

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO Doc T - 10572364  
CT 1057358  
DATE/TIME December 12, 2018 3:29 PM

LAND COURT

REGULAR SYSTEM

RETURN BY MAIL [ ] PICK-UP [ X ] TO:

SETTLE MEYER LAW  
A Limited Liability Law Company  
900 Fort Street Mall, Suite 1800  
Honolulu, Hawaii 96813  
Attn: Scott W. Settle, Esq.  
Phone: (808) 534-4434

TITLE OF DOCUMENT:

BYLAWS  
OF THE  
ASSOCIATION OF UNIT OWNERS  
OF  
'OHANA HALE

PARTIES TO DOCUMENT:

**"DEVELOPER":**

PUMEHANA HUI LP, a Hawaii limited partnership, with a  
mailing address of 770 Kapiolani Boulevard, Suite 200,  
Honolulu, Hawaii 96813

TMK No. (1) 2-3-028:004  
This document affects TCT No. 1,057,358

No. of Pages: \_\_\_\_\_

**BYLAWS  
OF THE  
ASSOCIATION OF UNIT OWNERS  
OF  
`OHANA HALE**

THESE BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF `OHANA HALE ("Declaration") are made this 11<sup>th</sup> day of December, 2018, by PUMEHANA HUI LP, a Hawaii limited partnership, with a mailing address of 770 Kapiolani Boulevard, Suite 200, Honolulu, Hawaii 96813 ("Developer").

**ARTICLE 1.  
INTRODUCTORY PROVISIONS**

1.1 Authority for Bylaws. Developer, acting as the present Association, hereby approves and adopts these Bylaws pursuant to Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended (the "Act"). These Bylaws are subject to the laws of the State of Hawaii, including but not limited to, the Act and Hawaii Administrative Rules, Title 16, Chapter 107 ("HAR"), as amended from time to time.

1.2 Definitions. The terms used herein with initial capital letters shall have the meanings given to them in Exhibit B of the Declaration, except as otherwise expressly provided herein.

1.3 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 run with the Land and Units, shall constitute equitable servitudes and liens, and shall be binding upon all parties having or acquiring any right, title or interest therein.

1.4 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.

1.5 Binding Effect of Bylaws on Owners, Mortgagees and Lessees. All present and future Owners, Unit 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 these Bylaws and the Declaration. The acceptance of a Unit Deed, conveyance, mortgage, 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 these Bylaws and the Declaration, as the same may be amended from time to time.

## ARTICLE 2. ASSOCIATION OF OWNERS

2.1 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 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 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 the below, Developer shall be entitled to vote the interest of each Unit that it owns.

2.2 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, the Limited Common Elements shall be managed and maintained by the Owner of the Unit to which such Limited Common Element is appurtenant.

2.3 General Powers and Duties. Except as limited by the Declaration, these Bylaws, the Act, or Applicable Law, the Association shall have and may exercise all powers (i) granted to the Association by the Declaration, these Bylaws, the Act, and Applicable Law, (ii) granted to other legal entities of the same type as the Association, and (iii) necessary and proper for the governance and operation of the Association.

### 2.4 Meetings of the Association.

a. First Annual Meeting. Developer or the Managing Agent shall call the first meeting of the Association, which meeting shall be held not later than 180 days after recordation of the first Unit Deed, if at that time forty percent (40%) or more of the Units in the Project have been sold and recorded. If forty percent (40%) or more of the Units in the Project are not sold and recorded at the end of one year after recordation of the first Unit Deed, then the first annual meeting shall be called and held as soon as practicable upon the request in writing of at least ten percent (10%) of the Owners. At such meeting, a Board of Directors will be elected or appointed to serve until the next annual meeting. The term "sold and recorded" means the sale of a Unit and the recording of the Unit Deed conveying such Unit in the Bureau. Notwithstanding anything to the contrary contained in these Bylaws, the Developer shall control the Association and appoint and remove the officers and members of the Board until the expiration of the Developer Control Period; provided, however, that in such event, Developer may require that, for the balance of the period set forth above, specified actions of the Association or the Board, as described in the Unit Deed executed by Developer, be approved by

Developer before they become effective. Thereafter, Developer, as the Owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

b. Annual Meetings. Other than the first annual meeting of the Association, annual meetings of the Association shall be held within 180 days following the close of the fiscal year of the Association on such date as the president of the Association (herein the "President") may designate. If the President shall fail to designate such date by the 90<sup>th</sup> day following the close of the fiscal year, then the annual meeting shall be held on the first Wednesday in the month of August in the following the close of the fiscal year. Each annual meeting shall be a general meeting and any business within the powers of the Association, without special notice of such business may be transacted except as limited by law, the Declaration or these Bylaws. The Board (by resolution) or a Majority of Unit Owners (by petition) may establish meetings in addition to annual meetings at semi-annual, quarter-annual or other regular intervals.

c. Special Meetings. Special meetings of the Association may be called by the President, a majority of the Board, or by a petition to the secretary of the Association (the "Secretary") or the Managing Agent signed by not less than twenty-five percent (25%) of the Owners. Upon receipt of the petition calling for a meeting, the Secretary or the Managing Agent shall send notice of the meeting to all Owners. If the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) days of the receipt of the petition calling for a meeting, then the person or petitioners calling for the meeting 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 in accordance with the requirements of these Bylaws and the Act. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within 45 days from the date the call was received. Except as provided otherwise in these Bylaws or by law, only such business shall be transacted at any special meeting as shall have been indicated by a specific or general description in the notice of the meeting. Any special meeting for the purpose of the removal and replacement of directors shall be called and conducted in accordance with applicable provisions of these Bylaws and the Act pertaining to the removal, replacement and election of Directors.

d. Conduct at Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order. The order of business at all meetings of the Unit Owners shall be as follows: (1) determination of quorum; (2) proof of notice of meeting; (3) adoption of meeting rules; (4) approval of minutes of preceding meeting; (5) report of Officers; (6) reports of committees; (7) election of inspectors of election (when so required); (8) election of Directors of the Board (when so required); (9) unfinished business; (10) new business; and (11) adjournment.

e. Adjournment. Any meeting of the Association may be adjourned to such place, date and time (but not later than immediately preceding the next annual meeting of the Association) as may be determined by vote of a Majority of the Unit Owners present at the meeting, either in person or by proxy, and whether or not quorum is 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.

f. Place of Meetings. All meetings of the Association shall be held at the address of the Project or elsewhere within the State of Hawaii convenient to the Owners as determined by the Board; provided that in the event of a natural disaster, such as a hurricane, Association meetings may be held outside the State.

g. Participation. Association meetings may be conducted by any means that allow participation by all Unit Owners in any deliberation or discussion.

