

**BYLAWS
OF
OMAOPIO RIDGE COMMUNITY ASSOCIATION**

**ARTICLE 1
INTRODUCTORY PROVISIONS**

1.1 **Definitions.** Defined terms appear throughout these Bylaws with the initial letter of each such term capitalized. Such terms shall have the meanings given to them in the Declaration (as hereinafter defined), except as otherwise expressly stated herein or clearly required by the context. Without limiting the foregoing, the following terms used in these Bylaws are defined as follows:

A. “Articles” or “Articles of Incorporation” means the Articles of Incorporation of the Omaopio Ridge Community Association, as filed or to be filed with the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii (the “DCCA”), as such Articles may be amended from time to time, or any successor thereto.

B. “Association” shall mean and refer to the Omaopio Ridge Community Association, which is a domestic nonprofit corporation organized under the Nonprofit Corporations Law and is the association of all Owners in the Subdivision acting as a group in accordance with the Articles of Incorporation.

C. “Board of Directors” or “Board” shall mean the Board of Directors of the Association.

D. “Bylaws” means these Bylaws of the Omaopio Ridge Community Association, as amended from time to time.

E. Reserved.

F. “Declaration” means the Declaration of Covenants, Conditions & Restrictions for the Omaopio Ridge Subdivision project dated December 22, 1998, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 98-193719, as amended (the “Declaration”), and any House Rules adopted pursuant thereto. The Association and its Board of Directors shall be preceded by the word “Omaopio Ridge” and known respectively as the “Omaopio Ridge Association” and “Omaopio Ridge Board”.

G. “Declarant” means Edward T. Esty, II and Mary Lee Esty, husband and wife, and their heirs and assigns, as provided in the Declaration.

H. “Member” means every Person who is entitled to membership in the Association, as provided in the Declaration.

I. “Nonprofit Corporations Law” means Hawaii Revised Statutes, Chapter 415B, as may be amended from time to time.

J. “Owner” means (i) the Declarant with respect to any Lot in the subdivision it owns which is not subject to an Agreement of Sale; (ii) all other Persons who own a Lot not subject to an Agreement of Sale; (iii) a buyer of a Lot under an Agreement of Sale; and each of their respective heirs, successors and assigns.

K. “Person” means a natural person, a corporation, a partnership, a trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

L. Reserved.

M. “Association Documents” means the documents creating and governing the Association, which includes these Bylaws, the Articles of Incorporation of the Association, the Declaration and the Rules and Regulations.

N. Reserved.

O. “Lot” means one of the three lots in the subdivision, being lots 8-A, 8-B and 8-C.

P. “Subdivision” shall mean the properties described on Exhibit “__” attached hereto.

Q. “Rules and Regulations” means the Rules and Regulations for the Omaopio Ridge Community Association adopted initially by the Declarant pursuant to the Declaration, which Rules and Regulations can be subsequently amended from time to time by the Association.

R. Reserved.

S. Reserved.

T. Reserved.

1.2 **Background.** The Association was formed to administer the Declaration and manage the Association Property. Membership in the Association shall consist of all of the Owners. The Association shall be managed by the Board.

1.3 **Principal Office.** The principal office of the Association shall be located in the County of Maui, State of Hawaii. The Association may have such other offices, either within or outside the County of Maui or the State of Hawaii, as the Board may determine or as the affairs of the Association may require.

1.4 **Adoption of Bylaws.** At the initial meeting of the Board of Directors, the Board, pursuant to the authority granted to it in the Articles, shall adopt these Bylaws and, by doing so, shall declare that the Property is owned and shall be owned, held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in these Bylaws, all of which are declared to be in furtherance of the general plan set forth in the Declaration, and are established for the purpose of enhancing and preserving the

value, desirability and attractiveness of the Property. These Bylaws shall constitute equitable servitudes, liens and covenants running with the Property and shall be binding upon and shall inure to the benefit of all Persons having or acquiring any right, title or interest in any portion of the Property.

1.5 **Conflicts.** In case of any conflict between the provisions of Hawaii law, the Declaration, the Articles and/or these Bylaws, then the provisions of Hawaii law, the Declaration, the Articles and these Bylaws (in that order) shall prevail.

1.6 **Application.** All present and future Owners and their guests, patrons, customers, other business invitees and employees, and any other Persons who may use any part of the Property in any manner are subject to the Association Documents, as each may be amended from time to time. The acceptance of a deed or other conveyance, or the entry into a rental agreement, or the act of occupying a Lot, shall constitute an agreement that the Association Documents, as they may be amended from time to time, are accepted, ratified and will be strictly complied with.

1.7 **Rights, Powers and Duties.** The Association, the Board and the Members shall have the powers and duties set forth in: (a) the Nonprofit Corporations Law, subject to any limitations set forth in the Association Documents; and (b) the Association Documents.

ARTICLE 2 ASSOCIATION MEETINGS

2.1 **Place of Meetings.** All meetings of the Association shall be held at the principal office of the Association or elsewhere convenient to the Members as designated by the Board.

2.2 **Organizational Meeting.** The first meeting of the Association shall be held not later than three hundred sixty-five (365) days after recordation of the first conveyance or other transfer of a Lot to a Person other than Declarant or an affiliate of Declarant. The first meeting shall be for the purpose of organizing the Association. At the request of either Declarant or Members representing at least sixty-six percent (66%) of the votes of the Members, the Declarant shall call for the initial meeting to take place at the time set forth in such request. If no request for an initial meeting is made within three hundred twenty (320) days after the first transfer of a Lot, the Declarant shall, on its own authority, call for the meeting to take place within the remainder of the 365-day period. The Declarant shall send notice of the initial meeting in the manner set forth in Section 2.5, below.

