Notary	Date of Notarization and Certification Statement (Official Stamp or Seal)
<u>KELLY SHACKELFORD</u> Printed Name of Notary	



## EXHIBIT "A"

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 5264 to Rufus P. Spalding) situate, lying and being at South Olohena, Puna, District of Kawaihau, Island and County of Kauai, State of Hawaii, being Lot "A", and thus bounded and described:

Beginning at a pipe at the Northeast corner of this Lot, the west boundary of Lot 3 of Land Court Application 1166, and on the south side of Papaloa Road, the coordinates of this said point of beginning referred to Government Survey Trig. Station "Nonou" being 2894.24 feet south and 8369.72 feet east, thence running by azimuths measured clockwise from true south:

1. 7° 09' 109.40 feet along Lot 3 of Land Court Application 1166 to a conc. mon.;
2. 336° 06' 587.50 feet along Lot 3 of Land Court Application 1166 to a pipe;
3. Thence along the 100 feet wide beach reserve which follows the high water mark, the direct azimuth and distance to a pipe being: 101° 13' 594.62 feet;
4. 154° 00' 94.33 feet along Lot "B" a portion of Grant 5264 to R. P. Spalding to a pipe;
5. 241° 02' 118.76 feet along Lot "B" a portion of Grant 5264 to R. P. Spalding to a pipe;
6. 151° 02' 155.48 feet along Lot "B" a portion of Grant 5264 to R. P. Spalding to a pipe;
7. 241° 02' 170.30 feet along the south side of Papaloa Road to a conc. mon.;
8. 236° 40' 180.30 feet along the south side of Papaloa Road to a conc. mon.;
9. 225° 55' 100.40 feet along the south side of Papaloa Road to the point of beginning and containing an area of 4.60 acres, more or less.



Being the premises described in Deed dated August 10, 1977, made by California Industrial Processing Co., a California corporation qualified to do business in the State of Hawaii, as Grantor, and Lae Nani, a Hawaii general partnership, as Grantee, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12371, Page 277.

SUBJECT, HOWEVER, to the following:

1. Drainage ditch running through the land under search, as shown on Tax Map.

2. A perpetual non-exclusive 10-foot wide public access pedestrian easement for ingress and egress from Papaloa Road to Ala Kukui Heiau, along northeastern boundaries of Lot A in favor of the County of Kauai in Grant dated July 28, 1977, in Liber 12482 at Page 356.

**END OF EXHIBIT "A"**

## ENDNOTES

The following endnotes correspond to provisions in the By-Laws which have been restated to conform to Chapter 514B, Hawaii Revised Statutes (“HRS”), and the Federal Fair Housing Act (42 U.S.C. Sections 3601 *et seq.*) and its State counterpart, Chapter 515, HRS, as amended, and to integrate all amendments made to the original By-Laws. The Restatement of By-Laws correctly states without change the corresponding provisions of the original By-Laws, as amended, and supersede the original By-Laws and all prior amendments thereto. In the event of a conflict, the Third Restatement of By-Laws shall be subordinate to the cited statute or amendment. Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act and Act 164 (SLH, 2004) recodified Chapter 514A as Chapter 514B, Hawai‘i Revised Statutes (“HRS”). Therefore, throughout this restatement, references to the previous usage have been amended to reflect present terminology. The By-Laws were originally attached as an exhibit to the Declaration of Horizontal Property Regime of Lae Nani, but they are now recorded separately.

- <sup>1</sup> Chapter 514B, HRS, replaced the term “apartment” with the term “unit”. This replacement has been made throughout these By-Laws. Nevertheless, the official name of the Association remains Association of Apartment Owners of Lae Nani, Inc.
- <sup>2</sup> To conform to Section 514A-82(a)(17), HRS (now Section 514B-121(e), HRS). It has been further restated to conform to Section 514B-121(e), HRS, as to location of meetings in the event of a natural disaster.
- <sup>3</sup> To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482 and to conform to Section 514B-121(a), HRS.
- <sup>4</sup> Article II, Section 4 has been restated to conform to HRS Section 514B-121(b), HRS, which: (a) clarifies that a special meeting may be called by a majority of the Board; (b) authorizes the Managing Agent to receive an owners’ petition and send notices; and (c) adds that if a petition is received, the notices of special meeting must be sent within 14 days and the meeting must be held within 60 days.
- <sup>5</sup> To conform to Section 514A-82(b)(3), HRS (now Section 514B-121(c), HRS), which states the requirements for a notice of meeting. It has been further restated to conform to Section 514B-121(c), HRS, which states that the notice must contain information on any proposed amendment to the governing documents, subject to the owners’ right to propose amendments or to remove Board members at the annual meeting.
- <sup>6</sup> To conform to Section 514B-121(c), HRS, which authorizes the Association to give notice by electronic mail at the option of a unit owner, expressed in writing.
- <sup>7</sup> To conform to Section 514A-82(b)(3), HRS (now Section 514B-121(c), HRS).
- <sup>8</sup> To conform to Section 514A-83.2(a), HRS (now Section 514B-123(d), HRS).
- <sup>9</sup> To conform to Section 514A-83.2(c), HRS (now Section 514B-123(d)(3), HRS).
- <sup>10</sup> To conform to Section 514A-83.2(b), HRS (now Section 514B-123(e), HRS).
- <sup>11</sup> To conform to Section 514A-83.2(e), HRS (now Section 514B-123(g), HRS).

