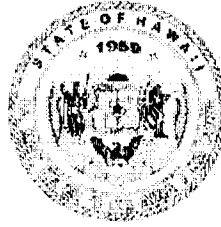


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March 17, 2021 8:01 AM

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/s/ LESLIE T KOBATA  
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Imanaka Asato, LLLC  
745 Fort Street, 17<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
(808) 521-9500 (OTI)

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Tax Map Key Nos. (1) 2-3-016:003 and 004 (portion)

Total Pages: 37

**BYLAWS OF THE ASSOCIATION**

**OF UNIT OWNERS OF**

**SKY ALA MOANA EAST**

## BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF SKY ALA MOANA EAST

THESE BYLAWS are made this 7<sup>th</sup> day of January, 2021, by **JL AVALON CAPBRIDGE, LLC**, a Hawaii limited liability company ("**Developer**"), with its principal place of business and post office address at 1440 Kapiolani Boulevard, Suite 1509, Honolulu, Hawaii 96814.

### WITNESSETH:

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

WHEREAS, Developer owns in fee simple the real property identified as TMK No. (1) 2-3-016:003 and :004 (portion) more particularly described in **Exhibit "A"** to the Declaration of Condominium Property Regime of Sky Ala Moana East of even date herewith (the "**Declaration**") and recorded at the Bureau of Conveyances of the State of Hawaii (the "**Bureau**"), and shown on Condominium Map No. 6201 filed in the Bureau concurrently therewith (the "**Condominium Map**"); and

WHEREAS, Developer has undertaken to develop the Land and Improvements to be constructed thereon as a condominium project, as described in the Declaration and in accordance with the Condominium Map; and

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

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

### ARTICLE I

#### INTRODUCTORY PROVISIONS

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

Section 2. **PURPOSE OF BYLAWS; COVENANTS TO RUN WITH THE LAND.** The Land and the Improvements are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following Bylaws, all of which are declared and agreed to be in furtherance of the plan set forth in the Declaration, to constitute a condominium property regime under the Act and for the purposes of enhancing and perfecting the value, desirability, and attractiveness of the Project. These Bylaws shall constitute covenants running with the Land and Units established thereon, and equitable servitudes and liens, and shall be binding upon all parties having or acquiring any right, title or interest therein.

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

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

Section 5. **BINDING EFFECT OF BYLAWS ON OWNERS, MORTGAGEES, AND LESSEES.** All present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and Occupants of Units, and their employees, business invitees, and any other Persons who may use any part of the Project in any manner are subject to the Condominium Documents, including these Bylaws. The acceptance of a

Unit Deed, conveyance, mortgage, or Agreement of Sale, or the entering into of a lease, or the act of occupancy of a Unit shall constitute an acceptance, ratification, and agreement to comply with the provisions of Condominium Documents, including these Bylaws, as the same may be amended from time to time.

## ARTICLE II

### ASSOCIATION OF OWNERS

Section 1. **MEMBERSHIP.** All Owners of the Project together shall constitute the Association. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member until such time as his or her ownership of such Unit ceases for any reason. In the event that the Project is terminated, the Association shall consist of all former Owners who owned Units at the time of termination and who are entitled to distributions of proceeds under Section 514B-47 of the Act, or such Owners' heirs, successors or assigns. Notwithstanding anything to the contrary provided herein, during the Developer Control Period, Developer shall operate the Project in accordance with the Declaration and these Bylaws and, where necessary, take all actions on behalf of the Association upon such terms and conditions as they shall agree upon which are consistent with the terms of the Declaration and these Bylaws. For the duration of the Developer Control Period, Developer shall have the right to appoint and remove the Officers and the Directors of the Association's Board. Following termination of the Developer Control Period and the first election of a replacement Board in accordance with Section III.1 below, Developer shall be entitled to vote the interest of each Unit that it owns.

