



# Hale Pau Hana

ASSOCIATION OF APARTMENT OWNERS  
2480 So. Kihei Road • Kihei, Maui, Hawaii 96753  
Phone: 879-2715

October 24, 2001

Apartment Owners  
Hale Pau Hana

Aloha,

**Subject: Amended and Restated HPH Bylaws and Horizontal Property Regime**

Last year your Board of Directors asked me to review our Bylaws and the Horizontal Property Regime and consolidate all previous amendments thereto and to bring our Horizontal Property Regime into compliance with State law. Enclosed for your information and use are copies of these amended and restated documents which were file with the State of Hawaii and recorded on November 1, 2000. A revision to the preamble of our Bylaws was subsequently made and recorded on June 27, 2001.

These documents will be distributed at this years Annual Meeting to all owners in attendance and mailed to those not in attendance as part of Annual Meeting Minutes package.

If I can be of further assistance or can answer any questions, please no not hesitate to call me at (909) 931-2826 or E – Mail me at [BashNola@aol.com](mailto:BashNola@aol.com).

Sincerely,

Sebastian J. Nola, Secretary  
AOAO Board of Directors

cc: Board of Directors  
Kurt Nielsen, GM  
Craig Edwards, IPM

R-630

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUN 27, 2001 08:02 AM

Doc No(s) 2001-097809

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

LAND COURT

AFTER RECORDATION, RETURN BY MAIL ( X ) PICK-UP ( )

DOUGLAS J. SAMESHIMA  
Attorney at Law  
2145 Wells Street, Suite 102  
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

NOTICE OF CORRECTION TO PREAMBLE OF AMENDED  
AND RESTATED BYLAWS OF THE ASSOCIATION OF  
APARTMENT OWNERS OF HALE PAU HANA

PARTIES TO DOCUMENT:

Association of Apartment Owners of Hale Pau Hana

PROPERTY DESCRIPTION:

LIBER/PAGE:

DOCUMENT NO: 2000-154637  
TRANSFER CERTIFICATE OF  
TITLE NO(S):

**NOTICE OF CORRECTION TO PREAMBLE OF  
AMENDED AND RESTATED BYLAWS OF THE ASSOCIATION OF  
APARTMENT OWNERS OF HALE PAU HANA**

THIS NOTICE OF CORRECTION is submitted for clarification and correction as it relates to the Recitals contained in the Amended and Restated Bylaws of the Association of Apartment Owners of Hale Pau Hana, recorded with the Bureau of Conveyances, State of Hawaii on November 1, 2000, at Document Number 2000-154637.

The Second Paragraph of said Recitals currently states:


WHEREAS, said Bylaws having been amended from time to time as authorized by the membership, the last Amendments having been completed and certified on November 17, 1995, Certification of said Amendments having been recorded with the Bureau of Conveyances in the State of Hawaii on November 24, 1995, at Document Number 95-152732.


The Second Paragraph of said Recitals is corrected to read:

WHEREAS, said Bylaws having been amended from time to time as authorized by the membership, the last Amendments having been completed and certified on November 30, 1999, Certification of said Amendments having been recorded with the Bureau of Conveyances in the State of Hawaii on January 5, 2000, at Document Number 2000-001466.

This Correction is noted to make the Amended and Restated Bylaws consistent with the record on file with the Bureau of Conveyances, State of Hawaii and does not, in any way, affect the substantive content, nor act as an amendment of said Bylaws.

Certified and Signed by The President, Nancy L. Yopp,  
and the Secretary, Sebastian J. Nola, as officers of said  
Association of Apartment Owners of Hale Pau Hana.

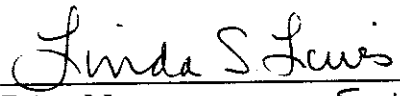
  
NANCY L. YOPP, President

  
SEBASTIAN J. NOLA, Secretary

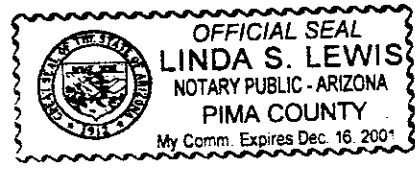
STATE OF ARIZONA )  
 )  
CITY AND COUNTY OF PIMA )

SS:

On this 25<sup>th</sup> day of MAY, 2001, before me  
personally appeared NANCYLYOPP, to me personally known, who, being duly sworn,  
did say that she is the President of HALE PAU HANA, INC., and that the  
instrument was signed in behalf of the Corporation by authority of its Board of  
Directors, and said NANCY YOPP acknowledged said instrument to be the free act  
and deed of said Corporation.

  
Print Name: LINDA S. LEWIS  
Notary Public, State of Arizona

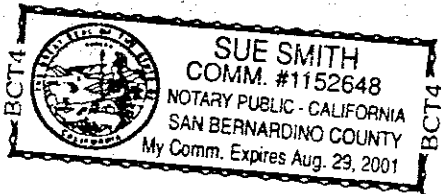
My commission expires: \_\_\_\_\_



CALIFORNIA  
STATE OF ~~ARIZONA~~ )  
 )  
CITY AND COUNTY OF SAN BERNARDINO )

SS:

On this 29 day of JAN, 2001, before me personally appeared SEBASTIAN J. NOLA, to me ~~personally~~ known, who, being duly sworn, did say that he is the Secretary of HALE PAU HANA, INC., and that the instrument was signed in behalf of the Corporation by authority of its Board of Directors, and said SEBASTIAN J. NOLA acknowledged said instrument to be the free act and deed of said Corporation.