2.5 Notice of Meetings. 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, any Unit Mortgagee may obtain a copy of any and all notices permitted or required to be given to the Owner. Notice can 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 given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

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

## 2.6 Record Date for Notices and Voting.

a. The "Record Date" is 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. 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. 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.

2.7 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Unit Owners shall constitute a quorum at all meetings of Owners.

2.8 Voting Interest; Multiple Owners. Each Owner shall be entitled to that percentage of the total vote of all of the Owners equal to the percentage of the Common Interest appurtenant to the Owner's Unit. Votes may be cast in person or by proxy. A personal representative, guardian, conservator, trustee, officer of a corporation, general partner of a partnership, limited liability partnership or limited partnership, member of a member-managed limited liability company, or manager of a manager-managed limited company may vote the percentage of vote for any Unit owned or controlled by such person in such capacity, provided that such person shall first have presented evidence satisfactory to the Association that such person owns or controls the Unit in such capacity. When a Unit is owned by two (2) or more Persons, if only one of them is present at any Association meeting, then that owner is entitled to cast all the votes allocated to the Unit. If more than one (1) of the Owners is present at the Association meeting, then the votes allocated to that Unit may be cast in proportion to each co-Owner's share of ownership in the Unit. Developer, as the Owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

2.9 Majority Vote. The vote of a Majority of Unit Owners at a meeting at which a quorum shall be present shall be binding upon all Owners for all purposes, except where a higher percentage vote is required in the Declaration or these Bylaws or by Applicable Law.

2.10 Majority of Unit Owners. As used in these Bylaws, the term "Majority of Unit Owners" shall mean Owners of Units to which are appurtenant more than fifty percent (50%) of the Common Interest. Any other designated percentage of Unit Owners shall mean the owners of Units to which are appurtenant the designated percentage of the Common Interest.

2.11 Proxies and Pledges.

a. Requirements. The proxy or authority given by any Owner to another person to represent the Owner at meetings of the Association must (i) be in writing and be delivered to the Secretary of the Association 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 names and signatures of the persons giving the proxy, the numbers of the Units for which the proxy is given, the printed name of the person to whom the proxy is given and the date that the proxy is given; and (iii) if it is a standard proxy form authorized by the Association, it must 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 with the vote to be shared with each Director 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 the majority of the Directors present at the meeting). 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 required by Section 514B-150 of the Act. A proxy may designate any person or the Board of Directors as an entity as proxy and may be limited as the Owner indicates.

A proxy or authority given by a co-Owner or co-Owners for only a share of a Unit's vote may be exercised to cast the entire vote for such Unit in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner. In case of a protest, each co-Owner or holder of a proxy from a co-Owner, as the case may be, shall be entitled to only a share of such Unit's vote in proportion to the respective shares of ownership in such Unit. Any provision hereof to the contrary notwithstanding, the standard proxy form, if any, which accompanies a notice of meeting: (i) shall be valid only for the meeting to which such notice pertains and its adjournments, if any; (ii) may designate any person as proxy; and (iii) may be limited to the Owner's desires as indicated; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit represented.

b. Limitations on Proxy Votes. If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 2.3(a) above, the Board 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. If the Board receives within seven (7) days from the time the Board posts the notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, then the Board shall mail to all Owners a proxy form containing either (i) the names of all Owners who have requested the use of Association funds to solicit proxies, together with their statements, or (ii) 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 be limited to black text on white paper, shall not exceed one single-sided 8.5" x 11" page and shall indicate the Owner's qualifications to serve on the Board and the reasons for wanting to receive proxies.

A 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, then the Board member shall proceed as an Owner under the previous paragraph.

No Managing Agent or Manager, or employees of either, shall solicit, for use by the Managing Agent or the Manager, any proxies from any Owner, nor shall the Managing Agent or Manager cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Voting rights transferred or pledged in a mortgage, deed of trust, lease, or agreement of sale of any Unit or interest therein, a true copy of which is filed with the Secretary, shall be exercised only by the person designated in such instrument unless a written release or other termination signed by the parties is filed with the Secretary. A Director shall not cast any proxy vote at any Board meeting.

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.

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 the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

c. Termination. Unless limited by this Section or the terms of the proxy, a proxy shall continue until revoked by a writing filed with the Secretary or by the death or incapacity of the Owner. Any one of the two (2) or more Persons owning a Unit may give or revoke a proxy for the entire vote of such Unit or, if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving such proxy. A proxy given by a co-Owner for only a share of a Unit's vote in proportion to the share of ownership of such co-Owner shall be revocable only by such co-Owner.

2.12 Acts of the Association; Consent in Lieu of Meeting. Whenever the vote of the Owners at a meeting thereof is required or permitted to be taken in connection with any action permitted by the Declaration or these Bylaws, the meeting and vote of Owners may be dispensed with if all of the Owners who would have been entitled to vote upon the action if the meeting were held, consent in writing to the action being taken.

2.13 Committees. The Association may create, appoint and discharge such standing or special committees as the affairs of the Association may require and define the authority and duties of such committees and any such rules for the conduct of the business thereof as the Association may deem appropriate.

2.14 Annual Registration. The Association shall be registered with the Real Estate Commission in accordance with the Act. The registration shall be in the form required by said Commission and shall include proof of fidelity bond coverage, registration fee, names and positions of those persons who handle the Association's funds, name of the Managing Agent, postal address of the Project and name, business address and telephone numbers of the designated contact person for the Association.