Section 2. **CLASSES.** The Association shall be comprised of a Commercial Class, a Flats Class, a Front Desk Class, a Hotel Class, a Parking Class, a Resort Class, the Hotel, Resort and Flats Class, and the Hotel and Resort Class. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Unit Class(es) to which such Owner's Unit belongs. Each class shall vote on and determine issues affecting their Unit Class. The Commercial Class, for instance, may vote on and determine issues pertaining to only the Commercial Class, subject to any approval rights of Developer or the Front Desk Unit Owner. The number of Units comprising each Unit Class may increase or decrease if Units are consolidated and/or subdivided.

Section 3. **PURPOSE.** The Association shall be organized and operated for the purposes of administrative and fiscal management of the Project and for managing, maintaining, acquiring, constructing, and caring for the Association property, which includes the Common Elements, any real property which is not part of the Common Elements but which the Association either owns or leases, any personal or moveable property owned or leased by the Association, and any fixtures owned or leased by the Association; provided, however, that unless otherwise provided in the Declaration or these Bylaws: (i) Limited Common Elements solely appurtenant to one Unit shall be managed and maintained by the Owner of the Unit to which such Limited Common Element is appurtenant; and (ii) Limited Common Elements appurtenant to multiple Units or to a Unit Class shall be managed and maintained by the Association.

Section 4. **VOTING.** Except with respect to those matters requiring voting by the Unit Classes set forth above, each Owner shall be entitled to that percentage of the total vote of all of the Owners which equals the percentage of the Common Interest appurtenant to such Unit as set forth in the Declaration. With respect to those matters requiring voting by a Unit Class, each Owner shall have a vote equal to his or her Class Common Interest as set forth in the Declaration. The respective Owners may cast votes in person or by proxy; provided voting by acclamation is permitted for items where formal voting is not necessary. The vendee of a Unit pursuant to an Agreement of Sale shall have the right to vote unless the vote is retained by the vendor as may be provided in said Agreement of Sale pursuant to Section 514B-124 of the Act. An executor, administrator, personal representative, guardian, or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any Unit owned or controlled by him or her in such capacity, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such Unit in such capacity not later than the commencement of the meeting. The vote for any Unit owned of record by two (2) or more Persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others. If more than one (1) Owner is present, the votes allocated to that Unit may be cast only in accordance with the agreement of the majority in interest of the Owners. There is a majority agreement if any one (1) of the Owners casts the votes allocated to that Unit without protest being made by any of the other Owners of the Unit to the person presiding over the meeting before the polls are closed. If co-Owners do not agree in their vote, then the entire vote allocated to that

Unit will not be counted. Corporations, general partnerships, limited partnerships, limited liability partnerships, and limited liability companies which are Owners shall designate a general partner, officer, member, or manager, as appropriate, for the purpose of exercising the vote; and such representative of an Owner which is a corporation, general partnership, limited partnership, or limited liability company shall present satisfactory written evidence to the Secretary of his or her designation as representative not later than the commencement of the meeting.

Section 5. **QUORUM.** The term "**quorum**" refers to the number or percentage of Owners who must be present at a meeting to conduct business for all Owners, and the applicable Unit Classes:

A. **ALL OWNERS.** For all meetings of the Association with respect to all matters which may be voted on by all Owners, thirty-three percent (33%) of the Owners must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws.

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

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

D. **FRONT DESK UNIT OWNERS.** With respect to those matters which may only be voted on by, or which require a vote of only, the Front Desk Class Owner, one hundred percent (100%) of the Front Desk Class Owners must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws.

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

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

G. **PARKING UNIT OWNERS.** With respect to those matters which may only be voted on by, or which require a vote of only, the Parking Class Owner, one hundred percent (100%) of the Parking Class Owners must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws.