Sue Smith  
Print: SUE SMITH  
Notary Public, State of California

My commission expires: 8-29-01

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612

R-464

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

NOV 01, 2000 10:30 AM

DOC NO(S) 2000-154637

/s/ CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

LAND COURT

✓

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ( X ) PICK-UP ( )

DOUGLAS J. SAMESHIMA  
Attorney at Law  
2145 Wells Street, Suite 102  
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

AMENDED AND RESTATED BYLAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF  
HALE PAU HANA

PARTIES TO DOCUMENT:

Association of Apartment Owners of Hale Pau Hana

PROPERTY DESCRIPTION:

LIBER/PAGE:

DOCUMENT NO:  
TRANSFER CERTIFICATE OF  
TITLE NO(S):

**AMENDED AND RESTATED**  
**BYLAWS OF THE**  
**ASSOCIATION OF APARTMENT OWNERS OF**  
**HALE PAU HANA**

WHEREAS, the Bylaws of the Association of Apartment Owners of Hale Pau Hana were first adopted pursuant to the Declaration of Horizontal Property Regime and the Bylaws of the Association of Apartment Owners of Hale Pau Hana annexed thereto, and having been recorded with the Bureau of Conveyances in the State of Hawaii on July 26, 1968, at Book Number 6146, Page 1;

WHEREAS, said Bylaws having been amended from time to time as authorized by the membership, the last Amendments having been completed and certified on November 17, 1995, Certification of said Amendments having been recorded with the Bureau of Conveyances in the State of Hawaii on November 24, 1995, at Document Number 95-152732.

WHEREAS, the members of the Association of Apartment Owners of Hale Pau Hana hereby Amend and Restate said Bylaws; and,

WHEREAS, the President, Nancy L. Yopp, and the Secretary, Sebastian J. Nola, certify, as officers of said Association of Apartment Owners of Hale Pau Hana, that these Amended and Restated Bylaws were duly adopted by the membership by the requisite vote, as required by the Bylaws.

The following Bylaws shall apply to the condominium project known as "HALE PAU HANA" (herein, called, the "Project") situated at Kamaole, District of Kula, Island and County of Maui, State of Hawaii, as described in and created by, Declaration of Condominium Property Regime (herein, called, the "Declaration") to be filed in the Bureau of Conveyances, State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project.

ARTICLE I  
MEMBERSHIP

Section 1. QUALIFICATION. All owners of the project shall constitute the Association of Apartment Owners, herein, called, the "Association". The owner of any apartment upon acquiring title (or a Vendee under an Agreement of Sale recorded in the Bureau of Conveyances or Land Court) shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 2. PLACE OF MEETING. All meetings of the Association of Apartment Owners shall be held at the address of the condominium project, or elsewhere within the State of Hawaii as determined by the Board of Directors.



Section 3. ANNUAL MEETING. The annual meeting of the Association shall be held on the First Saturday of November of each year.

Section 4. SPECIAL MEETING. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary.

Section 5. NOTICE OF MEETING. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner, according to the Association's record of ownership, at least fourteen (14) days before the date set for such meeting, and shall state whether it be an annual or special meeting, the authority for the call thereof, the date and time of such meeting, the place of such meeting, the times on the agenda for such meeting, and a standard proxy form authorized by the Association, in any of the following ways; a) by delivering it to him personally, or b) by leaving it at his apartment in the project or at his usual residence or place of business, or c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership, etc.

Section 6. QUORUM. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners, (i) at any meeting at which a quorum is present or (ii) through the return of ballots mailed to the owners shall be the acts of the Association, except as otherwise, provided herein.

Section 7. VOTING.

(a) Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. [Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association or by ballot mailed to and returned by the respective apartment owners as shown on the record of ownership of the Association.] An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

(b) The purchaser of an apartment pursuant to an Agreement of Sale recorded in the Bureau of Conveyances or Land Court shall have all the rights of an apartment owner, including the right to vote; provided that the Seller may retain the

right to vote on matters substantially affecting his security interest in the apartment, including, but not limited to, the right to vote;

1. Any partition of all or part of the project;
2. The nature and amount of any insurance covering the project and the disposition of any proceeds thereof;
3. The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;
4. The payment of any amount in excess of insurance or condemnation proceeds;
5. The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;
6. The special assessment of any expense;
7. The acquisition of any apartment in the project;
8. Any amendment to the Declaration of Condominium Project Regime or Bylaws;
9. Any removal of the project from the provisions of this chapter; and
10. Any other matter which would substantially affect the security interest of the Seller.

Section 8. PROXIES AND PLEDGES. The authority given by the apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary, and the proxy form which accompanies a notice of meeting shall be valid for the meeting to which

to notice pertains and its adjournment only. Voting rights transferred or pledged by Mortgage, Deed of Trust or Agreement of Sale of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

Section 9. ADJOURNMENT. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the apartment owners present, whether or not a quorum be present, without notice other than the announcement of such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. ORDER OF BUSINESS. The Order of business at all meetings of the Association shall be as follows:

- a) Roll call.
- b) Proof of Notice of Meeting.
- c) Reading of Minutes of preceding Meeting.
- d) Report of Officers.
- e) Report of Committees.
- f) Election of Directors.

g) Unfinished business.

h) New business.

ARTICLE II  
BOARD OF DIRECTORS

Section 1. NUMBER OF QUALIFICATIONS. The affairs of the Association shall be governed by a Board of Directors composed of Five (5) persons, each of whom shall be the sole owner, co-owners, a spouse of an owner, vendees under an Agreement of Sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. The Directors shall serve without compensation.

Section 2. POWERS. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things, therefore, as are not by law, the Declaration or these Bylaws directed to be exercised or done only by the apartment owners.