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- 12 To conform to Section 514A-96(b), HRS (now Sections 514B-123(d) and 514B-150(b), HRS).
- 13 To conform to Section 514A-82(b)(4), HRS (now Section 514B-123(h), HRS).
- 14 To conform to Section 514A-83.2(c), HRS (now Section 514B-123(h)(2), HRS).
- 15 To conform to Section 514A-82(b)(4), HRS (now Section 514B-123, HRS). It has been further restated to conform to 514B-123(h), HRS, which states that notice must be posted twenty-one (21) days before the distribution of proxies.
- 16 To conform to Section 514A-82(b)(4), HRS (now Section 514B-123, HRS). It has been further restated to conform to HRS Section 514B-123(h)(1), HRS, which changed the requirements for the owner's statement.
- 17 To conform to Section 514A-83.2(d), HRS (now Section 514B-123(f), HRS).
- 18 To conform to Section 514A-82(a)(16), HRS (now Section 514B-125(c), HRS).
- 19 To conform to Section 514B-122, HRS, which states the requirements for keeping minutes of the Association's meetings.
- 20 To conform to Section 514A-83.3, HRS (now Section 514B-123(j), HRS).
- 21 To conform to Section 514A-82(a)(16), HRS (now Section 514B-125(c), HRS).
- 22 To conform to Section 514B-107(a), HRS.
- 23 To conform to Section 514A-82(a)(12), HRS (now Section 514B-107(a), HRS).
- 24 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 25 To conform to Section 514A-82.4, HRS (now Section 514B-106, HRS).
- 26 To integrate the Amendment to Restatement of Declaration of Condominium Property Regime of Lae Nani and Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc. recorded as aforesaid on May 5, 2014 as Document No. A-52380586.
- 27 To integrate the Amendment of Restated By-Laws recorded as aforesaid on April 20, 1999 as Document No. 99-060618.
- 28 To conform to Section 514B-121(b), HRS, permitting petitioners to send notices at the Association's expense and in accordance with Chapter 514B, HRS, as well as the By-Laws, if notices have not sent within 14 days of receipt of petition.
- 29 To conform to Section 514A-82(b)(1), HRS (now Sections 514B-106(f) and 514B-121(b), HRS).
- 30 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 31 To integrate the Amendment of Restated By-Laws recorded as aforesaid on November 26, 2002 as Document No. 2002-211344.
- 32 To integrate the Amendment of Restated By-Laws recorded as aforesaid on November 26, 2002 as Document No. 2002-211344.

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- 33 To conform to Section 514A-83.1(b), HRS (now Section 514B-125(b), HRS). It has been further restated to conform to Section 514B-125(b), HRS, which expanded the list of matters for which the Board may meet in executive session.
- 34 To conform to Section 514A-83.1(a), HRS (now Section 514B-125(a), HRS).
- 35 To conform to Section 514A-83.4, HRS (now Section 514B-122, HRS).
- 36 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 37 To conform to Section 514A-95.1(a)(1), HRS (now Section 514B-143(a)(3), HRS) and further restated to update the statutory reference to the appropriate section of Chapter 514B, HRS.
- 38 This section has been restated to conform to Section 514B-143(a)(4), HRS, which also requires directors and officers liability coverage.
- 39 To update the statutory reference to the appropriate section of Chapter 514B, HRS.
- 40 To integrate the Amendment to the By-Laws recorded as aforesaid on February 5, 1988 in Liber 21609 at Page 725 and the Amendment of Restated By-Laws recorded as aforesaid on April 20, 1999 as Document No. 99-060618.
- 41 To update the statutory reference to the appropriate section of Chapter 514B, HRS.
- 42 To conform to Section 514A-82(b)(5), HRS (now Section 514B-125(f), HRS).
- 43 To conform to Section 514A-82(b)(10), HRS (now Section 514B-107(d), HRS).
- 44 To conform to Section 514A-82(b)(12), HRS (now 514B-107(d), HRS) and to update the statutory reference to the appropriate section of Chapter 514B, HRS.
- 45 To conform to Section 514A-82(b)(9), HRS (now Section 514B-125(d), HRS).
- 46 To conform to Section 514A-82(b)(11), HRS (now Section 514B-107, HRS). This section has been further restated to update the statutory reference to Chapter 514B, HRS.
- 47 To integrate the Amendment to the By-Laws recorded as aforesaid on June 12, 1984 in Liber 17937 at Page 181.
- 48 To conform to Section 514A-82(a)(4), HRS (now Section 514B-108(b), HRS).
- 49 To conform to Section 514A-96(a), HRS (now Section 514B-150(a), HRS).
- 50 To conform to Section 514A-96(b), HRS (now Section 514B-150(b), HRS).
- 51 To conform to Section 514A-82(b)(7), HRS (now Section 514B-107(c), HRS).
- 52 This section has been restated to reference the requirements of Section 514B-148, HRS, relating to Association reserves. These requirements were incorporated in Paragraph Q of the Declaration.
- 53 To conform to Section 514A-82(a)(6), HRS (now Sections 514B-104 and 514B-106(a), HRS).
- 54 This section has been restated to incorporate a reference to the insurance requirements stated in Section 514B-143, HRS.