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

Section 6. **MAJORITY VOTE.** The vote of a majority of the Common Interest, Flats Class Common Interest, Commercial Class Common Interest, Front Desk Class Common Interest, Hotel Class Common Interest, Parking Class Common Interest, Resort Class Common Interest, Hotel, Resort and Flats Class Common Interest, and/or Hotel and Resort Class Common Interest present or represented at a meeting at which a quorum is present shall be binding upon all Owners and/or Unit Class Owners, respectively, for all purposes, except where a higher percentage vote is required in the Declaration, these Bylaws, or by law. Notwithstanding the preceding sentence: (i) where a vote requires a Majority of Unit Owners, the term "**Majority of Unit Owners**" shall mean the

Owners to which are appurtenant more than fifty percent (50%) of the total Common Interest or Class Common Interest; and (ii) where a vote requires a specific percentage of Owners, the specified percentage of the Owners means Owners to which are appurtenant such percentage of the Common Interest (or Class Common Interest).

Section 7. **PROXIES.** An Owner may appoint in writing a proxy to represent the Owner at meetings of the Association. An Owner may vote by mail or electronic transmission through a duly executed proxy.

A. A proxy, to be valid, must: (i) be delivered to the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed name(s) and signature(s) of the Person(s) giving the proxy, the Unit number for which the proxy is given, the name of the person to whom the proxy is given, and the date that the proxy is given; (iii) if it is a standard proxy form authorized by the Association, contain boxes wherein the Owner has indicated that the proxy is given: (a) for quorum purposes only; (b) to the individual whose name is printed on a line next to this box; (c) to the Board as a whole and that the vote be made on the basis of the preference of the majority of the Directors present at the meeting; or (d) to those Directors present at the meeting with the vote to be shared with each Director receiving an equal percentage. The proxy form shall also contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report.

B. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the Owner indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit.

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

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

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

1) If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in this Section II.7, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) calendar days before its distribution of proxies. If the Board receives within seven (7) calendar days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all Owners either: (a) a proxy form containing the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (b) a proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements. The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page and indicate the Owner's qualifications to serve on the Board or reasons for wanting to receive proxies.

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

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

G. The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the Common Elements by Owners; provided that subject

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

Section 8. **PLACE OF MEETINGS.** All meetings of the Association shall be held at the Project, or elsewhere within the State of Hawaii, as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.

Section 9. **ANNUAL MEETINGS.** The first annual meeting of the Association shall be held upon the earlier of: (a) one hundred eighty (180) calendar days from the recordation of the first Unit Deed conveying a Unit in the Project, provided that not less than forty percent (40%) of the Units in the Project have been sold and recorded in said Bureau (or if less than forty percent (40%) of the Units in the Project have been sold and recorded, then within one (1) year of the recordation of the first Unit Deed, provided that ten percent (10%) of the Owners request, in writing, that the first annual meeting be held), (b) four (4) months after seventy-five percent (75%) of the Units of the Project have been conveyed by Developer to other Owners, or (c) five (5) years after the recordation of the first Unit Deed conveying a Unit in the Project. The terms "**recorded**" and "**recordation**" shall mean and refer to the recordation of a Unit Deed transferring a Unit to an Owner in said Bureau. Subject to the rights of Developer to designate Directors contained in the Declaration and these Bylaws, at such meeting, the Owners shall elect a Board. Thereafter, the annual meetings of the Association shall be held on a date that is selected by the Board. If the Board does not choose a meeting date by the 15<sup>th</sup> of February of each year, then the meeting will be held at the Project at 6:30 p.m. on the third (3<sup>rd</sup>) Wednesday in March of each year, or at such other time as the Board may determine from time to time. Developer may set the date and time for the first annual meeting. Owners may transact other business at such meeting as may properly come before the Association.

Section 10. **SPECIAL MEETINGS.** A special meeting of the Association may be called at any time for any one (1) or more purposes. It may be called by (a) the President, (b) a majority of the Directors, or (c) a petition signed by not less than twenty-five percent (25%) of the Owners and presented to the Secretary or to the Managing Agent. The Owners may transact only that business the general nature of which is stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary or the Managing Agent shall send written notice of the meeting to all Owners in the manner provided in Section II.11 below. In the event that the Secretary or the Managing Agent shall fail to send out notices within fourteen (14) calendar days of receipt of any petition to have such meeting, or such other period as may be required by Section 514B-121 of the Act, the petitioners calling for the meeting may send the notice in accordance with the provisions for such notice contained in these Bylaws. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within forty-five (45) calendar days from the date the call was received.