### ARTICLE 3. BOARD OF DIRECTORS

#### 3.1 Number and Qualification.

a. Number. The affairs of the Association shall be governed by the Board of Directors. Except as set forth herein, the Board of Directors shall be composed of nine (9) persons; provided, however, that the number of directors can be reduced pursuant to Section 514B-106 of the Act, but in no event shall there be less than seven (7) Directors. The Developer shall appoint and remove the Directors and Officers until the expiration of the Developer Control Period. The initial Board appointed by the Developer can consist of three (3), five (5), seven (7) or nine (9) members. Prior to termination of the Developer Control Period, an annual or special meeting of the Association shall be called and held at which the Unit Owners shall elect a Board of nine (9) Directors.

b. Qualifications. Except with respect to the initial Directors appointed by the Developer, all Directors shall either be Owners, co-Owners or vendees under an agreement of sale. A personal representative, guardian, conservator, trustee, officer of a corporation, general partner of a partnership, limited liability partnership or limited partnership, member of a member-managed limited liability company, manager of a manager-managed limited liability company,



and the fiduciary or offer of a fiduciary Owner, respectively, shall be deemed to be Owners for the purposes of this Section. There shall not be more than one representative on the Board of Directors from any one Unit; provided, however, that this shall not prevent representatives of Developer from holding more than one Director position if Developer owns more than one Unit. No manager or other employee of the Association or employee, shareholder, member, manager, partner or owner of the Managing Agent shall serve on the Board. No Owner who is in default, as provided in Section 6.1 of these Bylaws, in the payment of any assessments or other amounts charged to the Owner's Unit as of 4:30 p.m. on the second business day prior to the Record Date shall be qualified to be elected or appointed to serve on the Board.

3.2 Election and Term of Office. Except with respect to the initial Board of Directors appointed by the Developer, the election of Directors shall be by secret written ballot at each annual meeting and any special meeting called for that purpose, provided that if the number of candidates nominated is equal to or less than the number of vacancies to be filled, then the candidates shall be deemed to be elected. At the first annual or special meeting of the Association where the Owners other than Developer are to elect the Directors, the three (3) candidates who receive the largest number of votes shall be elected for terms of three (3) years, the three (3) candidates who receive the next largest number of votes shall be elected for a term of two (2) years, and the three (3) candidates who received the next largest number of votes shall be elected for a term of one (1) year. Thereafter, at the expiration of the term of office of each Director, each Director's successor shall be elected to serve a term of three (3) years. Each Director 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.

3.3 Removal. At any regular or special meeting of the Association duly called, any one or more Directors may be removed with or without cause by a vote of a Majority of the Unit Owners present at the meeting and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that if such removal and replacement is to occur at a special meeting, the call for such meeting shall be by the President of the Association or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Unit Owners; and provided further that if the Secretary or Managing Agent does not send out the notices for the special meeting within 14 days of receipt of the petition, the petitioners shall send out the notices for the special meeting, which notices shall set forth the time, date and place for the special meeting. Any member of the Board whose removal has been proposed by an Owner shall be given an opportunity to be heard at the meeting. Any Director who fails to attend three (3) consecutive meetings of the Board may be removed by vote of a majority of the remaining Directors as provided above in this Section 3.3. Upon removal of a Director by the remaining Directors of the Board, the President shall schedule a special Association meeting to elect a replacement Director within sixty (60) days from the date of the former Director's removal. If the President fails to so schedule a special meeting, the call for such meeting shall be made by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Unit Owners. The replacement of the Director removed by the Board 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.

3.4 Vacancies. Individual vacancies on the Board (i.e., where just one Director's position is vacant at a time) caused by any reason other than the removal of a Director by the Association or by the Board shall be filled by a vote of a majority of the remaining directors at a special meeting of the Board held for that purpose, even though the Directors present at such

meeting may constitute less than a quorum. An individual vacancy of the Board may also be filled, and multiple vacancies on the Board (i.e., where more than one Director's position is vacant at a time) shall be filled, at a special meeting of the Association whether or not called for that purpose. Each person so elected shall be a Director for the remainder of the term of the Director whose vacancy is filled (unless sooner removed) or until a successor is elected at the next annual meeting of the Association. The death, incapacity, or resignation of any Director, or such Director's ceasing to be qualified to serve as a Director in accordance with Section 3.1 of these Bylaws shall cause such office to be vacant.

### 3.5 Meetings of the Board of Directors.

a. Organizational Meeting. The initial organizational meeting of the Board of Directors shall be held at the place of and immediately following the first annual meeting of the Association; provided, however, that the Directors appointed by Developer may, in their sole discretion, hold meetings and take action prior to the date of the first annual meeting of the Association and the Board's initial organizational meeting. No separate notice other than the notice of the annual meeting of the Association shall be necessary for such initial organizational meeting. At such meeting, the Board shall elect the officers of the Association for the ensuing year; provided, however, that the Directors appointed by Developer may, in their sole discretion, elect the initial officers of the Association prior to the date of the initial organizational meeting of the Association.

b. Regular Annual Meetings. Regular annual meetings of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meetings, the Board shall elect the Officers of the Association for the ensuing year.

c. Additional Regular Meetings. The Board shall meet at least once a year in addition to the annual meeting following the annual meeting of the Association. The Board of Directors may fix dates, times and places of additional regular meetings of the Board of Directors.

d. Special Meetings. Special meetings of the Board may be called by the President and will be called by the Secretary promptly upon the written request of at least three (3) Directors.

e. Open and Executive Sessions. All meetings of the Board, other than executive sessions, shall be open to all Owners, and Owners who are not Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters: concerning personnel; concerning litigation in which the Association is or may become involved; necessary to protect the attorney-client privilege of the Association; or necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session.

f. Attendance by Telephone or Other Means of Communication. Directors of the Board or members of any committee may participate in a meeting by conference telephone or other means of communication through which all Directors participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in

person at such a meeting. Subject to Section 3.5(e) above, the Board shall allow Unit Owners to participate in Board meetings conducted by means of communication through which all participants can hear each other at the same time, provided that the Owner shall pay for the costs associated with his or her participation.

g. Conduct of Meetings. All meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order. No audio taping, video taping, photography, filming, or other audio or visual recording of meetings of the Board is permitted except by or at the direction of the Secretary for the sole purpose of the production of the minutes of the meeting or as otherwise authorized by the Board. Such recordings shall not be considered records of the Association for any purpose.