Section 3. ELECTION AND TERM. Election of Directors shall be cumulative voting by secret ballot at each annual meeting and Special Meeting called for the purpose. Directors shall hold office for a period of three (3) years and until their respective successors have been elected, subject to, removal as herein provided, except, that at the first Annual Meeting one-third (1/3) of the Directors shall be

elected for one (1) year, one-third (1/3) for two (2) years and one-third (1/3) for three (3) years. No director shall serve no more than one (1) three (3) year term at a time.

Section 4. VACANCIES. Vacancies in the Board of Directors caused by any reason other than removal of a Director by the Association shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until his successor is elected at the next Annual Meeting of the Association. Death, incapacity, or resignation of any Director, or his ceasing to be the sole owner or co-owner of an apartment shall cause his office to become vacant.

Section 5. REMOVAL OF DIRECTORS. At any regular or Special Meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by vote of a majority of apartment owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

Section 6. ANNUAL MEETING. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each Annual Meeting of the Association, and no notice shall be necessary to any directors in order to validly constitute such meeting, provided, that a majority of the whole

Board be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. REGULAR MEETING. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, telephone or telegraph, at least one (1) day prior to the date of such meeting.

Section 8. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by the President on at least eight (8) hours notice to each Director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice of the written request of at least two (2) directors.

Section 9. WAIVER OF NOTICE. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the Directors are present at any meeting of Board, no notice thereof, shall be required, and any business may be transacted at such meeting.

Section 10. QUORUM OF BOARD. At all meetings of the Board of Directors a majority of the total number of Directors established by these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. FIDELITY BONDS. The Board of Directors shall require that all employees and agents of the Association handling or responsible for its funds shall furnish adequate fidelity bonds. The premium on such bonds shall be paid by the Association.

Section 12. BOARD ATTENDANCE BY CONFERENCE CALL. Members of the Board of Directors or of any Committee may participate in a meeting by means of a telephone conference (call) 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. Provided, however, the language of this Section 12 shall not be deemed to supplant the normal, more desirable procedure of participants being present in person at



regular and Special Meetings of the Board of Directors or any Committee, but only as a means to conduct such meetings when it is absolutely impossible or impractical to conduct such meetings without those participating being present in person.

### ARTICLE III OFFICERS

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

Section 2. ELECTION AND TERM. The officers of the Association shall be elected annually by the Board of Directors at its Annual Meeting and shall hold office at the pleasure of the Board.

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

Section 4. PRESIDENT. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board, he shall exercise general

supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided, by these Bylaws or assigned to him from time to time by the Board.

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

Section 6. SECRETARY. The Secretary shall attend and keep the Minutes of all Meetings of the Association and of the Board of Directors, give all notices thereof, as provided, by these Bylaws, maintain and keep a continuous and accurate record of ownership of all apartments, 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.

Section 7. TREASURER. The Treasurer shall supervise the Managing Agent's custody of all funds of the Association, maintenance of accounts and records thereof and preparation of financial reports thereof.

Section 8. AUDITOR. The members of the Association of Apartment Owners may require, by vote at the Annual Meeting, a yearly audit of the Association books by a Certified Public Accountant.

ARTICLE IV  
ADMINISTRATION

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

- a) Supervision of its immediate management and operations;
- b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;
- c) Purchase, maintenance and replacement of any equipment and provisions of all water and utility services required for the common elements;
- d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary, either at the expense of such apartment or as a common expense as determined by the Board;
- e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project;
- f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year;
- g) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

i) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

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

k) No payment shall be made from and out of the homeowners funds for any and all expenses incurred by a homeowner on behalf of or for the benefit of the Homeowners Association without the approval by the Board of Directors.

l) No homeowner shall offer or tender goods or services to the Homeowner's Association in exchange for pecuniary gain or profit.

m) To enforce the provisions of the Project documents and establish, assess and collect such penalties and fines and any interest as the Board deems appropriate with respect to such enforcement, including penalties, fines and interest for failure or refusal to pay on demand all costs and expenses required to be paid

hereunder; provided that such penalties, fines, and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. If unpaid, the amount of such penalties and fines against an apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Act for the foreclosure of a lien for common expenses. The amount of any such penalty or fines or interest imposed pursuant to this section shall be due and payable by the apartment owner against whose apartment such penalty, fine, or interest has been imposed with the owner's next common expense installment payment.

Section 2. MANAGING AGENT. The Board of Directors shall annually employ a responsible Managing Agent to manage and control the Project, subject at all times, to direction by the Board, with all administrative functions set forth, specifically, in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish.

Section 3. REPRESENTATION. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two (2) or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one (1) apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without

prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent. Every Managing Agent shall also be the agent of the respective lessees under any apartment leases filed with the Board for collection, custody and payment of all rent, taxes, assessments and other charges thereunder payable to their lessors.

Section 4. EXECUTION OF INSTRUMENTS. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided, by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

#### ARTICLE V OBLIGATIONS OF APARTMENT OWNERS

Section 1. ASSESSMENTS. All apartment owners shall pay in advance on the first day of each and every month the monthly installments of assessment against their apartments for common expenses of the Project in accordance with the Declaration. The procedure for the collection of delinquent assessments shall be as follows:

- a) Any assessment account not settled by the 15th of the month is

delinquent.

- b) Delinquent accounts shall be charged \$15.00 per occurrence.
- c) Accounts delinquent one (1) month or more shall be charged at the rate of eighteen percent (18%) simple interest computed from the date the account is due.
- d) Accounts delinquent two (2) months shall be handled in accordance with foreclosure procedures outlined in the Declaration.
- e) Expenses incidental to collecting a delinquent account shall be paid by the owner whose account is delinquent.

Section 2. MAINTENANCE OF APARTMENTS. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including, without limitation, all internal installations therein, such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, with all necessary reparations and amendments, whatsoever, in good order and condition except, as otherwise provided by law, or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in

performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

Section 3. USE OF PROJECT.