Section 11. **NOTICE OF MEETINGS AND OTHER NOTICES.** The Secretary shall cause written notice of all meetings, annual or special, stating the date, time, and place of the meeting and whether it is annual or special, together with a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws, to be given by hand delivering such notice(s) and form, by mailing, postage prepaid to the mailing address of each Unit or any other address designated in writing by the Owner, or, at the option of the Owner, expressed in writing, by facsimile or electronic mail to the electronic mailing address designated in writing by the Owner, at least fourteen (14) calendar days before the date assigned for the meeting. The notice must state the authority for holding the meeting, the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws, and any proposal to remove a Director; provided that nothing herein shall preclude an Owner from proposing an amendment to the Declaration or these Bylaws or to remove a Director at any annual meeting. Upon written request for notices delivered to the Board, the holder of any duly recorded Mortgage or deed of trust from any Owner may obtain a copy of any and all notices permitted or required to be given to the Owner, whose interest is subject to said Mortgage or deed of trust. Notice may be considered waived as follows:

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

B. An Owner may waive notice of any Association meeting by signing a document that (i) waives notice, (ii) consents to or approves the action taken at the meeting, or (iii) approves the minutes of the

meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

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

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

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

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

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

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

Section 13. **ADJOURNMENT OF MEETINGS.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than thirty (30) calendar days from the time the original meeting was called, as may be determined by majority vote of the Owners present, without notice other than the announcement at such meeting. If the meeting is adjourned for thirty (30) calendar days or more, or if the law requires a new notice, then a new notice must be given pursuant to Section II.11 herein. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 14. **CONDUCT OF MEETINGS AND ORDER OF BUSINESS.** All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

Section 15. **INSPECTORS FOR VOTING AND PROXIES.**

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

B. **DUTIES.** The voting inspectors will: (i) determine the authenticity, validity, and effect of proxies, pledges, and other documents purporting to give any person the right to represent, act, and vote for an Owner; (ii) receive votes, ballots, and consents; (iii) hear and determine all challenges, questions, and conflicts relating in any way to the right to cast votes; (iv) count and tabulate all votes and consents; (v) decide when the polls will close; (vi) determine the results of all votes and elections; and (vii) do anything else appropriate to conduct the vote or election fairly as to all Owners. The decision, act, or certificate of a majority of inspectors, if there are three (3), or of a single inspector, if there is only one (1), will be effective. Any facts stated in any effective report or certificate is presumed to be accurate.

Section 16. **MINUTES OF ASSOCIATION MEETINGS.** Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) calendar days after the meeting, if authorized by the Owners at an annual meeting. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval and unapproved final drafts of minutes shall be available within sixty (60) calendar days after the meeting. If approved by the Board, Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) calendar days after approval. An Owner shall be allowed to offer corrections to the minutes at an Association meeting.

Section 17. **ASSOCIATION POWERS.** Except as otherwise provided herein, and subject to the provisions of the Declaration and these Bylaws, the Association, even if unincorporated, shall have those powers set forth in Section 514B-104 of the Act, as limited by Section 514B-105 of the Act. The Association shall further have the powers of the Sky East Owner (as defined in the Reciprocal Easement Agreement) set forth in the Reciprocal Easement Agreement and as a member of the Master Association. The Association delegates its powers to the Board, unless such delegation is prohibited by the Act.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. **NUMBER AND QUALIFICATION.** The affairs of the Association shall be governed by the Board. During the Developer Control Period, one (1) Commercial Director, one (1) Front Desk Director, one (1) Flats Director, one (1) Hotel Director, one (1) Resort Director, and one (1) Parking Director shall be appointed from time to time by Developer. Upon the termination of the Developer Control Period, the Board shall be comprised of two (2) Hotel Directors, two (2) Resort Directors, (2) Flats Directors, one (1) Commercial Director, one (1) Front Desk Director, and one (1) Parking Director, who shall be elected as set forth in Section III.3 below. In the event the Owners decrease the number of Directors as permitted by the Act, the Board shall contain at least one (1) Director from each Unit Class. Each Director shall be an Owner, co-Owner, a vendee under Agreement of Sale, a trustee or beneficiary of a trust that owns a Unit, or an officer of any corporate owner or a representative of any entity which owns a Unit. The partners of a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be Owners for purposes of serving on the Board. There shall not be more than one (1) Director from any one (1) Unit. No resident manager or employee of the Association shall serve on the Board. Any Director who is an employee of a Managing Agent shall not participate in any discussions regarding the Condominium Management Agreement with such Managing Agent and shall be excluded from any executive session where such Managing Agent or Condominium Management Agreement will be discussed.