At the initial meeting, Owners shall elect an entirely new Board of Directors. The Members may transact such other business as is properly before them.

Until the first conveyance or other transfer of an a Lot to a Person other than Declarant or an affiliate of Declarant, Declarant shall be the only Owner and the only Member of the Association. Notwithstanding any provision herein to the contrary, until Declarant conveys or transfers that first Lot to another Person, Declarant may act for the Association in all capacities, and may do so without any formal meeting or notice.

2.3 **Annual Meetings.** Regular meetings of the Members shall be held each year, with

the first such annual meeting taking place within one year after the initial organizational meeting. The Board shall set the time, day and month for each annual meeting of the Association, which meetings may coincide with the date of the annual meeting of the Condominium Association; provided, however, that, if the Board does not so set a date for the annual meeting, such meeting shall be held on the first Monday of April in each year, or, if that day is a holiday, the next calendar day. At each annual meeting, the Members will elect Directors to replace those whose terms of office then expire, unless the Board has provided for the election of Directors to be by mail. The Members may transact such other business as is properly put before them.

2.4 **Special Meetings.** Special meetings of the Members may be called for any one or more purposes and may be called by the President of the Association, by a majority of Directors, or by a petition to the secretary of the Association signed by Members representing not less than fifty percent (50%) of the Lots. The Members may transact only that business which is stated in the notice of the special meeting.

2.5 **Notice of Meetings.**

A. **In Writing.** Written notice of all meetings (organizational, annual and special) must be sent to all members. The written notice must state: (i) the place, date and hour of the meeting; (ii) the authority for the meeting, and whether it is the organizational meeting or an annual or special meeting; (iii) the items of business (with a brief description) which, as of the date the notice is sent: (a) the Board intends to present to the Members at the meeting; and (b) a Member intends to present; provided, however, the Member notifies the Board in writing of his/her intention; provided further, however, that, at the organizational meeting and all annual meetings, a Member may present any other proper business, unless notice of such business is specifically and expressly required by another part of the Association Documents.

B. **Proxies.** Any standard proxy form authorized by the Association or the Board must be in the form required by Section 2.12 and must be sent with each written notice.

C. **Delivery.** Each written notice must be sent either by personal delivery or by putting it in the mail (first class, postage prepaid). The address used for each Member will be the last address appearing on the Association's records for that Member or such address given to the Association by that Member. Each Member must inform the Board of any change in such Member's address. Written notices shall be sent between thirty (30) and sixty (60) days before the date scheduled for the meeting.

D. **Notice Recipients.** Written notices shall be sent to each Person who, as of the record date, is entitled to vote as or for a Member of the Association. The record date will be set as stated in Section 2.11. Notices must also be sent to each mortgagee of a Lot from whom the Association has received, as of the record date, a written request for a notice.

E. **Effect of Failure to Receive Properly Sent Notice.** If a notice is sent as required by this Section, then: (i) no Person entitled to vote and no mortgagee may complain because such notice was not actually received; and (ii) the fact that such Person or mortgagee does not actually receive the notice will not, by itself, invalidate anything that transpires at the meeting.

F. **Failure to Provide Current Address.** Notwithstanding any provision herein to the contrary, notice of a meeting need not be sent if there is no address given or appearing in the Association's records. In the event a properly stamped notice, mailed to the last address given or appearing in the Association's records, is returned by the post office as undeliverable, no notice of any kind need be sent to that Person unless and until a new address is later given or obtained for that Person.

G. **Waiver of Notice.** A Member's right to have written notice of Association meetings is waived:

i. With respect to each item of business set forth in the notice, if: (a) the Member is present at the meeting; and (b) the Member does not, at the commencement of the meeting, object to holding the meeting due to a failure to send written notice;

ii. With respect to each item of business that should have been stated in the notice, but was not, if: (a) the Member is present at the meeting; and (b) the Member does not object when that item of business is first raised:

iii. By signing a written waiver or consent, either before or after the meeting;

iv. By approving the minutes of the meeting in writing; or

v. If the Member receives written notice of any action taken at a meeting and does not object to such action in writing within fifteen (15) days after receipt of the written notice.

H. **Standing to Object to Lack of Notice.** Only the Person who had the right to be sent a notice of a meeting, but was not sent such a notice, may object if the notice was not sent to such Person.

2.6 **Quorum.** Except as may otherwise be provided in these Bylaws, the Articles or the Declaration, the presence of Members representing at least fifty-one percent (51%) of the votes attributable to Lots in the Subdivision shall constitute a quorum at all meetings of the Association. A Member is "present" at a meeting if there in person or represented by proxy or in any other manner as stated in Section 2.13. The vote of a Member or Members whose voting rights have been suspended as stated in the Declaration will not, however, be considered for purposes of determining a quorum, even if the Member or Members owning that vote or such Member's or Members' proxy or other representative, is present at the meeting.

2.7 **Adjournment.** Without notice other than the announcement at such meeting, any Association meeting where there is a quorum may be adjourned to a later time and date to such place and time as may be determined by a majority of the votes present, whether such votes are represented by a Member or Members present at the meeting or by proxy. Notice of when the meeting is to re-commence may be given by verbal announcement at the time of the adjournment.

No written notice of the adjourned meeting is required, unless the meeting is adjourned for more than forty five (45) days, in which case written notice must be sent again as stated in Section 2.5. 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.

2.8 Actions of the Association. Except as otherwise provided in these Bylaws, the Declaration, any valid contract entered into by the Association, or by law, any action which may be taken by the Members may be taken by a majority (greater than 50%) of a quorum. Any reference to a specified percentage of votes shall mean those votes representing such specific percentage of Lots in the Subdivision.