3.6 Notice. Fourteen (14) days prior notice of regular meetings of the Board, and, if practicable, at least three (3) business days prior written notice of special meetings shall be given to each Director, either personally or by telephone, United States mail, electronic mail, facsimile transmission ("fax") or any other means reasonably calculated to reach the recipient, and shall state the time, place and purpose of such meeting. Notice of all Board meetings shall be posted by the Managing Agent or any Director of the Board in prominent locations within the Project no later than seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board. During the Developer Control Period, the Board may act without a formal meeting, call or notice.

3.7 Waiver of Notice. A Director may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall constitute a waiver of notice of the time, place and purpose of the meeting. If all the directors are present at a meeting of the Board, notice shall not be required and any business may be transacted at such meeting.

3.8 Quorum of Board of Directors. 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. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A Director may not vote by proxy at any Board meetings. Whether or not a quorum is 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 that might have been transacted at the meeting originally called may be transacted without further notice.

3.9 Action by Directors Without a Meeting. Any action required or permitted under any of the Condominium Documents to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such actions do not involve a meeting and, thus, Unit Owners need not be allowed the opportunity to participate in such actions or writings.

3.10 Conflicts of Interest. A Director may not vote at any meeting on any issue in which such Director has a conflict of interest. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest to the Board prior to a vote on that issue at the meeting of the Board, and the minutes of the meeting shall record the fact that a disclosure was made. As used herein, "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. The determination of whether a conflict of interest exists as to a particular Director

or Directors shall be determined by a majority of the non-interested Directors, which determination shall be conclusive and binding on all parties. If abstentions for such a reason would result in less than a majority being able to vote, the Directors who are not required to abstain shall constitute a quorum for the purpose of voting on the matter in question. A Director who is a plaintiff (or the equivalent) in any action brought against the Association or the Board or a defendant (or the equivalent) in any action brought by the Association or the Board shall be conclusively deemed to have a conflict of interest as to that matter. In the event that all Directors have a conflict of interest on a matter, the President shall appoint a committee of not less than five (5) disinterested Unit Owners who shall make recommendations to the Board on the matter in question, which said recommendations shall be binding upon the Board unless a majority of the entire Board votes to reject or modify such recommendations.

3.11 Fidelity Bonds. The Board shall require that the Managing Agent obtain and keep a fidelity bond that at least meets the requirements of the Act, provided that the Board may require that the fidelity bond have greater coverage and be for a higher amount than is required by the Act. If other people besides the Managing Agent and its employees handle funds belonging to or administered by the Association, then the Board shall obtain and keep one or more fidelity bonds covering such other people, which bonds shall be in such amount as deemed reasonable by the Board. The premiums on such bonds, if paid by the Association, shall constitute a Common Expense (defined below). Every such bond shall, to the extent reasonably obtained:

a. Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least sixty (60) days prior written notice to the Board and every Person with a financial interest in the Project who shall have requested notice of such action; and,

b. Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered.

3.12 Compensation. No Director shall receive any compensation from the Association for acting as such or reimbursement for travel expenses and per diem expense, except as may be approved by a Majority of the Unit Owners at any annual meeting or as may be specifically permitted by the Act. Directors may be reimbursed for reasonable, ordinary expenses (such as copying charges) incurred in their performance of their duties as Directors.

3.13 Availability of Documents. The Association shall, at its expense, provide all Board members with a current copy of the Declaration, these Bylaws, the House Rules (if any), any management agreement and, annually, a copy of the Act.

#### **ARTICLE 4. OFFICERS**

4.1 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. One individual may hold no more than one office; provided, however, that multiple offices filled by the Developer may be held by the same person. An Owner shall not act as both an Officer of the Association and an employee of the Managing Agent.

4.2 Election of Officers. The Officers of the Association shall be elected or appointed annually by the Board and shall hold office at the pleasure of the Board.

4.3 Removal/Vacancies. Any officer may be removed with or without cause by the affirmative vote of a majority of the Board of Directors. Vacancies may be filled by the Board at any regular meeting or at a special meeting of the Board called for such purpose.

4.4 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. He or she shall exercise general supervision and direction of 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 by the Board.

4.5 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.

4.6 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 continuous and accurate record of ownership of 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 the Secretary and all other duties assigned by the Board.

4.7 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. The Treasurer shall, in general, perform all of the duties incident to the office of Treasurer and all other duties assigned by the Board.

4.8 Compensation. No person shall receive any compensation from the Association for acting as an Officer but may be reimbursed for actual expenses incurred in the course of performing such Officer's duties, provided that any such expenses shall be approved in advance by the Board.

4.9 Execution of Agreements, Contracts, Deeds, Checks, and other Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by any two (2) of the President, Vice President, Secretary or Treasurer, or such other person or persons as may be designated by the Board.

## **ARTICLE 5. ADMINISTRATION**

5.1 Management. The Board of Directors shall have the rights, powers and duties necessary for the management and operation of the Project and administration of the affairs of the Association and may do all acts and things except those that may not be delegated by the Association to the Board of Directors by the Act, the Declaration or these Bylaws.

5.2 Duties of the Board. Subject to such limitations, if any, that are set forth in the Act and the Declaration, the duties of the Board of Directors include, without limitation, such duties as are set forth in the Declaration and these Bylaws, as well as the following:

a. Operation and Maintenance of the Common Elements. Subject to limitations in the Declaration and these Bylaws, the Board will operate, maintain, repair, replace, and make Improvements to the Common Elements.

b. Maintenance and Repair of Units. The Board may perform maintenance and repairs on any Unit or Limited Common Element in the Project if;

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

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

The Board will charge a Special Assessment (defined below) to that Unit for the cost of the maintenance or repair and any attorneys' fees and other expenses incurred in charging and collecting the special assessment.

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

d. Employment of Personnel. The Board may hire employees, including a resident manager and operational and maintenance staff, and may designate, employ, train, supervise, and dismiss any personnel necessary or useful to maintain, repair, replace, rebuild, or restore the Common Elements or to operate the Project.

e. Delegation of Powers. The Board may delegate its powers to committees, agents, officers, representatives, and employees at the Board's discretion.

f. Enforcement of Condominium Documents; Law. The Board will enforce the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project.