Section 2. **POWERS AND DUTIES.** The Board shall have all the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and the Declaration, and for the maintenance, upkeep, and repair of the Project in good order and condition in accordance with the Project Quality Standard, and the Association may delegate, all rights, powers, and duties to the Board, except those rights, powers, and duties that cannot be delegated to the Board by law, the Declaration, or these Bylaws. The Board shall have all rights, powers, and duties to act on behalf of the Association (other than those requiring the vote of the Association set forth in the Act and subject to all rights and approval requirements set forth in the Declaration and these Bylaws, including without limitation, the Developer's Reserved Rights or any approval rights of Developer or the Front Desk Unit Owner), including the right to take any and all actions as a member of the Master Association. The Board shall elect one or more director(s), which directors shall be members of the Board, to serve as directors of the Master Association. The election and term of such director(s) shall be the same as the



election and term of Officers of the Association as set forth in Section IV.2 of these Bylaws (except termination of Directors is governed by Section III.4 of these Bylaws).

Section 3. **ELECTION AND TERM OF OFFICE.** During the Developer Control Period, the Board shall be appointed as set forth in Section III.1, and the Directors so appointed shall serve until removed by Developer. Upon the termination of the Developer Control Period, each Flats Director shall be elected and removed only by Flats Class Owners, the Commercial Director shall be elected and removed only by the Commercial Class Owners, the Front Desk Director shall be elected and removed only by the Front Desk Class Owners, and the Hotel Directors shall be elected and removed only by the Hotel Class Owners, the Resort Directors shall be elected and removed only by the Resort Class, and the Parking Director shall be elected and removed only by the Parking Class; provided that for so long as Developer owns the Front Desk Unit in the Project, the Front Desk Director shall be Developer. Election of Directors may be by secret ballot at each annual meeting and each special meeting called for that purpose. Other than for the initial term set forth below, Directors shall hold office for a period not to exceed three (3) years and until their respective successors have been elected, subject to removal as herein provided. The term of office for the initial Directors shall be as follows: (a) the Hotel Director with the highest number of votes shall serve for three (3) years and the Hotel Director with the next highest number of votes shall serve for two (2) years; (b) the Resort Director with the highest number of votes shall serve for three (3) years and the Resort Director with the next highest number of votes shall serve for two (2) years; (c) the Flats Director with the highest number of votes shall serve for three (3) years and the Flats Director with the next highest number of votes shall serve for two (2) years; (d) the Commercial Director shall initially serve for three (3) years; (e) the Front Desk Director shall initially serve for three (3) years; provided that so long as Developer shall own the Front Desk Unit, the term of the Front Desk Director shall not be limited; (e) the Parking Director shall initially serve for three (3) years. Directors shall be elected at each annual meeting to fill the vacancy in the office of Directors occurring as of the time of such meeting. An Owner shall provide notice of the Owner's intent to cumulatively vote before voting commences. The term "**cumulative voting**" as used herein means that each Owner may cast for any one (1) or more nominees to the Board a vote equivalent to the vote which such Owner is entitled to multiplied by the number of Director positions to be elected and for whom the Owner is entitled to vote, and each Owner shall be entitled to cumulate his or her votes and give all thereof to one nominee or to distribute his or her votes in such manner as he or she shall determine among any or all of the nominees for whom such Owner is entitled to vote, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected. A vote to fill Director positions may be done through a motion passed by acclamation in situations where a formal vote is not necessary (i.e., where there are four (4) vacant Director seats and there are only four (4) candidates).