2.9 Loss of a Quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough votes to leave less than a quorum, provided that at least a majority of the votes required to constitute a quorum remains in attendance, and provided further that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.10 Action Without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be so taken without a meeting if written consent setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Members. At any time before all needed consents are obtained, however, any written consent may be changed or canceled in a writing filed with the Secretary, and if all needed consents are not obtained within two hundred seventy (270) days after the first consent is received, all consents received as of that date will no longer be effective.

Action may be also taken without a meeting if the following requirements are met:

1. A written ballot is sent to every Member entitled to vote which: (i) states the proposed action; (ii) gives an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association; (iii) provides that the vote of the Members shall be cast in accordance with the choice specified; and (iv) sets a reasonable time for the Member to return the ballot to the Association;

2. The number of votes cast by ballot within the specified time equals or exceeds the quorum required to be present at a meeting authorizing the action; and

3. The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

The Board may also determine to conduct the election of directors by mail, as permitted by Section 415B-43 of the Nonprofit Corporations Law. In addition, an irregular meeting may be made valid by unanimous consent of the Members.

2.11 Record Date. The term “record date” means the date that is used to determine which

persons are entitled to notice of and to vote at any meeting or any action without a meeting. The record date also determines who may object to and waive lack of notice and exercise other rights for or as a Member.

A. **Board May Fix Record Date.** The Board may fix the record dates. The date may not, however, be more than sixty one (61) nor less than thirty one (31) days before the date set for the meeting, or, if an action is without a meeting, not more than thirty one (31) days nor less than one (1) day before requests for written consent are sent.

B. **Record Date Not Fixed By Board.** If a record date is not fixed by the Board, the following shall apply:

1. For meetings, the record date will be the close of business the day before the first notice is sent;
2. For objections to and waivers of notice, the record date will be the close of business on the day before the meeting; and
3. For actions without a meeting, the record date will be the day before the first request for written consent or ballot is sent.

C. **Record Date for Adjourned Meetings.** The record date for any meeting starting again after adjournment will be the record date for that meeting before adjournment, with this exception: If notice must be given before the meeting may be started again (see Section 2.7), a new record date must be set as provided above, as if the continuation of the meeting were a new meeting.

D. **Rights as of Record Dates.** Only Members or persons entitled to act for Members as shown on the Association's records on the record date will have the rights referred to in this Section 2.11. Any Person who becomes a Member of record or whose right to act for a Member is made a matter of record after the record date will not have these rights until a subsequent meeting.

2.12 **Proxies.** Votes may be cast in person or by proxy by a Member (or any person lawfully acting for such Member). To be valid, a proxy must:

A. Be in writing;

B. State each proposed action; give an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon; provide that the vote of the Member shall be cast in accordance with the choice specified; and include the name or names of Members who expect to be in attendance in person at the meeting to whom the proxy may be given for the purpose of casting the vote to reflect the absent Member's vote as specified;

C. Be signed by the Member (or by any person lawfully acting for the Member);
and

D. Be filed with the Secretary.

No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise stated in the proxy. Each proxy must be voted as marked. Any failure to comply will not, however, by itself, make invalid any action taken at the meeting, but it may be the basis for challenging the proxy or written consent.

A proxy may be canceled at any time (if it is lawful to do so): (i) in a writing signed by the Member (or other person) giving the proxy and filed with the Secretary; or (ii) if the Member (or person lawfully acting on the Member's behalf) is present at the meeting and casts the vote in person.

2.13 Who May Vote for a Member.

A. **Pledge.** A Member may pledge to another person (the “pledgee”), in writing, the authority to represent, act and vote for such Member by a provision in a mortgage or any agreement of sale covering the Member’s Lot, by any other lawful document, or a Court Order may give this authority to someone else. If a certified copy of any pledge is filed with the Secretary as of the record date, only the person named in the pledge (i.e., the pledgee) may vote in person or by proxy on that matter. The Lot need not be transferred to the pledgee’s name and the pledgee keeps the right to vote in person or by proxy until the pledge is released or ended in writing filed with the Secretary. If, however, the pledge is not duly filed with the Secretary as of the record date, the claim of a pledge will be ignored, and the Member will have the right to cast the vote.

B. **Personal Representatives, Guardians, and Trustees.** Personal representatives, guardians, and trustees of a Member (the “Representative(s)”) may vote, in person or by proxy, each Lot held by the Representative, even if the Lot has not been transferred into the Representative’s name on the Association's records. Before the record date, however, a certified copy of the document showing that the Representative is the personal representative or guardian or trustee of the Member must be filed with the Secretary.

C. **Minors.** A minor has the right to vote in person or by proxy and to exercise other rights of a Member for each Lot owned in such minor's name, unless a guardian of the minor's property has been appointed and the fact of this guardianship has been documented in a writing filed with the Secretary, as stated in the previous subsection.

D. **Corporations and Partnerships.** The vote of a corporate Member may be cast in person or by proxy: (1) as stated in the bylaws of that corporation; (2) in the absence of a controlling provision in the bylaws, as the board of directors of that corporation decides; or (3) in the absence of a controlling certificate or provision in the articles, by the chairman, president or vice president of that corporation, or any other person authorized to do so by any of them. The vote of a Member that is a partnership may be cast in person or by proxy: (i) as stated in the articles and/or certificate of partnership; or (ii) if there is no such provision, by any general partner or any other

person authorized to do so by such general partner. Documents establishing such authority may, but need not, be filed prior to any meeting. Instead, votes or proxies purportedly cast or given under any such authority presented at or before the meeting will be presumed to be validly voted or given, unless the contrary is shown.