- a) The apartments of the Project shall be used only for residential purposes.
- b) All common elements of the Project shall be used only for their respective purposes as designed.
- c) No apartment owner or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, grounds or other common elements of similar nature any furniture, packages or other objects of any kind or otherwise obstruct transit through such elements.
- d) Every apartment owner or occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations nor or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Project.



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

f) No apartment owner or occupant shall erect or place in the Project any building or structure, including fences and walls, nor make any additions or alterations to any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect if so required by the Board and approved by the Board and a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected.

g) No apartment owner shall decorate or landscape any entrance, hallway, planting area or lanai appurtenant to his apartment, except in accordance with standards therefor established by the Board of Directors of specific plans approved, in writing, by the Board.

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

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

j) No rugs or other objects shall be dusted or shaken from the windows of the Project or cleaned by beating or sweeping on any hallway or exterior part of the Project.

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

l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept or encouraged to stay in any part of the Project, except that dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments, but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements, except in transit when carried or on leash, provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the Project shall be permanently removed therefrom promptly upon notice given by the Board of Directors or Managing Agent.

m) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna, machines or air-conditioning units, or other equipment or appurtenances whatsoever on the exterior of the Project or protruding through the walls, window, or roof thereof.

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

o) No owner, guest, or lessee shall occupy any unit without first registering at the Resort office or with the Resident Manager if the Resort office is closed.

Section 4. HOUSE RULES. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operations and use of the common elements not inconsistent with any provision of law, the Declaration or these Bylaws.

Section 5. EXPENSES OF ENFORCEMENT. All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the Association for:

1. Collecting any delinquent assessments against any owner's apartment;
2. Foreclosing any lien thereon,
3. Enforcing any provisions of the Declaration, Bylaws, House Rules, and the Horizontal Property Act; or

4. The rules and regulations of the Real Estate Commission; against an owner or any occupant of an apartment shall be promptly paid on demand to the Association by the apartment owner; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorney's fees, incurred by the apartment owner as a result of the action of the Association shall be promptly paid on demand to the apartment owner by the Association.

Section 6. RECORD OF OWNERSHIP. Every apartment owner shall promptly cause to be duly recorded or filed of record the deed, lease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file such lease with and present such other evidence of his title to the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 7. MORTGAGES. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any apartment or interest

therein shall report to such person the amount of any assessments against such apartment then due and unpaid.

Section 8. TIME SHARING. Ownership of a time-sharing interest in an apartment or pursuant to a program of time-sharing or ownership of a fee or leasehold interest in an apartment by a party holding subject to any time-sharing with others is prohibited. Any conveyance or lease of a time-sharing interest or any declaration, agreement or other arrangement whereby the owner or lessee of an apartment holds an apartment pursuant to any time-sharing program shall be void, and the grantee, lessee or transferee under such conveyance or lease or holder under such arrangement shall not be deemed or recognized as an owner and member of the Association or have any vote at any meeting thereof or be entitled to notices or to any other rights of a member of the Association. A time-sharing interest shall mean and include any interest in which the right to use, occupancy or possession of the apartment circulates among or is owned, held or leased by various persons according to a fixed or floating time schedule on a periodically recurring basis, whether by way of membership, rental or use agreement, co-tenancy agreement, sale, lease, deed, vacation bond or license, partnership or otherwise, and a time-sharing program shall include any arrangement whereby a party has a vacation license, club membership, limited partnership or vacation bond entitling him to a right to the use, occupancy or possession of apartments which include an apartment within this Horizontal Property

Regime on a fixed or floating time schedule on a periodically recurring basis. Any attempt to divide the ownership, use, right to possession or other attributes of ownership to an apartment upon a time basis, other than a lease or tenancy for a single continuous period of one or more days, weeks, months or years without interruption in the manner of an ordinary lease or tenancy agreement, shall be deemed null and void. The Board of Directors, or the Manager, on behalf of the Board of Directors, may bring an appropriate action on behalf of the owners and/or the Association to enforce the terms hereof, including injunctive and/or damages and other relief, together with reasonable attorney fees and costs incurred to enforce the terms hereof.

## ARTICLE VI MISCELLANEOUS

Section 1. AMENDMENT. These Bylaws may be amended at any time by the vote or written consent of sixty-five percent (65%) of all apartment owners; provided, that any proposed Bylaws with the rationale for the proposal may be submitted by the Board of Directors or by a Volunteer Apartment Owners Committee. If submitted by that Committee, it shall be accompanied by a Petition signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership. The proposed Bylaws, rationale, and ballots for voting on any proposed Bylaws shall be mailed by the Board of Directors to the

apartment 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 of Directors. The vote or written consent required to adopt the proposed Bylaws shall not be less than sixty-five percent (65%) of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the bylaw is duly adopted, then the Board shall cause the bylaw amendment to be recorded in the Land Court of the State of Hawaii. The Volunteer Apartment Owners Committee shall be precluded from submitting a Petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original Petition was submitted to the Board. The foregoing shall not preclude any apartment owner or Voluntary Apartment Owners Committee from proposing any bylaw amendment at any annual Association meeting.

Section 2. INDEMNIFICATION. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct; and in the absence of such final adjudication, indemnification shall be provided only

in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

Section 3. SUBORDINATION. These Bylaws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Horizontal Property Act (Chapter 170A), Revised Laws of Hawaii 1955, as amended) which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Horizontal Property Act.

Section 4. INTERPRETATION. In case any provision of these Bylaws shall be invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these Bylaws shall be deemed or construed to authorize the Association of Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the apartment owners.