Section 4. **REMOVAL OF MEMBERS OF THE BOARD.** At any annual or special meeting of the Association duly called, Directors may be removed and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created as follows:

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

B. After the Developer Control Period, the removal and replacement of a Director shall be by a vote of a majority of the Unit Class Owners and, otherwise, in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of Directors. Any Director whose removal has been proposed by the Unit Class Owners shall be given an opportunity to be heard at such meeting. Any Director who shall miss three (3) consecutive meetings of the Board may be removed by vote of a majority of the remaining Directors, even though they may constitute less than a quorum; provided, however, that this right of removal shall be without prejudice to the Unit Class Owners' right to remove Directors as provided in this Section. The replacement of the Director so removed shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of Directors. Any Director removed by the Board shall not be eligible for reelection to the Board for a period of one (1) year after such Director's removal.

Section 5. **VACANCIES.**

A. A Director's office shall become vacant in the event of such Director's death, incapacity, or resignation or if such Director shall cease to be an Owner or co-Owner of record of a Unit, a vendee

of a Unit under an Agreement of Sale, a trustee or beneficiary of a trust which owns a Unit, or an officer, partner, member, or other Person authorized to act on behalf of any other legal entity which owns a Unit.

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

C. Any vacancies of a Director after the end of the Developer Control Period, other than a vacancy caused by the natural expiration of the term of such Director or the removal of such Director, shall be filled by the vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall serve until his or her successor is elected at the next annual meeting of the Association. The successor elected at such annual meeting serves until the expiration of the term of the Director whose seat is vacated.

Section 6. **ORGANIZATIONAL MEETING.** The first meeting of the Board shall be held immediately after the first annual meeting of the Association and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided that a majority of the Board, which must include the Front Desk Unit Owner, shall be present thereat. At such meeting, the Board shall elect the Officers for the ensuing year.

Section 7. **REGULAR MEETINGS.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year.

Section 8. **EXECUTIVE SESSION.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene privately in executive session to discuss and vote upon matters: (a) concerning personnel; (b) concerning litigation in which the Association is or may become involved; (c) necessary to protect the attorney-client privilege of the Association; or (d) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. **SPECIAL MEETINGS.** Special meetings of the Board may be called by the President on three (3) business days' notice to each Director, given personally or by mail, facsimile transmission, or electronic mail transmission (which notice shall state the time, place and purpose of the meeting), and on posting of notice, if practicable, as provided in Section III.11; provided, however, that in the case of emergency situations, as determined by the President, a special meeting of the Board may be called by the President on eight (8) hours' notice to each Director. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice, if practicable, on the written request of at least two (2) Directors.

Section 10. **CONDUCT OF MEETING.** All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. All meetings of the Board (whether organizational, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

Section 11. **NOTICES; WAIVER OF NOTICE.** Notice of all Board meetings and other notices to the Directors shall be given to each Director by the Secretary or the person or persons calling the meeting. Notice of regular meetings of the Board shall be given to each Director personally or by first class mail, facsimile, or electronic mail at least seven (7) calendar days, if practicable, prior to the day named for such meeting. Notice of all Board meetings shall also be posted by the Managing Agent or resident manager, if any, or a member of the Board, in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board. Before or at any meeting of the Board, any Director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice to him or her of such meeting. If all the Directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 12. **COMPENSATION.** No Director shall receive any compensation from the Association for travel expenses, Directors' fees and *per diem* expenses; provided that, with the approval of the Board, Directors

may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the meeting shall reflect in detail the items and the amounts of the reimbursements. The Directors may expend Association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for travel expenses on the island of Oahu, all reimbursement for other travel expenses shall be subject to pre-approval by the Board and shall be reflected in the minutes as discussed above.