E. **Property Owned by the Association.** Votes may not be cast or proxies given for any Property owned by the Association.

2.14 **Cumulative Voting.** “Cumulative voting” is a special procedure used to elect Directors. For each Lot owned, there is one (1) vote for each Director to be elected. Each Member with the right to cast a vote may cumulate such Member's votes by giving to one nominee all of the votes that such Member has for all of the Directors to be elected. Alternatively, the Member may distribute the Member’s votes among the nominees in any other way. The nominees receiving the highest number of votes, up to the number of Directors to be chosen, will be elected, except as stated in Section 3.2.

2.15 **Conflicting Claims for Votes.**

A. **Co-Owners.** Co-Owners of a particular Lot are all Members of the Association. However, such co-Owners collectively have just one (1) vote for each Lot owned. Each vote must be cast as a unit. The vote or votes cast by the co-Owners of a Lot are counted as indicated by those co-Owners present in person or by proxy, if there is no conflict between them and even if less than a majority of the co-Owners are present at the meeting. If, however, there is a conflict among the co-Owners present, then the vote will be cast as indicated by a majority of all of the co-Owners (not just a majority of those present). If a majority cannot be reached, no vote may be cast or counted for that Lot.

B. **Multiple Claims for a Member’s Vote.** There may be conflicting authorities for corporate or partnership Members. If the vote cast by these authorities on any matter is the same, the vote on that matter will be counted. If the votes on any matter would be in conflict, the conflict between the authorities must first be resolved. If the authority is from the same source, the one given last will control. If it cannot be determined from their face which authority was given last, no vote may be cast or counted on any matter where there is a conflict. If the conflict is between different types of corporate or partnership authorities, the priority stated in Section 2.13(D) controls and must be followed. If the conflict is not resolved, no vote for that corporation or partnership may be cast or counted. If more than one (1) proxy is given, and there is a conflict between the votes that would be cast by such proxy on any matter, the proxy signed last will control. If it cannot be determined from the face of the proxies which was last signed, no vote may be cast or counted on any matter where there is a conflict. All conflicts will be decided by the inspector or inspectors appointed as stated in Section 2.17.

2.16 **Voting Multiple Interests.** Any Person who is entitled to vote for more than one (1) Lot may cast all such votes together, may split the votes, or may refrain from exercising all of the votes. However, if, when voting, the Person does not expressly specify that one (1) vote is being cast differently from another, then it is conclusively deemed that all such votes have been cast the same way.

2.17 **Voting and Election Inspectors.**

A. **Appointment and Number.** Before any meeting of the Association, the Board shall appoint either one or three voting inspectors.

B. **Duties.** The inspector or inspectors will:

1. Determine the number of votes that may be cast, the authenticity, validity and effect of proxies, pledges and other documents purporting to give any Person the right to represent, act and vote for a Member;
2. Receive votes, ballots and consents;
3. Hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes;
4. Count and tabulate all votes and consents;
5. Decide when the polls will close;
6. Determine the result of all votes and elections;
7. Do other acts that may be proper to conduct the vote or election with fairness to all Members; and
8. Perform such duties impartially, in good faith, to the best of his/her ability and as quickly as practicable.

C. **Inspector Decisions, Acts and Certificates.** 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 controlling. Any facts stated in any effective report or certificate shall be presumed accurate.

2.18 **Order and Conduct of Meetings.** The order of business at all meetings of the Association shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Report of Board of Directors;
- (f) Reports of committees (if any);
- (g) Election of members of the Board of Directors (when required);
- (h) Unfinished business; and
- (i) New business.

All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order. In the case of a conflict between such rules and the Articles, the Declaration or these Bylaws, the Articles, the Declaration and these Bylaws shall control.

PART 3 DIRECTORS

3.1 Number and Qualification. The Board shall be composed of three (3), five (5) or seven (7) persons. The initial Board shall be composed of three (3) persons as identified in the Articles. Except with respect to directors appointed by Declarant, all directors shall be Owners. An officer of a corporate Owner, the general partners of a general or limited partnership Owner, and the fiduciary or officer of a fiduciary Owner, respectively, shall be deemed to be Owners for the purposes of this Section. The buyer under an Agreement of Sale (and not the seller) is considered the Member for this purpose. Except with respect to directors appointed by Declarant, there shall not be more than one representative on the Board from any one Lot. At least one (1) director shall be a resident of the State of Hawaii, as required by the Nonprofit Corporations Law. In the absence of a Hawaii-resident Member willing to serve as a director, a non-Member Hawaii resident will qualify to fill one (1) director position.

3.2 Election and Term of Office. Notwithstanding any other provision contained in these Bylaws:

A. Until the organizational meeting, the directors and officers shall be appointed from time to time by Declarant. At the organizational meeting, the Members shall elect a new slate of three directors, whose terms shall run until the first annual meeting of the Association. The persons receiving the most votes will be elected, provided, however, one (1) director will be elected solely by Members other than Declarant. At every later election of directors, one (1) director will also be elected solely by Members other than Declarant, if there is then no such director remaining on the Board.

B. Directors elected from and after the first annual meeting of the Association shall hold office for a term of two years and until their respective successors have been elected, subject to removal as herein provided; except that at the first annual meeting of the Association, the number of persons to equal a majority of directors (but no more) who receive the largest number of votes shall be elected for terms of two years, and the remaining directors shall be elected for a term of one year. Thereafter, at the expiration of the term of office of each such director, each successor director shall be elected for a term of two years.