## ARTICLE VII LIST OF MEMBERS

Section 1. The Resident Manager or Managing Agent, or Board of Directors shall keep an accurate and current list of members of the Association of Apartment Owners and their current addresses and the names and addresses of the



vendees under an Agreement of sale, if any. The list shall be maintained at a place designated by the Board of Directors.

ARTICLE VIII  
CONDUCT OF MEETING

Section 1. All Association and Board of Directors meetings shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings.

ARTICLE IX  
CONFLICT OF INTEREST

Section 1. A Director shall not vote at any Board meeting on any issue in which he has a conflict of interest.

ARTICLE X  
RESIDENT MANAGER

Section 1. No Resident Manager of the Condominium shall serve on the Board of Directors.

ARTICLE XI  
BOOKS AND EXAMINATION

Section 1. The Manager or Board of Directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. All records and vouchers

authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board of Directors, and shall be available for examination by the apartment owners at convenient hours of week days.

## ARTICLE XII MEDIATION

Section 1. If a dispute arises out of, or relates to, these Bylaws and/or the governance of the Association, Horizontal Property Regime, House Rules, and applicable condominium law, and if said dispute cannot be settled through discussion/negotiation, at the request of any party, all parties shall first try in good faith to settle the dispute by mediation to reach a mutually satisfactory compromise to a dispute.

Section 2. The mediator shall be selected by the disputing parties from a listing of three (3) available mediators names provided by Mediation Services of Maui, Inc. Substitution of mediators other than from Mediation Services of Maui, Inc., are acceptable, if mutually agreeable. Mediation shall commence withing twenty one (21) days of selection of a mediator.

Section 3. If, after a minimum of two (2) days mediation sessions, any party to a dispute feels in cannot be resolved by mediation, he/she shall so notify the other parties to the dispute and the mediator, in writing.

Section 4. Any decision reached by mediation shall be reduced, in writing, and signed by all parties.

Section 5. The costs of mediation shall be shared equally by all parties to the dispute.

Section 6. If the parties have not resolved their dispute within ninety (90) days of the commencement of mediation, the parties shall have failed to resolve their dispute by mediation.

Section 7. The President of the Association of Apartment Owners shall be notified of a dispute. The Board of Directors may decide to be included in any mediation proceedings as a party of interest.

CERTIFICATE OF AMENDMENT AND RESTATEMENT

The undersigned owner of all apartments of the Project hereby amend and restate the foregoing as the Amended and Restated Bylaws of the Association of Apartment Owners of HALE PAU HANA this 25<sup>th</sup> day of September, 2000.

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HALE PAU HANA, INC.

By: *Nancy L. Yopp*  
Nancy L. Yopp  
Its President

By: *Sebastian J. Nola*  
Sebastian J. Nola  
Its Secretary

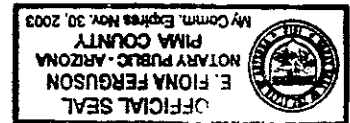
STATE OF ARIZONA )  
CITY AND COUNTY OF Pima )

SS:

On this 35<sup>th</sup> day of September, 2000, before me personally appeared Nancy L. Yopp, to me personally known, who, being duly sworn, did say that she is the President of HALE PAU HANA, INC., and that the instrument was signed in behalf of the Corporation by authority of it Board of Directors, and said NANCY L. YOPP acknowledged said instrument to be the free act and deed of said Corporation.

*E. Fiona Ferguson*  
Print Name: E. Fiona Ferguson  
Notary Public, State of Arizona

My commission expires: \_\_\_\_\_



STATE OF HAWAII     )  
                                  )  
COUNTY OF MAUI    )

SS:

On this 7<sup>th</sup> day of August, 2000, before me personally appeared SEBASTIAN J. NOLA, to me personally known, who, being duly sworn, did say that he is the Secretary of HALE PAU HANA, INC., and that the instrument was signed in behalf of the Corporation by authority of its Board of Directors, and said SEBASTIAN J. NOLA acknowledged said instrument to be the free act and deed of said Corporation.

Esmeralda Bulosan  
Esmeralda Bulosan  
Notary Public, State of Hawaii

My commission expires: 2/6/2001

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R-468

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

NOV 01, 2000 10:30 AM

DOC NO(S) 2000-154636

/S/CARL P. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ( X ) PICK-UP ( )

DOUGLAS J. SAMESHIMA  
Attorney at Law  
2145 Wells Street, Suite 102  
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

AMENDED AND RESTATED DECLARATION OF  
HORIZONTAL PROPERTY REGIME OF  
HALE PAU HANA, INC.

PARTIES TO DOCUMENT:

Hale Pau Hana, Inc.

PROPERTY DESCRIPTION:

LIBER/PAGE:

DOCUMENT NO:  
TRANSFER CERTIFICATE OF  
TITLE NO(S):

**AMENDED AND RESTATED**  
**DECLARATION OF HORIZONTAL PROPERTY REGIME**  
**OF HALE PAU HANA, INC.**

WHEREAS, HALE PAU HANA, INC., a Hawaii corporation, hereinafter, called, "Owner" is the owner in fee simple of that certain property described in Exhibit A-1 attached hereto; and

WHEREAS, Owner will improve said property by the construction of four (4) buildings in accordance with plans incorporated herein by reference and recorded in the Bureau of Conveyances of the State of Hawaii as Condominium Map No. 108, on July 26, 1968 at Book Number 6146, Page 1.

NOW THEREFORE, in order to create a condominium project consisting of said land and improvements (herein, called the "Project"), and to be known as "HALE PAU HANA", Owner hereby submits said Property and all of its interest therein to a horizontal property regime established by the Horizontal Property Act, Chapter 170-A, Revised Laws of Hawaii 1955, as amended, and in furtherance thereof makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declares that said Property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to said declarations, which declarations shall constitute covenants running with the land and shall be binding on and for the benefit of Owner, and its successors and assigns, and all subsequent owners and lessees of all or

any part of the project and their respective successors, heirs, executors, administrators and assigns.