Section 13. **QUORUM OF BOARD.** At all meetings of the Board, a majority of the total number of Directors established by these Bylaws shall constitute a quorum for the transaction of business, and action by a majority of the Directors present at any meeting at which a quorum is present shall constitute action by the Board; provided that, any action shall be subject to any applicable approval rights of the Front Desk Unit Owner or Developer. If less than a quorum shall be present at any meeting of the Board, or the Front Desk Unit Owner is unavailable for a meeting in which a matter involving the Front Desk Unit and/or the Limited Common Elements appurtenant thereto is being discussed, a majority of those Directors present may adjourn the meeting and call an additional meeting at which a majority of the total number of Directors and the Front Desk Unit Owner can attend.

Section 14. **NO PROXY VOTE; CONFLICT OF INTEREST.** A Director shall not cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a conflict of interest; provided, however, that nothing herein shall limit the right of the Front Desk Director to vote or to exercise any approval rights under the Declaration and these Bylaws. In the event of a conflict of interest, the Director shall disclose the nature of such conflict prior to a vote at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. For the purposes of this Section, "**conflict of interest**" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. Ownership and use of a Unit by a Director for the purposes permitted by the Declaration and these Bylaws do not, by themselves, create a conflict of interest. If abstentions for such a reason would result in less than a majority being able to vote, the Directors who do not abstain shall appoint one or more persons as temporary Directors to vote on the matter in question.

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

Section 16. **MINUTES OF BOARD MEETINGS.** The minutes of the meetings of the Board shall: (a) shall include the recorded vote of each Director on all motions except motions voted on in executive session; (b) be approved no later than the second succeeding regular meeting; (c) be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) calendar days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

Section 17. **ACTION BY DIRECTORS WITHOUT MEETING.** Any action required or permitted to be taken at any meeting of the Board or of a committee of the Board may be taken without a meeting if all of the Directors authorized to vote on such matter or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the Board meetings or committee meetings as the case may be and shall have the same effect as a unanimous vote.

Section 18. **REMOTE MEETINGS.** Subject to the notice requirements contained in these Bylaws, members of the Board or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment through which all Directors

participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the Board, any Owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the Owner pay for the costs associated with the participation.

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

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

## ARTICLE IV

### OFFICERS

Section 1. **DESIGNATION.** The principal Officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board. The Board may appoint an assistant treasurer, an assistant secretary, and such other Officers as in its judgment may be necessary. All Officers shall be members of the Board. Except as specifically authorized by the Association at an annual or special meeting, no Officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such Officer. An Owner shall not act as both an Officer of the Association and an employee of the Managing Agent.

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

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

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

Section 5. **PRESIDENT.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. He or she shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He or she shall also have such other powers and duties as may be provided by these Bylaws or assigned to him or her from time to time by the Board.

Section 6. **VICE PRESIDENT.** The Vice President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

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

Section 8. **TREASURER.** The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer shall, in general, perform all of the duties incident to the office of Treasurer and all other duties assigned by the Board.

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

Section 10. **LIABILITY AND INDEMNITY OF THE BOARD AND OFFICERS.** The Directors and Officers shall not be liable to the Association for any mistake of judgment or otherwise except for their own individual gross negligence or willful misconduct. The Association shall obtain and maintain at the Association's expense a policy of Directors' and Officers' liability insurance covering the Directors and Officers as provided in Section V.1.N.

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

## ARTICLE V

### MANAGEMENT

Section 1. **MANAGEMENT AND OPERATION OF THE PROJECT.** Subject to the limits described in Section III.2, and the Front Desk Unit Owner's responsibility for the management and maintenance of the Hotel Shared Facilities, the Board shall manage and operate the Project, and shall be delegated to it by the Association the powers and duties to do so, which include, but are limited to, the following:

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

B. **MAINTENANCE AND REPAIR OF UNITS.** The Board may perform maintenance and repairs on any Unit or Limited Common Element in the Project if;

- 1) It is necessary to protect the Common Elements or any other Unit, and
- 2) The Owner of the Unit fails or refuses to perform the maintenance or repair within a reasonable time after the Board delivers written notice to him or her describing the maintenance and repairs needed.