C. At each annual meeting after the organizational meeting, the Members shall elect a director to fill each position that expires at that meeting, except the Board may provide that the election of directors be conducted by mail. The Members may re-elect any person as a director. There is no limit to the number of successive terms of office that any person may hold.

D. At any regular or special meeting of the Association where there is a quorum,

Members representing seventy-five percent (75%) of the votes attributable to the Lots present at such meeting can vote to change the number of directors, provided, however: (i) such resulting number is either three (3), five (5) or seven (7); and (ii) all existing directors are allowed to complete their respective terms, subject to the Board's and the Members' rights of removal.

E. If, at any election of directors, at least one (1) Hawaii resident would not be elected pursuant to the procedures set forth herein, then the Hawaii resident receiving the most votes will be elected in place of the person who received the least number of votes but who still would have been elected. If no Hawaii resident gets any vote, then there shall be a re-vote until a Hawaii resident is elected. The requirement for a Hawaii-resident director shall automatically cease if Hawaii law does not require that at least one director be a Hawaii resident.

3.3 Nomination of Directors. Except with respect to directors selected by Declarant, nominations for election to the Board shall be made by a Nominating Committee. The Nominating Committee shall consist of a chairman, who shall be a member of the Board, and three (3) or more Members of the Association, none of whom may represent the same Lot. The Nominating Committee shall be appointed by the Board of Directors not less than sixty (60) days prior to each election of directors to serve a term of one (1) year or until their successors are appointed, and their appointment shall be announced at such annual meeting. Not less than thirty (30) days prior to each election of directors, the Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled; provided, however, at least three (3) Hawaii residents are nominated (who need not be Members), unless a director whose term is not expiring at the meeting is a Hawaii resident. Nominations shall also be permitted from the floor. The list of nominees must also include any qualified person nominated in any petition signed by Members representing at least five percent (5%) of the votes attributable to the Lots and received by the Board not less than thirty (30) days before the election. The list of nominees must be sent to each person entitled to vote as of the record date. If the list is prepared before the notice of the meeting is sent, the list must be sent with the notice. Each person nominated must be placed on the ballot. However, any Member present at any meeting, or, if the election is to be by mail, any Member who submits a written request not less than thirty (30) days before the election, may nominate any other qualified person for director, and the person so nominated must be added to the ballot.

3.4 Removal of Directors.

A. **By the Members.** Directors may be removed with or without cause by the Members. A director may be removed at any annual meeting, or at any special meeting called for such purpose. Any director whose removal has been proposed shall be given the opportunity to be heard at such meeting. Such director shall be removed if Members representing a majority of the votes attributable to the Lots vote to do so, except: (1) no director may be removed without cause if Members representing at least twenty-five percent (25%) of the votes attributable to the Lots vote against such director's removal; (2) unless all directors are removed, no director may be removed if the votes cast against removal would have been sufficient to elect the director if voted cumulatively at the most recent election of directors; and (3) the director(s) elected by Members other than Declarant shall not be subject to removal by Declarant acting alone. At any meeting in which a director is removed, the Members are to elect a person to fill the vacant position. The person so

elected will hold office for the remainder of the removed director's term.

B. **By the Board.** The other Members of the Board may (but are not required to) remove any director who is not present at three (3) or more consecutive regular meetings of the Board. However, if before a director is removed for missing meetings, such director is present at any later meeting, such director must miss at least three (3) more consecutive meetings before removal.

3.5 Vacancies.

A. **When a Vacancy Shall Occur.** A vacancy on the Board will occur when any authorized position of director is not filled. A vacancy can occur as a result of the following:

1. A Director dies or resigns. Unless required by its terms, a resignation need not be accepted by the Board. Instead, it will be effective as of the time stated, or, if no time is stated, as soon as it is given to the Board:

2. Subject to Section 3.1, a director ceases to be an Owner or co-Owner (or in the case of an Owner or co-Owner that is a partnership or a corporation, the director ceases to be a general partner or corporate officer);

3. If a director who was a Hawaii resident ceases to be (and no other director is) a Hawaii resident;

4. The Members remove a director pursuant to the authority given in Section 3.4A, but do not at the same time elect a replacement;

5. A Director is removed by the Board pursuant to the authority given in Section 3.4B;

6. The Members fail to elect a director to succeed someone whose term of office expires at an annual meeting;

7. The Members fail to elect at least one (1) director who is a Hawaii resident and no other Director who has this qualification is still on the Board;

8. The Members increase the authorized number of directors but at the same time do not elect a director to fill the new position or positions created: or

9. An authorized position is not filled for any other reason by a duly elected director.

B. **Filling of Vacancies.** The Board must fill all of the vacancies referred to in subsection A above. These vacancies will be filled by a vote of a majority of the remaining directors, even if by less than a quorum. If the vacancy is created by the Board's removal of a

director, the Board must appoint a replacement at the same time that the director is removed. If the vacancy is created because there is no director who is a Hawaii resident, then the Board must appoint a Hawaii resident to fill the vacancy. In this case the Board may appoint a Hawaii resident who is not a Member.

C. **Term of Directors Appointed to Fill Vacancies.** Each person so appointed will be a director for the remainder of the term of the director being replaced. For vacancies resulting from a failure of the Members to elect a director, however, the person appointed will hold office for the term that such person would have held if elected by the Members.

3.6 **Annual Meetings of the Board.** Immediately after the organizational meeting of the Members and after each annual meeting of the Members and after new directors are otherwise elected or appointed, the Board must hold a meeting to organize itself. At such meeting the Board must elect the required officers and may also transact any other business. No call or notice of this meeting is required.