A. DIVISION OF PROPERTY. The project is hereby divided into the following fee simple estates:

1. Apartments. Eighty (80) freehold estates are hereby designated and the spaces within the perimeter walls, floors and ceilings of each of the eighty (80) apartment units of the project contained in four (4) buildings, designated on said plans as "Building A", "Building B", "Building C", and "Building D", constructed principally of reinforced concrete floor and roof slabs and concrete walls, which spaces (herein, called the "Apartment"), are designated on said plans and described as follows:

(a) Apartments numbered 101 to 107, inclusive, are located on the first floor;

Apartments numbered 201-207, inclusive, are located on the Second floor;

Apartments numbered 301-307, inclusive, are located on the Third floor;

Apartments numbered 401-407, inclusive, are located on the Fourth floor;

Apartments numbered 501-507, inclusive, are located on the Fifth floor;

Apartments numbered 601-607, inclusive, are located on the Sixth floor; and



Apartments numbered 701-707, inclusive, are located on the seventh floor of Building A.

- (b) Apartments numbered 1-6, inclusive, are located on the ground floor; and

Apartments numbered 15-10, inclusive, are located on the second floor of the building designated on said plans as Building B.

- © Apartments numbered 7 to 14, inclusive, are located on the ground floor; and

Apartments numbered 21 to 28, inclusive, are located on the second floor; and

One penthouse apartment, designated "Penthouse", is located on the third floor of the building designated on said plans as Building C.

- (d) Apartment Nos. D-1 to D-3, inclusive, as shown on said supplementary revised plans.

Each apartment contains the number of rooms and the approximate floor area according to its respective plan, which plans are designated 1 to 5, as follows:

1. Typical Unit Building A:

Forty-two (42) apartments, #101 to #107, inclusive, #201 to #206, inclusive, #301 to #306, inclusive, #401 to #406, inclusive, #501 to #506, inclusive, #601 to #606, inclusive, and #701 to #706, inclusive, in Building A consist of one bedroom, two bathrooms, one living room, one dining room, one kitchen, one lanai and an entry hall, and contain approximately 826 square feet of

floor area, including, the lanai. These apartments are identified on said plans as "Typical Unit Building A".

2. End Unit Building A:

Six (6) apartments, #207, #307, #407, #507, #607, and #707, in Building A, consists of two bedrooms, two bathrooms, one living room, one dining room, one kitchen, a hallway and one lanai, and contain approximately 1,152 square feet of floor area, including, the lanai. These apartments are identified on said plans as "End Unit Building A".

3. Typical Unit Buildings B & C:

Twenty-eight (28) apartments, being all of the apartments in Building B and Building C, except for the penthouse unit in Building C, consist of one bedroom, one bathroom, one kitchen, one living room, a hallway and one lanai, and contain approximately 718 square feet of floor area, including, the lanai.

4. Penthouse Plan Building C:

One (1) penthouse apartment on the third floor of Building C is designated "Penthouse", and consists of three bedrooms, a dressing room, one living room-dining room combination, a kitchen, a utility room, a hallway, an entry and three lanais, and contains approximately 2,924 square feet of floor area, including, the lanais.

5. Typical Unit Building D:

Apartment No. D-1 consists of two bedrooms, two bathrooms, one living room, one dining room, one kitchen, and contains approximately 1,589 square feet of floor area. Apartment No. D-2 consists of two bedrooms, two bathrooms, one living room, one dining room, one kitchen, and contains approximately 1,259 square of floor area. Apartment No. D-3 is an office and storage room, containing approximately 512 square feet of floor area, and is a common element.

Together, with non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said apartments; in the other common elements for use according to their respective purposes.

The apartments are numbered and located in the manner shown on Condominium Map No. 108 recorded in the Bureau of Conveyances of the State of Hawaii.

Each apartment in Building A, B, and C has immediate access to a walkway across the face of the buildings, and stairways leading to the ground floor from the 2<sup>nd</sup> and 3<sup>rd</sup> floors of Buildings B and C. In Building A, the walkways on the upper floors lead to an elevator and two stairways. Each apartment in Building D has immediate access to a walkway.

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding the apartments or any pipes, wires, conduits or other utility lines running through such apartments which are utilized for or serve more than one apartment, the same being deemed common elements, as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, windows and window frames, doors and door frames, the inner decorated or finished surfaces of all walls, floors and ceilings, and the built-in fixtures.

2. Common Elements. One freehold estate is hereby designated of all remaining portions of the project, herein called, "common elements", including, specifically, but not limited to:

- a) Said land in fee simple;
- b) All foundations, floor slabs, columns, girders, beams supports, bearing walls, roofs, chases, entries, stairways, walkways and elevator of said buildings;
- c) All yards, grounds, landscaping, mailboxes and refuse facilities;
- d) All parking areas and driveways;

- e) All ducts; electrical equipment, wiring and other central and appurtenant, installations, including power, light, water, sewage treatment system, water sprinkling system and telephone;
- f) One automatic electric passenger elevator with elevator housing and appurtenant equipment;
- g) Swimming pool, swimming pool recreation area and equipment and well site;
- h) Storage units located in Building A and next to Buildings B and C; and
- i) Building D basement, and Owners' storage room, including, the basement access stairway.