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

i. Monetary Fine. A monetary fine may be charged for any violation of the Condominium Documents, the Act, the HAR, and any other Applicable Law.

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

All appeals shall be reviewed by the Board either by electronic mail, conference call, or at a physical meeting of the Board within ninety (90) calendar days after the notice of appeal has been delivered to the Board. A statement of facts upon which the fine and/or penalty was based should be delivered or mailed to the Owner at least ten (10) business days before the meeting. The Owner has the right to appear and to explain why the fine or penalty should not be imposed or why access and services should not be terminated. The Board and Owner may ask other persons to attend and present testimony at the hearing. A majority of the Directors present will decide whether to impose the fine or penalty or to terminate access and services, if permitted.

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

iv. When Services Will Be Restored. The Board will restore an Owner's access and services when the Owner pays all amounts due.

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

h. Budget. Each year, the Board must prepare and adopt a budget of Common Expenses of the Association and determine the amount of Assessments.

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

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

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

l. Borrowing Money. Subject to the notice and Owner approval requirements of Section 514B-105 of the Act and any approval requirements and spending limitations contained in these Bylaws or in the Declaration, the Association may authorize the Board to borrow money to be used for the repair, replacement, maintenance, operation, or administration of the Common Elements of the Project, or to make any additions, alterations,

and Improvements to them. The cost of borrowing including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to this borrowing, with respect to the Common Elements will be a Common Expense.

m. Payment of Common Expenses. As agent of the Owners, the Board will pay all Common Expenses authorized by the Board.

n. Insurance and Bonds. The Board will buy and keep in effect any insurance and bonds required or permitted by the Declaration or these Bylaws.

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

p. Purchase of Goods. Subject to any limitations contained within the Condominium Documents or by law, and if required by the Condominium Documents or by law, or if it is necessary or proper, in the Board's opinion, to operate the Project or to enforce the Condominium Documents, the Board may:

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

ii. Make repairs and structural alterations, and

iii. Pay taxes and assessments and other Common Expenses.

If any materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, or assessments are required because of the acts, misuse, or negligence of the Owners or Occupants of a particular Unit, the Board will charge the costs of it as a Special Assessment to that Unit to the extent permitted by Section 6.1(c).

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

r. Purchasing Units. Except as otherwise caused by the exercise of a Developer's reserved right to transfer Units to the Association, with the affirmative vote of sixty seven percent (67%) of the Association, the Board may buy, lease, or otherwise acquire any Unit on behalf of the Association, the cost of which shall be a Common Expense. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title.

s. Legal Proceedings. The Board may begin, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to enforcement of the Condominium Documents; (ii) damage to the Common Elements; (iii) damage to any part of any Unit to the extent that the Association is obligated to



maintain and repair it; or (iv) damage to the Units which arises out of, or is integrally related to, damage to any of the Common Elements, Limited Common Elements or to any part of any Unit to the extent that the Association is obligated to maintain and repair them. Except as otherwise provided in Section 514B-161(b) of the Act, if the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one (1) party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees. Notwithstanding the foregoing, all claims regarding the design, development, management or construction of any part of the Project shall be resolved pursuant to Section 18.5 of the Declaration, and in no event may the Association begin, defend, settle, or intervene on behalf of any one (1) or more Owners in litigation, arbitration, mediation, or administrative proceedings in matters for which only the Owner(s) has (have) standing to assert.

t. House Rules. Notwithstanding anything herein to the contrary, the Board may prepare and adopt additional rules and regulations (e.g. House Rules) governing the Project, Units, Common Elements and Limited Common Elements.

### 5.3 Managing Agent.

a. Board to Hire Managing Agent. The Board shall at all times employ a responsible Managing Agent duly qualified under the requirements of the Act to manage and control the Project, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Board; provided that the term of any such management contract shall be limited to a duration of one (1) year, except with the approval of a Majority of Unit Owners, provided further that such management contract shall also comply with the Declaration and these Bylaws. If Developer or a division, subsidiary or affiliate of Developer acts as the first Managing Agent, such management contract shall be subject to termination by either party on not more than ninety (90) days' written notice.

b. Authority of Managing Agent. The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Project, (ii) maintenance, repair, replacement and restoration of the exterior of the building(s) and other Common Elements, and any additions or alterations thereto, (iii) purchase, maintenance, and replacement of any equipment, (iv) servicing of all utilities to the building(s) and the various Units, (v) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (vi) contracting with others for the furnishing of such services as it deems proper for the Project, (vii) preparation of a proposed budget and schedule of assessments, (viii) collection of assessments, and payment of bills to third parties, (ix) purchase of such insurance as is contemplated by these Bylaws, and (x) custody and control of all funds and maintenance of books and records and preparation of financial reports.

c. Board Limits on Managing Agent Authority. The Board may in its discretion limit any of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent.

d. Association Approval of Managing Agent. The appointment and terms of compensation of the Managing Agent (other than the initial Managing Agent) shall be submitted to the Association for approval at each annual meeting but if not ratified by a Majority of the Unit

Owners, such contract shall be deemed terminated ninety (90) days after such non-ratification by the Association, and the Board shall give prompt written notice thereof to the Managing Agent and appoint a qualified successor Managing Agent subject to ratification by the Association in the manner set forth above. In no event shall the contract with any Managing Agent (other than the initial Managing Agent) be for a term exceeding three (3) years and any such contract shall be subject to termination, without penalty, by either party thereto on not more than ninety (90) days written notice.

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

## ARTICLE 6. BUDGET; RESERVES; COLLECTION OF ASSESSMENTS

6.1 Budget and Reserves. The Board must prepare and adopt an annual operating budget and provide copies of such budget to the Owners. The budget must contain any information required by the Act and the HAR.