3.7 **Regular Meetings.** Between annual meetings, the Board must hold regular meetings. The number of these meetings and the time and place will be set from time to time by a majority of all directors. The Board must, however, hold a regular meeting at least once every twelve (12) months. Notice of regular meetings must be sent to each director. Notices may be delivered personally, by mail, by telephone or by telegraph. Notices must be sent at least fifteen (15) days prior to the date of each meeting. The notice may, but need not, be in writing. Written notice shall be considered properly sent, even if not actually received, if mailed to the last address or telecopied to the last telecopier number given by that director to the Board and is put in the mail at least seven (7) days before the meeting or telecopied at least three (3) days before the meeting. Notice that is not written must actually be received.

3.8 **Special Meetings.** A special meeting of the Board may be called for any one or more purposes. It may be called by the President or any two (2) other directors.

3.9 **Notice Requirements and Waiver of Notice.** Except in an emergency (as determined by the President) notice of special meetings of the Board must be given in the same manner as notice of regular meetings; provided, however, such notice is sent at least fifteen (15) days (rather than three (3) days) before the scheduled date of the meeting. A director may waive notice of any meeting and is deemed to so waive if actually present at the meeting, unless such presence is for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. A director also waives notice: (a) by signing a written waiver before or after the meeting; or (b) if in writing after the meeting, such director consents to or approves of the action taken by the Board or consents to or approves of the minutes of the Board meeting.

3.10 **Place of Meetings.** The annual meeting shall be held at the same place as the annual meeting of the Members. All other meetings of the Board shall be held at location as the Board may decide. If, however, the Board decides that meetings at another location may reduce (a) the cost to the Association and/or (b) the inconvenience to the directors, meetings may be held at another location.

3.11 **Meetings by Telephone.** Members of the Board of Directors or of any committee may participate in a meeting by means of a conference telephone or similar communication equipment by which all persons 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.

3.12 **Open and Executive Sessions.** Subject to the provisions of Section 3.17 below, all meetings of the Board shall be open to all Members, provided that Members who are not directors may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. If the number of Members requesting connection to the Board meeting by telephone makes meeting by telephone conference impractical or impossible, the Board may not meet by telephone conference. The Board, with the approval of a majority of a quorum, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or pending or threatened litigation or orders of business of a similar nature. The nature and all business to be considered in executive session shall first be announced in open session. Board Members may not vote by proxy on matters pending before the Board. The Board does not have to give general notice of its meetings to the Members, provided such notice shall be given to any Member who timely requests notice in writing.

3.13 **Adjourning Meetings.** A majority of directors present, whether or not a quorum, may adjourn any meeting to another time and place. Other than an announcement at the time of the adjournment, a notice of the adjourned meeting is not required; provided, however, that notice shall be given to the absent directors: (a) if there was not a quorum; or (b) if the meeting is not set to commence again within twenty-four (24) hours.

3.14 **Quorum of Board of Directors.** At all meetings of the Board, the presence, in person or by telephone, of a majority of the director positions, whether filled or not, 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 cast a proxy at any meeting. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.15 **Actions of the Board.** Each director present at a meeting is presumed to have approved all actions taken at that meeting unless: (1) such director's dissent is entered in the minutes; or (2) such director files with the Secretary a written dissent within five (5) days after the meeting.

3.16 **Loss of a Quorum.** The directors present at a Board meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum, provided that at least a majority of the directors required to constitute a quorum remains in attendance, and provided further that any action taken is approved by at least a majority of the directors required to constitute a quorum.

3.17 **Action Without a Meeting; Validating Irregular Meetings.**

A. The Board may take action on any matter without a meeting: (1) if all the directors in office consent to that action in writing; and (2) (i) if such directors represent at least a quorum, or (ii) if the approval of some other number of directors is required or authorized by law, the Articles, the Declaration or any other provision of these Bylaws, and the directors signing such document equal that number.

B. An irregular meeting may be made valid as stated in Section 415B-15 of the Nonprofit Corporations Law.

3.18 **Conduct of Meetings.** All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order or any other generally accepted rules for the conduct of meetings that are first approved for this use by the Board. If, however, there is any conflict between those rules and the Articles, the Declaration or these Bylaws, the provisions of the Articles, the Declaration and the Bylaws shall control.

3.19 **Executive and Other Committees.**

A. **Power to Appoint.** The Board may establish one (1) or more committees to serve at its pleasure. The Board may appoint any two (2) or more directors to serve on the executive committee. It may appoint any one (1) or more directors and other members to serve on other committees. The Board may also designate one (1) or more directors to serve as alternate members on any committee, to replace any member who is absent at a meeting of that committee. Committee appointments shall require the vote of a majority of all directors. The purpose of the committee, its members and its authorities and duties must be stated in the minutes of the meetings of the Board before the appointments become effective. Each committee will automatically be dissolved at the time of the next annual meeting of the Board.

B. **Authority of Committees.** Each committee appointed as stated in subsection (A) may be given all the powers and authorities of the Board; provided, however, it may not:

1. Adopt, amend or repeal the Articles or these Bylaws;
2. Fill vacancies on the Board or in any committee;
3. Amend or repeal any resolution of the Board, which, by its express terms, is not so amendable or repealable;
4. Appoint any other committees of the Board or the members of such committees;
5. Approve any transaction: (i) between the Association and one (1) or more of its directors, or (ii) between the Association and any entity in which one (1) or more of its directors have a material financial interest;
6. Fix the compensation of officers and directors;

7. Incur any debt or other obligation in excess of \$10,000; or

8. Take any other action which, by the express terms of the Articles, the Declaration, or any other part of these Bylaws, must be taken only upon the vote or approval of the Members, or the Board itself, or which is prohibited by Section 415B-66 of the Nonprofit Corporations Law.