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- 55 This section has been restated to include a reference to the requirements of Section 514B-149, HRS, regarding the handling and disbursement of funds.
- 56 To reflect the 1988 re-designation of the Horizontal Property Act as the Condominium Property Act.
- 57 To integrate the Amendment to the By-Laws recorded as aforesaid on February 5, 1988 in Liber 21609 at Page 725.
- 58 To conform to Section 514A-82.3, HRS (now Section 514B-105(e), HRS). It has been further restated to conform to Section 514B-105(e), HRS, which authorizes the owners to either vote or give their written consent, no longer requires the approval of a majority of the number of units, and authorizes the Board to borrow funds on the project's personal property and generally for the operation of the project.
- 59 To conform to Section 514A-97(a), HRS (now Section 514B-149, HRS).
- 60 To conform to Section 514A-97(c), HRS (now Section 514B-149(c), HRS). This section has been further restated to conform to Section 514B-149(c), HRS, which also allows for Association funds to be held in certificates of deposit.
- 61 To conform to Section 514A-97(d), HRS (now Section 514B-149(d), HRS).
- 62 To conform to Section 514A-97(e), HRS (now Section 514B-149(e), HRS).
- 63 To conform to Section 514A-97(f), HRS (now Section 514B-149(f), HRS).
- 64 To integrate the Amendment to the By-Laws recorded as aforesaid on February 5, 1988 in Liber 21609 at Page 725 and the Amendment of Restated By-Laws recorded as aforesaid on November 26, 2002 as Document No. 2002-211344.
- 65 To conform to Section 514A-86(a), HRS (now Section 514B-143, HRS).
- 66 To conform to Section 514B-143(a)(4), HRS, which requires directors and officers liability coverage.
- 67 To conform to Section 514A-86(b), HRS (now 514B-143(e), HRS). The last sentence of this section was deleted to conform to Section 514B-143 which no longer requires a written summary of every policy of insurance to be provided to the Board and to the owners (formerly required by Section 514A-86(c), HRS) and added in a prior restatement.
- 68 To integrate the Amendment of Restated By-Laws recorded as aforesaid on April 20, 1999 as Document No. 99-060618.
- 69 To conform to Section 514A-83.6, HRS (now Section 514B-121(c), HRS).
- 70 To conform to Section 514B-148(b), HRS.
- 71 This section has been restated to conform to Section 514B-148(d), HRS, by limiting liability of the Association and related parties for good faith estimated replacement reserves that prove incorrect. The following paragraphs were also redesignated accordingly.
- 72 This section has been restated to conform to Section 514B-148(e), HRS, which includes an exception for majority owner approval of amounts exceeding the operating budget by more than 20%.
- 73 To conform to Section 514B-148(f), HRS.