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

b. Reserve Funds.

i. Replacement Reserves. The Association must establish replacement reserve funds for capital upgrades, as required by law, but in no event in an amount less than ten percent (10%) of the Association's annual budget. The Association may set up any additional replacement reserve funds that the Board determines to be necessary or prudent. As required by the Act and the HAR, the Board shall calculate the Association's estimated replacement reserves based on a reserve study developed in compliance with the Act. The term, "Association Property" as used in the HAR governing the reserve study shall refer to all Common Elements with the responsibility thereof divided according to whether the expense is attributable to a Common Element or a Limited Common Element. The Association must compute the estimated replacement reserves in the manner required by the Act and the HAR and shall set up separate replacement reserves. The annual operating budget must include all sums required to fund the replacement reserves funds in accordance with the Declaration, the Act, and the HAR. It may also include any greater amounts that the Board chooses in the exercise of its reasonable business judgment. Reserves may be used for those purposes required by the Act and the HAR. Neither the Association, nor any Owner, Director, Officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association will be liable if that estimate later proves incorrect. The Owners to which the Limited Common Elements are appurtenant shall assume the responsibility of the Board to establish replacement reserves for the Limited Common Elements; provided that any replacement reserves budget for any shared areas that serve the entire Project, if any, shall be coordinated by the Board to ensure consistency and efficient use of Association funds. Replacement reserves for the Common Elements shall be assessed as a Common Expense. As permitted by Section 514B-148 of the Act, the requirements of Section 514B-148 of the Act shall override any requirements in the Declaration or these Bylaws with the exception of: (a) any provision in the Declaration, these Bylaws, or any other Condominium Documents that require the Association to collect more reserves than are

required under Section 514B-148 of the Act; or (b) any provisions in the Declaration, these Bylaws, or any other Association documents that relate to upgrading the Common Elements, such as additions, Improvements, and alterations to the Common Elements

ii. Budget Limitation. The Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations, as set forth in Section 514B-148(e) of the Act or with the approval of a Majority of the Unit Owners. Prior to the imposition or collection of an assessment under this Section that has not been approved by a Majority of the Unit Owners, the Board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of assessment.

iii. Operating Reserves. Subject to Section 6.1 of these Bylaws, the Board may establish and maintain an operating reserve by monthly assessment against (and payment by) all Owners for operating expenses in proportion to their respective Common Interests; provided that, the Owners to which the Limited Common Elements are appurtenant shall assume the responsibility of the Board to establish operating reserves for the Limited Common Elements as a Limited Common Expense. Neither the Association, nor any Owner, Director, Officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated operating reserves for the Association will be liable if that estimate later proves incorrect. The reserves shall be set forth in the Association budget.

iv. Other Reserves. The Association may establish working capital reserve Improvement funds and other reserve funds that the Board deems necessary.

v. Owners' Interest in Reserves. Except upon termination of the condominium property regime created by the Declaration, the interest of any Owner in the reserves of the Association:

1. Cannot be withdrawn or assigned separately; and,
2. Will be transferred automatically with each transfer of the Unit, whether or not the Unit Deed or other transfer document expressly says so.

## 6.2 Duty to Pay Assessments; Interest and Late Charges.

a. Personal Obligation to Pay. Each Owner is personally obligated to pay, on time, all applicable Assessments (regular, special or otherwise) charged to the Owner or to his or her Unit. If a Unit is owned by more than one Person, each of them will be jointly and severally liable for the Assessments. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. By acquiring a Unit, an Owner promises to pay all applicable Assessments charged to him or her, or to his or her Unit.

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

c. How Payments Will Be Applied. Payments will be applied first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment.

6.3 Creation of Lien and Personal Obligation to Pay Assessments. Each Unit Owner, by acceptance of a Unit Deed or other conveyance of an interest in a Unit and/or title thereto, whether or not it shall be so expressed in such Unit Deed, is deemed to covenant and agree to pay to the Association the Assessments assessed against the Unit to pay the Unit's share of Common Expenses and other charges, as may be established and collected from time to time, as provided in this Declaration and the Bylaws. The unpaid amount of all Assessments against a Unit, together with interest thereon, penalties, fines, late charges, attorneys' fees, court costs, and other costs of collection thereof (collectively, "Collection Costs"), assessed against a Unit shall constitute a lien against such Unit that may be foreclosed by the Board or the Managing Agent as provided for in the Bylaws and/or in the Act. The Board or the Managing Agent shall send notice of such lien prepaid, by a mail service that provides proof of delivery, to the Unit Owner and all other Persons having any interest in such Unit as shown on the Association's record of ownership, including Unit Mortgagees. Said lien shall constitute a lien prior to all other liens, except (a) all sums unpaid to HHFDC under the HHFDC SAE Program pursuant to Chapter 201H, as applicable, (b) liens established by the use, sale and transfer restrictions of the HHFDC Buyback Restrictions and/or HHFDC SAE Program in favor of HHFDC, as established and/or set forth in Chapter 201H, as applicable; (c) liens for taxes and assessment lawfully imposed by governmental authorities against the Unit; and (d) all sums unpaid on any mortgage that was recorded prior to the recordation of a notice of lien by (or on behalf of) the Association, and costs and expenses (including attorneys' fees) provided in such mortgage. Upon receipt of such notice, any Unit Mortgagee shall be entitled to pay all unpaid amounts of any such assessment and the Board, acting on behalf of the Association, shall accept such payment in satisfaction thereof and thereupon release and discharge the lien securing the payment thereof. The Managing Agent, acting on behalf of the Association and as directed by the Board, shall be entitled to bid on a Unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit. An action to recover a money judgment for unpaid Assessments, Special Assessments and Collection Costs shall be maintainable without foreclosing or waiving the lien security such amounts. Each described assessment and fee, together with such Collection Costs, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due.

6.4 Purchase by Unit Mortgagee. Except as provided in the Act, this Declaration or the Bylaws, when a Unit Mortgagee or other purchaser of a Unit acquires title to such Unit as a result of a forfeiture or as a result of foreclosure and sale or a conveyance in lieu of foreclosure, the party acquiring title in such manner shall not be liable for any share of Common Expenses that became due prior to such acquisition of title. Except as provided in the Act, this Declaration or the Bylaws, the unpaid share of Common Expenses shall become Common Expenses to be collected from all Unit Owners, including such Unit Mortgagee or such other purchaser and their respective heirs, successors, legal representatives, and assigns.