C. **Conduct of Committees.** Each committee must govern itself in the same manner as the Board is governed by Sections 3.7 through 3.18 hereof. Minutes of all committee meetings must be taken and kept as required by these Bylaws.

3.20 **Compensation of Directors.** Directors shall not receive any compensation from the Association for acting as such member of the Board; provided, however, any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors; and provided further, however, the Board may decide that without more pay it would be difficult to obtain and/or keep persons to serve as directors. In such a case, upon the approval of Members representing a majority of the votes attributable to the Lots represented at any Association meeting at which there is a quorum, the Board may set a level of compensation for the directors. Nothing in this Section or elsewhere in these Bylaws shall prevent a director from serving the Association in a capacity other than as an officer or director, or from receiving payment for such services. Such director must be excluded, however, from the discussions and voting by the Board on whether to hire and how much to pay such director.

3.21 **Liability and Indemnity of Directors and Officers.** Each director and officer shall perform their duties in good faith and in the best interests of the Association. Each director and officer shall exercise that level of care, including reasonable inquiry, that an ordinarily prudent person in a like position would exercise in similar circumstances. No director or officer shall be liable for any act or omission, however, unless guilty of gross negligence or misconduct. The directors and officers of the Association shall not be liable to the Owners or the Association for any mistake of judgment or otherwise, except for their own gross negligence or willful misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities which may be incurred by or imposed on him in connection with any claim, action, proceeding, investigation or inquiry made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been a director or officer of the Association, or by reason of any past or future action taken, authorized or approved by him or any omission to act as a director or officer, whether or not he continues to be such director or officer at the time of incurring or the imposition of such costs, expenses or liabilities. Such costs, expenses or liabilities shall include judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, except those costs, expenses and liabilities as shall relate to matters as to which he shall be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as a director or officer. In the absence of a final adjudication of the existence or nonexistence of a director's or officer's liability to the Association, the determination of whether a director or officer has acted with gross negligence or willful misconduct may be made (1) by the Board of Directors by a majority vote of a quorum consisting of disinterested directors, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent

legal counsel selected by the Board of Directors, or (3) if a quorum of disinterested directors so directs, by a vote of those Members representing a majority of the votes attributable to the Lots. The foregoing right of indemnification shall not be exclusive of other rights which any director or officer may have and shall inure to the benefit of the heirs and personal representatives of each director or officer. Section 415B-6 of the Nonprofit Corporations Law shall govern how, when and under what conditions the Association is to indemnify, but it must indemnify to the fullest extent allowed by this Section.

3.22 Fidelity Bonds. The Board, at its discretion, may require that all directors, officers, trustees, employees, and volunteers responsible for handling funds belonging to or administered by the Association furnish adequate fidelity bonds naming the Association as the insured and providing coverage in such amounts as the Board deems adequate. The premiums on such bonds, if paid by the Association, shall constitute a common expense. Every such bond shall:

(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 other person in interest who shall have requested such notice; 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.

3.23 General Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except those which by the Declaration, the Articles or these Bylaws are directed to be done and exercised exclusively by the Members or the Members generally.

3.24 Delegation to Third Parties. The Board (on behalf of the Association) may delegate its powers and duties to third parties, which parties would perform such duties and services as the Board shall authorize, subject at all times to Hawaii law (including Hawaii Revised Statutes, Chapter 514E, as amended, and any rules adopted pursuant thereto), to direction by the Board and to the primary rights and responsibility of the Association. The compensation of any such third party shall be determined by the Board.

3.25 Conflicts of Interest. Where a director has a financial interest in, or a conflict of interest with respect to, an issue before the Board, the director shall disclose the fact of the relationship or interest to the Board. Contracts and other transactions entered into by the Board wherein such a relationship or interest exists shall not be void or voidable, if proper disclosure is made and the Board authorizes, approves or ratifies the contract or transaction by a vote sufficient for the purpose, without counting the vote of the interested director or director, or if the contract or transaction is fair and reasonable to the Association. The interested director or directors may be counted in determining the presence of a quorum.

PART 4

OFFICERS

4.1 **Required Officers.** The Association shall have the following officers: (a) a President; (b) a Vice President; (c) a Secretary; and (d) a Treasurer. Any person may hold any two (2) or more of these offices, but there must be at least two (2) persons holding these offices.

4.2 **Eligibility for Required Officers.** Each officer required by Section 4.1 must be: (a) a Member of the Association; and (b) except for the Treasurer, a member of the Board as well.

4.3 **Election and Term of Required Officers.** At each annual meeting of the Board, the Board must elect the officers required by Section 4.1. The term of each of these officers will last until a successor is elected at the next annual meeting of the Board.

4.4 **Other Officers.** The Board may appoint assistant and other officers from time to time, or the Board may give this power to the President or any other officers. The title, term of office, and authorities and duties of these other officers must, however, be stated in the minutes of the meeting of the Board before their appointment will be effective, and their terms of office must end no later than the next annual meeting of the Board.

4.5 **Removal and Resignation of Officers.** Any officer may be removed, with or without cause, by Board action. Any officer may resign at any time. Unless required by its terms, a resignation does not have to be accepted by the Board to be effective and will be effective at the time stated, or, if no time is stated, as soon as it is given to the Board.

4.6 **Vacancies.** A required office may become vacant due to death, resignation, removal, change in the status of that officer so that he/she no longer is qualified, or for any other reason. If any required office becomes vacant, the Board must fill it immediately. Vacancies shall be filled by a majority vote of the directors then holding office, even if they are less than a quorum. If any other office becomes vacant, the Board may leave it unfilled or appoint a successor.