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- 74 To update the statutory reference to the appropriate section of Chapter 514B, HRS.
- 75 To conform to Section 514B-148(h), HRS, by including the cost of necessary insurance as an extraordinary expense under the definition of “emergency situation.”
- 76 To conform to Section 514A-83.6, HRS (now Section 514B-148, HRS).
- 77 To conform to Section 514A-82(b)(8), HRS (now Section 514B-133(b), HRS).
- 78 To conform to Section 514A-92, HRS (now Section 514B-144, HRS).
- 79 To update the statutory reference to the appropriate section of Chapter 514B, HRS.
- 80 To conform to Section 514A-90(c), HRS (now Sections 514B-146(c) and (d), HRS).
- 81 To conform to Section 514A-92.2, HRS (now Section 514B-144(h), HRS).
- 82 To conform to Section 514B-146(g), HRS, which states the conditions under which the Association can collect unpaid assessments incurred before a foreclosure.
- 83 To conform to Section 514A-90(a), HRS (now Section 514B-146(a), HRS).
- 84 To conform to Section 514B-146(g), HRS.
- 85 To conform to Section 514B-146(b), HRS, which includes nonjudicial powers of sale foreclosures.
- 86 To conform to Section 514A-90(b), HRS (now Section 514B-146(b), HRS).
- 87 To conform to Section 514B-146(e), HRS.
- 88 To conform to Sections 514A-90(e) and (f), HRS (now Sections 514B-146(e) and (f), HRS).
- 89 To conform to Section 514A-91, HRS (now Section 514B-144(f), HRS).
- 90 To integrate the Amendment of Restated By-Laws recorded as aforesaid on April 20, 1999 as Document No. 99-060618.
- 91 To integrate the Amendment to Restatement of Declaration of Condominium Property Regime of Lae Nani and Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc. recorded as aforesaid on May 5, 2014 as Document No. A-52380586.
- 92 To integrate the Amendment of Restated By-Laws recorded as aforesaid on November 26, 2002 as Document No. 2002-211344.
- 93 To integrate the First Amendment to Restated Declaration of Condominium Property Regime of Lae Nani recorded as aforesaid on December 11, 2008 as Document No. 2008-186334, which reduced the required percentage of approval from 75% to 67%.
- 94 To conform to Section 514A-89, HRS (now Section 514B-140, HRS).
- 95 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 96 To conform to the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 *et seq.*). Guests for short-term occupancy may also be covered by the Americans With Disabilities Act.

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- 97 To comply with the Over-the-Air Reception Device Rule (47 C.F.R. Section 1.4000).
- 98 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 99 To integrate the Amendment to Restatement of Declaration of Condominium Property Regime of Lae Nani and Restatement of By-Laws of the Association of Apartment Owners of Lae Nani, Inc. recorded as aforesaid on May 5, 2014 as Document No. A-52380586.
- 100 To conform to Section 514A-94, HRS (now Section 514B-157, HRS). This subsection has also been restated to update the statutory references to the appropriate parts of Chapter 514B, HRS.
- 101 To integrate the Amendment to the By-Laws recorded as aforesaid on May 31, 1985 in Liber 18681 at Page 354.
- 102 To integrate the Second Amendment to the Restatement of the By-Laws of the Association of Apartment Owners of Lae Nani, Inc. recorded as aforesaid on May 5, 2008 as Document No. 2008-071177. The approval requirement of 75% stated in that amendment was further reduced to conform to the opt-in amendment (the First Amendment to Restated Declaration of Condominium Property Regime of Lae Nani recorded as aforesaid on December 11, 2008 as Document No. 2008-186334), which reduced approval requirements for alterations to the common elements to 67%.
- 103 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 104 To conform to Section 514A-82(b)(6), HRS (now Section 514B-137, HRS).
- 105 To integrate the Amendment of Restated By-Laws recorded as aforesaid on February 13, 1997 as Document No. 97-020482.
- 106 To conform to Section 514A-82(b)(2), HRS (now 514B-108(e), HRS). This section has been further restated to conform to Section 514B-108(e), HRS, which increased the required percentage of approval from 65% to 67%.
- 107 To conform to Section 514B-108(e), HRS, which increased the required percentage of approval from 65% to 67%.
- 108 To conform to Section 514A-82(b)(2), HRS (now Section 514B-108, HRS).
- 109 To reflect the 1988 re-designation of the Horizontal Property Act as the Condominium Property Act.
- 110 To reflect the re-designation of Chapter 514, HRS, as Chapter 514A, HRS and to update the statutory reference to Chapter 514B, HRS.
- 111 To conform to Sections 514A-2, 514A-99, HRS (now Section 514B-61, HRS).
- 112 To reflect the 1988 re-designation of the Horizontal Property Act as the Condominium Property Act.
- 113 To conform to Sections 514A-83.5(a) and (c)(1) and (2), HRS (now Sections 514B-154(a) and (b), HRS).
- 114 To conform to Section 514A-83.5(b), HRS (now Sections 514B-122, 514B-126, 514B-154 and 514B-154.4, HRS).
- 115 To conform to Section 514A-83.5(a), HRS (now Section 514B-154(a), HRS).

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- 116 To conform to Section 514A-83.5(d)(1), HRS (now Section 514B-154(c), HRS).
- 117 To conform to Section 514A-83.5(e), HRS (now Section 514B-154(f), HRS).
- 118 To conform to Section 514A-92.5, HRS (now Section 514B-105(d), HRS).
- 119 To conform to Section 514A-85(d), HRS (now Section 514B-154(i), HRS).
- 120 To conform to Section 514A-84.5, HRS (now Section 514B-154(d), HRS).
- 121 To conform to Section 514B-154.5, HRS.
- 122 To conform to Section 514A-82(b)(7), HRS (now Section 514B-107(c), HRS).
- 123 To conform to the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 *et seq.*) and its State counterpart, Chapter 515, HRS, as amended.