3. Limited Common Elements. Certain parts of the common elements, herein designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

- a) The stairway from the 2<sup>nd</sup> to the 3<sup>rd</sup> floor of Building C shall be appurtenant to and for the exclusive use of the penthouse apartment on the 3<sup>rd</sup> floor of this building;

b) Each stairway in Buildings B and C serving all units shall be appurtenant to and for the exclusive use of the apartments of the building so served.

c) The hallway in Building D serving all units in said Building D shall be appurtenant to and for the exclusive use of the apartments of the building so served.

B. COMMON INTEREST. Each apartment shall have appurtenant thereof an undivided percentage interest as follows:

Typical Unit Building A	1.210%
End Unit Building A	1.682%
Typical Unit Building B & C	1.051%
Penthouse Plan Building C	4.281%
Apartment D-1	2.326%
Apartment D-2	1.843%

in all of the common elements of the project, herein called "common interest", and the same proportionate share in all common profits and expenses of the project and for all other purposes including voting.

C. EASEMENTS. In addition to any exclusive easements hereby established in the limited common elements, the apartments and common elements shall also have and be subject to the following easements:

1. Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments and limited common elements of its building or structure for support.

2. If any part of the common elements encroaches upon any apartment or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. In the event, any buildings of the project shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

3. The Association of Apartment Owners shall have the right, to be exercised by its Board of Directors or the Managing Agent, to enter such apartment and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the project or for making emergency repairs therein necessary to prevent damage to any apartments or common elements.

D. ALTERATION AND TRANSFER OF INTERESTS. The common interest and easements appurtenant to each apartment shall have a permanent character and shall not be altered without the consent of 75% of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected, being first obtained, and expressed in an amendment to this Declaration duly recorded. The common interest and easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed, leased or encumbered with such apartment, even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument.

E. PARTITION. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except, as provided by said Horizontal Property Act.

F. USE. The apartments shall be and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and the owners of the respective apartments shall have the absolute right to lease or rent such apartments for transient purposes, subject to all the provisions of this Declaration.

G. ASSOCIATION OF APARTMENT OWNERS. Administration of the project shall be vested in its Association of Apartment Owners, herein called the



"Association", consisting of all apartment owners of the project in accordance with the by-laws of the Association attached hereto and made a part hereof as Exhibit A. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceased for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including the exercise of voting rights, as may be provided by lease of any apartment filed with the Board of Directors of the Association, herein called "Board", the lessee of such apartment shall be deemed to be the owner, thereof.

H. ADMINISTRATION OF THE PROJECT. Operation of the project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Horizontal Property Act, this Declaration and the by-laws of the Association, and specifically, but without limitation, the Association shall:

1. Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the project or any part thereof.

2. Keep all common elements of the project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and

regulations now or hereafter made by any governmental authority for the time being applicable to the project or the use thereof.

3. Well and substantially repair, maintain, amend and keep all common elements of the project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the project and the established curb or street line in a neat and attractive condition and all tress, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within 30 days after the giving of such notice.

4. Before commencing or permitting construction of any improvements on the project, obtain a bond naming as obligees collectively all apartment owners as their interest may appear, in a penal sum not less than one-half of the cost of such construction and with a corporate surety authorized to do business in Hawaii, guaranteeing completion of such construction free and clear of all mechanic's and materialman's liens arising from Section 170-A-9(b), Revised Laws of Hawaii 1955, as amended.

5. Observe any setback lines affecting the project as shown on the map herein mentioned in the description thereof, and not erect, place or maintain any building or structure whatsoever, except fences or walls between any street boundary of the project and the setback line along such boundary.

6. Not erect or place on the project any building or structure including, fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the project, nor place or maintain thereon any signs or bills visible outside of the project, except those first approved by a majority of apartment owners (or such larger percentage required by law or this Declaration) including, all owners of apartments thereby directly affected.

7. Not make or suffer any strip or waste or unlawful, improper or offensive use of the project.

I. MANAGING AGENT. Operation of the project may be conducted for the Association by a responsible Managing Agent who shall be appointed by the Association of Apartment Owners in accordance with the Bylaws. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Horizontal Property Act.

J. COMMON EXPENSES. All charges, costs and expenses whatsoever in incurred by the Association for or in connection with the administration of the project and maintenance, repair, replacement and restoration of the common

elements, any additions and alterations thereto, all labor, services, materials, supplies, and equipment therefor, all liability whatsoever for loss or damage arising out of or in connection with the common elements, or any accident or fire on the common elements or any nuisance thereon, and all premiums for hazard and liability insurance herein required with respect to the project, shall constitute common expenses of the project for their respective proportionate share of which the apartment owners shall be severally liable.

K. WAIVER OF USE OF COMMON ELEMENTS. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment.

L. COMPLIANCE WITH DECLARATION, BY-LAWS AND DECISIONS. All apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the project or any part thereof, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws of the Association and all agreements, decisions and determinations of the Association, as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or Board on behalf of the Association or, in a proper case, by an aggrieved apartment owner.

M. UNPAID COMMON EXPENSES CONSTITUTE LIEN. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only 1) liens for taxes and assessments lawfully imposed by governmental authority against such apartment, and 2) all sums secured by mortgages of record. Such lien may be foreclosed by suit by the Association or Managing Agent, acting on its behalf, in like manner as a mortgage of real property, provided that thirty (30) days' prior written notice of the intention to foreclose shall be mailed, postage prepaid, to the Lessor and all other persons having an interest in such apartment as shown in the Association's record of ownership. The Managing Agent, acting on behalf of the Association pursuant to directions of its Board, shall have the power to bid such apartment at foreclosure sale and to acquire, hold, lease, mortgage and convey such apartment. Suite to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

N. ACQUISITION BY FORECLOSURE. Where the Mortgagee of a mortgage of record or other purchaser of any apartment obtains title to such apartment as a result of foreclosure of the mortgage, such acquirer of title, his successors and assigns shall be liable for the share of the common expenses or

assessments of the Association chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer.