4.7 **President.** The President will be the chief executive officer of the Association. Subject to the Association Documents and the control of the Board, the President shall: (a) supervise, direct and control the Association's business and affairs; and (b) have the general powers and duties of management which, under the laws of the State of Hawaii, the president of any Hawaii nonprofit corporation has. The President shall preside at all meetings of the Association and the Board, be an "ex officio" member of all committees, and have all of the other powers and duties stated elsewhere in these Bylaws and the other Association Documents.

4.8 **Vice President.** The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to act temporarily in the place of the President. He shall also have such other powers and duties as may be assigned to him from time to time by the Board or by the President.

4.9 **Secretary.** As required by law and the Association Documents, the Secretary must: (a) keep the minutes of all meetings of the Association, the Board, and all committees, and for this purpose the Secretary shall be a member of all committees; (b) give all required notices of these

meetings; (c) keep a list of all Owners and Members; (d) keep all other books and records of the Association (except financial records kept by the Treasurer); and (e) perform all the duties incident to the office of secretary of a corporation organized under the laws of the State of Hawaii. The Secretary shall perform other secretarial duties as assigned by the President, the Board, or these Bylaws. All duties of the Secretary may be delegated to any other officer or person appointed for that purpose. If the Secretary is absent at any meeting or is unable to act or if the office is vacant, the Board shall appoint a temporary replacement to perform the duties of the Secretary.

4.10 **Treasurer.** The Treasurer is the chief financial officer of the Association. As required by law and the Association Documents, the Treasurer shall: (a) keep full and accurate financial records and books of account showing all receipts and disbursements, (b) deposit all monies and other valuable effects of the Association in such depositories as may be designated by the Board; (c) prepare all financial statements, reports and other required financial data; and (d) perform all the duties incident to the office of treasurer of a corporation organized under the laws of the State of Hawaii. The Treasurer shall perform such other financial-related duties as are assigned by the President, the Board or these Bylaws. The Board may give the Treasurer's duties to another officer, accountants and other suitable persons providing professional financial services. If the Treasurer is unable to act or if this office is vacant, any other person must be appointed to perform all required duties of the Treasurer at least on a temporary basis.

4.11 **Compensation of Officers.** Compensation of Officers shall be set in the same manner as may be set for directors pursuant to Section 3.20.

4.12 **Liability and Indemnity of Officers.** Officers have the same liabilities and have the same rights to be indemnified as directors and other agents pursuant to Sections 3.21 and 3.22.

PART 5 BOOKS AND RECORDS

5.1 Execution of Instruments.

A. Unless otherwise provided by a resolution of the Board, all checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by any two (2) of the required officers, or by any other such person or persons as may be designated by the Board as shall be provided by general or special resolution of the Board or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and the Treasurer or Secretary.

B. Except as otherwise required in the Association Documents, the Board may authorize any officer or other agent to enter into any contract or other obligation for the Association. This authority may be given generally, or limited to any one or more transactions. Unless expressly given such authority, no officer or other agent may: (1) obligate the Association; (2) pledge the Association's credit; or (3) make the Association liable for any purpose or any amount.

5.2 Books and Records.

A. **Maintenance.** The Association must keep and maintain correct and complete books and records of account as required by Section 415B-45 of the Nonprofit Corporations Law. The minutes of all meetings and other proceedings of the Members and the Board must also be kept as set forth in that section. Minutes of committee meetings and proceedings must be kept in the same manner. In addition, all notices, objections, waivers, consents, dissents and other matters related to these meetings must be filed and kept with these minutes. The Association must also keep at its principal office the original or a copy of a complete and up-to-date version of all of the Association Documents.

B. **Inspection.** The Association Documents shall be available for inspection by the Members at any reasonable time during normal business hours. Copies of the Association Documents may also be purchased by any Member. All other books and records of the Association are also open to inspection at any reasonable time during normal business hours at the written request of any Member. Inspection may be made in person or through an attorney or other agent. The right to inspect includes the right to copy and make extracts, at the Member's expense. The Board may, however, make reasonable rules: (i) requiring notice before inspection; (ii) limiting the hours and days of the week for inspection; and (iii) setting the cost of making copies of documents requested. The Rules and Regulations may also require that a Member agree in writing not to use, or allow the use of, any information obtained from such inspection for commercial or other purposes not reasonably related to the regular business of the Association or the Member's interest in the Association. Each director shall have the absolute right at any reasonable time to inspect all books and records and the properties owned or controlled by the Association.

5.3 **Fiscal Year.** The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

5.4 **Certificate of Ownership.** The Board may issue to any requesting Member a certificate of membership in the Association.

PART 6 GENERAL AND MISCELLANEOUS PROVISIONS

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

6.2 **Provisions of Declaration Control.** Because the Association was formed to manage the Declaration, many provisions normally found in the Bylaws of a non-profit corporation are found in the Declaration. As such, the provisions of the Declaration shall be considered a part of these Bylaws, as if repeated herein.

6.3 **Amendment.** These Bylaws may be amended only as set forth in Section 9.3 of the Declaration.

6.4 **Binding Effect.** These Bylaws are binding on and are for the benefit of the Members.

6.5 **Waiver.** No restriction, 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.

6.6 **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions hereof.

6.7 **Gender.** The use of a pronoun of any gender in these Bylaws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural whenever the context requires.

6.8 **Interpretation.** These Bylaws shall be interpreted in accordance with the provisions of Hawaii law and except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of these Bylaws. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the provisions of the Declaration.