The Unit Mortgagee or other purchaser of the Unit shall be deemed to acquire title and shall be required to pay the Unit's share of the Common Expenses upon the first to occur of: (a) 36 days after an order confirming the sale to the purchaser has been filed with the court; (b) 60 days after a hearing at which the court grants the motion to confirm the sale to the purchaser; (c) 30 days after the public sale in non-judicial power of sale foreclosure pursuant to Section 667-5 of the Hawaii Revised Statutes, as amended; or (d) upon the recording of the Unit Deed or other instrument conveying title in the Unit to the purchaser.

## 6.5 Assessment Disputes.

a. Statement of Unpaid Amounts. No Owner may withhold any Assessment claimed by the Association. An Owner who disputes the amount of an Assessment may request a written statement clearly indicating (1) the amount of Common Expenses included in the Assessment, including the due date of each amount claimed; (2) the amount of any penalty, late fee, lien filing fee, and any other charge included in the Assessment; (3) the amount of attorneys' fees and costs, if any, included in the Assessment and (4) other such matters as provided in Section 514B-146(c) of the Act. Upon receipt of such a request, the Association, or the Managing Agent on behalf of the Association, must provide a written statement disclosing this information and anything else required by the Act or the HAR.

b. Assessment Disputes. An Owner who pays the Association the full amount claimed by the Association may still contest the Assessment in the manner provided in the Act.

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

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

## 6.8 Financial Reports.

a. Financial Statements. The Association must prepare and send the following statements to each Owner:

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

ii. The Annual Report. The Association must send an annual report to each owner within ninety (90) days after the end of each fiscal year. The annual report must include:

1. A balance sheet showing the assets, liabilities and net worth of the Association at the end of the fiscal year;

2. An operating (income) statement for the fiscal year;

3. A statement of the net changes in the financial condition of the Association for the fiscal year; and

4. Any other information required by the law of any jurisdiction (for example, another state) where the Project is registered for public sale.

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

6.10 Audit. The Association shall require an annual audit of the Association's financial accounts and no less than one (1) yearly unannounced verification of the Association's cash balance by an independent public accountant. A copy of the annual audit shall be made available to each Unit Owner in accordance with the requirements set forth in the Act.

## ARTICLE 7. MORTGAGES AND UNIT MORTGAGEES

7.1 Examination of Books and Project Documents. Each Unit Mortgagee shall be permitted to examine the Project Documents and the books, records, and financial statements of the Association at reasonable times on business days, and each such Unit Mortgagee shall have the right to require the submission to it of annual reports and other financial data that may be required to be submitted to an Owner.

7.2 Right of First Refusal Not Applicable. In the event that there shall be any "right of first refusal" to purchase any Unit by the Association, any first Unit Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage or foreclosure of a mortgage or deed in lieu of foreclosure shall be exempt from such "right of first refusal."

7.3 Unpaid Assessments. Except as provided in the Act, the Declaration or herein, any first Unit Mortgagee who obtains title to a Unit pursuant to the remedies provided in a mortgage or foreclosure of the mortgage shall not be liable for such Unit's unpaid Assessments and other assessments that accrue prior to the acquisition of title to such Unit by the Unit Mortgagee. The unpaid Assessments shall be deemed to be collectible from all of the Owners, including an acquirer of such Unit and his or her successors and assigns.

7.4 Release of Information. The Board may provide any information available to it pertaining to a Unit or the Project to the first Unit Mortgagee of a Unit and such Unit Mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

7.5 Amendment to Bylaws. An amendment to this Article 7 must be agreed to by Unit Mortgagees that represent at least fifty one percent (51%) of the Common Interest of Units that are subject to mortgages. Implied approval by a Unit Mortgage to a proposed amendment to this Article 7 shall be assumed when such Unit Mortgagee fails to submit a response to a written proposal for such amendment within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

## ARTICLE 8. MISCELLANEOUS

### 8.1 Amendment of Bylaws.

a. Vote or Consent Requirements. Except as otherwise expressly provided in these Bylaws (including, specifically, subsections (d) and (e) below) or the Act, these Bylaws may be amended in any respect not inconsistent with law or the Declaration by the affirmative vote and/or written consent of Owners of Units to which are appurtenant not less than sixty-seven percent (67%) of the Common Interest of the Project, which amendment shall be effective upon the recording of a written instrument setting forth such amendment and vote and/or consent, duly executed by all of the consenting Owners or any two officers of the Association; provided, however, that each one of the particulars set forth in Section 514B-108(b) of the Act shall always be embodied in these Bylaws. Notwithstanding anything in these Bylaws to the contrary, amendments to the provisions of these Bylaws that are for the express benefit of Developer shall also require the express written consent and joinder of Developer, together with such other approval requirements set forth in this Section 9.1(a). Subject to the amendment approval requirements set forth above and any other requirements set forth in these Bylaws, any two officers of the Association may prepare, execute, certify, and record an amendment to these Bylaws on behalf of the Association.

b. Proposed Amendments. Proposed amendments to these Bylaws together with the detailed rationale for the proposal may be submitted to the Owners either by the Board of Directors or by a volunteer Owner's group. If a volunteer Owner's group desires to submit a proposal to the Owners, then the proposal shall be accompanied by a petition supporting the proposed Bylaw amendment(s) signed by not less than twenty-five percent (25%) of the Owners, as shown on the Association's record of ownership. The proposed Bylaws, rationale, and ballots for voting on any proposed Bylaw revisions 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, to be valid, must be obtained within three hundred sixty-five (365) days after mailing for a proposed Bylaw revision(s) submitted by either the Board or a volunteer Owner's group. If the Bylaw revision(s) is duly adopted, then the Board shall cause an amendment of the Bylaws to be recorded. The volunteer Unit Owner's group shall be precluded from submitting a petition for the proposed Bylaw revision(s) that is/are substantially similar to that which has been previously mailed to the Owners within three hundred sixty-five (365) days after the original petition was submitted to the Board. This subsection shall not preclude any Unit Owner or voluntary Unit Owner's group from proposing any Bylaw amendment(s) at any annual Association meeting.

c. Adoption of Committee's Proposal. If the Board fails to mail the proposed amendments to these Bylaws, rationale, and ballots for voting to the Owners within thirty (30) days of the receipt of the petition by the Board, then the Owner's group may mail such items to

the Owners, and the vote thus taken will be valid, provided the Owner's group has complied with all other applicable rules on voting for Bylaw amendments. The results of such vote shall be presented to the officers of the Association, who shall promptly execute such documents as shall be necessary to permit the amendments to be recorded.