O. INSURANCE. The Board on behalf of the Association at its common expense shall at all times keep all buildings of the project insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, in the names of the Owners and any lessees of apartments and any Mortgagee of any interest in any apartment, payable in case of loss to such Trust Company qualified under the laws of the State of Hawaii as shall be designated by the Board, as Trustee for the custody and disposition as herein provided, of all proceeds of such insurance. The interest of each apartment owner in such proceeds shall be in proportion to the loss or damage to his apartment, which interest shall be held as between such owner, any lessee of such apartment and any Mortgagee on an interest therein, as their interests may appear. The provisions hereof are, without prejudice, to the right of each apartment owner to insure his apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first

approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds.

Such policy or policies:

(i) shall contain no provisions limiting or prohibiting other insurance by the apartment owner or any lessee, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, pro-ration, or contribution by reason of, any such other insurance;

(ii) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board, of if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the owner, lessee, or mortgagees, or by reason of any act or neglect of the Board or the owner, lessee, or mortgagee of any apartment;

(iii) shall provide that the policy may not be cancelled (whether or not requested by the Board) except, by giving to the Board and to each apartment owner, lessee and mortgagee who shall have requested such notice of the insurer, in writing, addressed to him at the premises, thirty (30) days written notice of such cancellation;

(iv) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the owner, any lessee, or mortgagee;

(v) shall contain a standard mortgagee clause which

1) shall name the holder of any mortgage affecting any apartment whose name shall have been furnished to the Board;

2) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board or the owner, or any lessee, of any apartment;

3) shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior the effective date of the termination of the policy), and any contribution clause;

4) shall provide that without affecting the protection afforded to the mortgagee by such mortgage clause, any proceeds payable under such clause shall be payable to the trust company aforementioned; and

5) shall provide that any reference to a mortgagee in the policy shall include all mortgagees on any unit, in order of preference.

The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance covering all apartment owners with respect to the project in a responsible insurance company



with minimum limits of not less than \$300,000 for injury to one (1) person and \$500,000 for injury to more than one (1) person in any one accident or occurrence and \$50,000 for property damage. The provisions hereof are, without prejudice, to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

P. UNINSURED CASUALTY. In case at any time or times any improvements of the project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, whether to build, repair or restore such improvements shall be determined by vote of seventy-five percent (75%) of the apartment owners. Any such approved restoration of the common elements shall be completed diligently by the Association at its common expense, and the apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

Q. ALTERATION OF PROJECT. Restoration or replacement of the Project or any building thereof or construction of any additional building or structural alteration or addition to any building, different in any material respect from said condominium map of the Project, shall be undertaken by the Association or any

apartment owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to vote or written consent of not less than 75% of all of the apartment owners, and in accordance with complete plans and specifications, therefor, first approved in writing by the Board, and promptly upon completion of such restoration, replacement, or construction the Association shall duly record such amendment in said Bureau of Conveyances, together with, a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.

R. MAINTENANCE RESERVE FUND. The Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all apartment owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each apartment owner's obligations to provide for utilities, insurance, maintenance and repair of the common elements, and other expenses of administration of the project, which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or reduced in the discretion of the Board. The proportionate interest of each apartment owner in said Fund cannot be withdrawn or separately assigned, but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in

the conveyance thereof. In case the Horizontal Property Regime hereby created shall be terminated or waived, said Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners in their respective proportionate shares, except for the owners of any apartments then reconstituted as a new Horizontal Property Regime.

S. AMENDMENT TO DECLARATION. Except, as otherwise provided, herein, or in said Horizontal Property Act this Declaration may be amended by vote of seventy-five percent (75%) of the apartment owners effective only upon the recording of an instrument setting forth such amendment and vote duly executed by such owners or by the proper officers of the Association.

T. DEFINITIONS. The term "majority" or "majority of apartment owners, herein, means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the apartment owners means the owner of apartments to which are appurtenant such percentage of the common interests.

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IN WITNESS WHEREOF, the Owner has executed this Amended and Restated Declaration of Horizontal Regime of Hale Pau Hana, Inc., this 25<sup>th</sup> day of September, 2000.

HALE PAU HANA, INC.

By: Nancy L. Yopp  
Nancy L. Yopp  
Its President

By: Sebastian J. Nola  
Sebastian J. Nola  
Its Secretary

STATE OF ARIZONA )

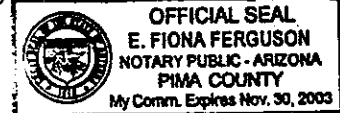
CITY AND COUNTY OF Pima )

SS:

On this 25<sup>th</sup> day of September, 2000, before me personally appeared Nancy L. Yopp, to me personally known, who, being duly sworn, did say that she is the President of HALE PAU HANA, INC., and that the instrument was signed in behalf of the Corporation by authority of its Board of Directors, and said NANCY L. YOPP acknowledged said instrument to be the free act and deed of said Corporation.

E. Fiona Ferguson  
Print Name: E. FIONA FERGUSON  
Notary Public, State of Arizona


My commission expires: \_\_\_\_\_



STATE OF HAWAII     )  
                              )  
COUNTY OF MAUI    )

SS:

On this 7<sup>th</sup> day of August, 2000, before me personally appeared SEBASTIAN J. NOLA, to me personally known, who, being duly sworn, did say that he is the Secretary of HALE PAU HANA, INC., and that the instrument was signed in behalf of the Corporation by authority of its Board of Directors, and said SEBASTIAN J. NOLA acknowledged said instrument to be the free act and deed of said Corporation.

  
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Esmeralda Bulosan  
Notary Public, State of Hawaii

My commission expires: 2/6/2001

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