d. Developer's Right to Amend. Any provision of this Section 11.3 or these Bylaws to the contrary notwithstanding, and until the recording of the Unit conveyances or agreements of sale with respect to all of the Units in the Project in favor of persons, including the Association, any Unit Owner or any Unit Mortgagee, Occupant, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to make such amendments (i) to correct any misstatements of fact in the Condominium Documents, to correct typographical errors, to correct mathematical errors in the statement of Common Interests or to correct errors in the legal description of the Land, and (ii) as may be required by Applicable Law, by the Real Estate Commission, by the County, by any title insurance company issuing a title insurance policy of the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency.

e. Restatement of Bylaws and Declaration. Subject to Section 514B-23 of the Act, the Association at any time may, by a resolution adopted by the Board, restate the Declaration or these Bylaws to amend the Declaration or these Bylaws for the reasons set forth in Section 514B-109(b) of the Act, subject, however, to the requirements of Section 514B-109(b) of the Act.

f. When Amendments Are Effective. An amendment to these Bylaws shall be effective only upon the recording of such amendment.

g. Unit Mortgagees. Notwithstanding anything to the contrary herein or the Condominium Documents, any amendments to the Declaration or these Bylaws of a material adverse nature to Unit Mortgagees must be agreed to by Unit Mortgagees that represent at least fifty-one percent (51%) of the Common Interests that are subject to mortgages.

8.2 Abatement and Enjoinment of Violations. The violation of any rule or requirement adopted by the Board, or the breach of any of these Bylaws or breach of any provision of the Declaration, shall give the Board the right, in addition to any other right set forth in the Declaration or these Bylaws:

a. To enter the Unit and/or Limited Common Elements appurtenant thereto, in which, or as to which, such violation or breach exist and summarily to abate and remove, at the expense of the appropriate Owner or Occupant, any structure, thing or condition that may exist therein contrary to the intent and meaning of the Condominium Documents, and the Board shall not be deemed guilty in any manner of trespass; and/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, including attorneys' fees, shall be paid by the appropriate Owner upon demand.

8.3 Manner of Giving Notices. All notices permitted or required to be given under these Bylaws, the Declaration or the Act must be in writing and may be delivered either personally, by fax or by mail. Unless otherwise required by the Act, the Declaration or these Bylaws: (a) all notices mailed to Owners shall be sent by first class mail, or by an express mail service that provides a receipt for, or other proof of, delivery, to the Owner or Owners at the



address furnished in writing from time to time to the Association, or if no address has been furnished, to the Unit; (b) all notices to the Board may be personally delivered to a Director or may be sent by first class mail, by an express mail service that provides proof of delivery, or by fax to the office of the Managing Agent or to such other address as the Board may hereafter designate from time to time by notice in writing to all Owners; and (c) all notices to Unit Mortgagees shall be sent by first class mail, or by an express mail service that provides a receipt for, or other proof of, delivery, to their respective addresses, as designated by them from time to time in writing, to the Board. All notices given by mail shall be deemed to have been given twenty-four (24) hours after being deposited in the United States mail, or with the express mail service provider, postage prepaid, except notices of changes of address which shall be deemed to have been given when received. All notices given by fax shall be deemed to have been given upon transmission to the fax number shown on the records of the Association or the Board.

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

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

8.6 Interpretation. The provisions of these Bylaws will be interpreted to carry out the purpose of creating a residential condominium in accordance with the Declaration and the Act.

8.7 Effect of Invalid Provisions. The provisions of these Bylaws are severable. Invalidation of any part of these Bylaws by judgment, decree, or order shall in no way affect any other provisions of these Bylaws, each of which shall remain in full force and effect.

8.8 Waiver. No restrictions, condition, obligation or provision contained in these Bylaws 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 which may occur.

8.9 Conflicting Provisions. In the event of any conflict between the Declaration and these Bylaws, the Declaration shall control; provided, however, in no event shall any controlling provision result in a violation of Applicable Law.

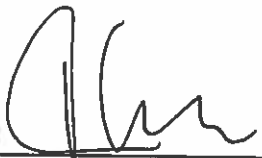
(The remainder of this page is intentionally left blank)

**IN WITNESS WHEREOF**, Developer, acting as the initial Association, hereby adopts the foregoing Bylaws as the Bylaws of the Association of Unit Owners of 'Ohana Hale on behalf of the Association this 11th day of December, 2018.

**DEVELOPER:**

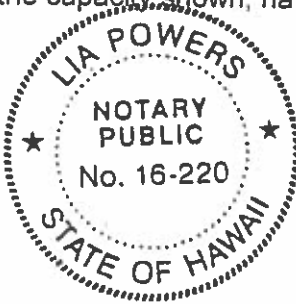
**PUMEHANA HUI LP**, a Hawaii limited partnership


By MJF Development Corporation, a California corporation, its General Partner

By  \_\_\_\_\_  
Franco J. Mola  
Its President

STATE OF HAWAII )  
 ) SS.  
CITY & COUNTY OF HONOLULU )

On this 11th day of December, 2018, before me personally appeared FRANCO J. MOLA, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



  
\_\_\_\_\_  
Notary Public, State of Hawai'i  
Printed Name: Lia Powers  
My commission expires: June 12, 2020

NOTARY CERTIFICATION STATEMENT

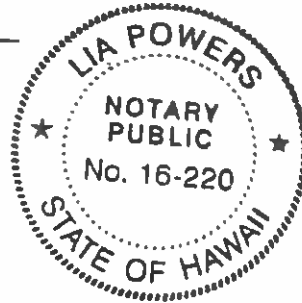
Document Identification or Description:


Bylaws of the Association of Unit Owners of 'Ohana Hale  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: December 11, 2018.

No. of Pages: 27

Jurisdiction: First Circuit  
(in which notarial act is performed)



  
\_\_\_\_\_  
Signature of Notary  
Date of Notarization and  
Certification Statement  
December 11, 2018  
Lia Powers  
\_\_\_\_\_  
Printed Name of Notary