

BYLAWS
of
HAWAI`I RESTAURANT ASSOCIATION
(a Hawai`i nonprofit corporation)

(Chapter 414D, Hawai`i Revised Statutes)

ARTICLE 1
GENERAL

Section 1.1 Principal Office. The principal office of the Association shall be maintained at such place within or without the State of Hawai`i as the Board of Directors shall determine.

Section 1.2 Seal. The Association may, but need not, have a corporate seal. The seal of the Association shall be in such form and shall bear the name of the Association and such other words, devices and inscriptions as the Board of Directors from time to time shall prescribe.

Section 1.3 Fiscal Year. The fiscal year of the Association is January 1 through December 31, or as may otherwise be established by the Board of Directors.

Section 1.4 Purposes. The purposes for which the Association is organized and operated shall be as follows:

(a) To unify and further the common interests of food service establishments within the State of Hawaii;

(b) To seek the enactment of legislation of benefit to members of the Association; and

(c) To promote goodwill and better understanding between the members of the Association as well as between such members, on the one hand, and governmental authorities and the public, on the other.

ARTICLE 2
MEMBERSHIP

Section 2.1 Classes of Membership. The Association shall have the following classes of membership:

(a) Regular Members. Those eligible for Regular Membership shall be any business actively operating a food service establishment. The term "any business" may include any country club, military activity or hotel which actively operates a food service establishment.

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(b) Allied Members. Those eligible for Allied Membership shall be:

(1) Any business enterprise that deals with a product or service that is used in any food and beverage operation; and

(2) Any hotel without food service.

(c) Individual Members. Those eligible for Individual Membership shall be:

(1) Any individual retired from active participation in a restaurant operation;

(2) Any individual enrolled in or employed by an educational institution offering courses of study pertaining to the food service industry; and

(3) Any individual interested in supporting the restaurant and food service industry in Hawaii.

(d) Associate Members. Those eligible for Associate Membership shall be any nonprofit enterprise directly engaged in food service, such as schools, hospitals and clubs.

(e) Honorary Members. The Board of Directors may elect by a two-thirds ($\frac{2}{3}$) vote one individual per year who, in the opinion of the Board, (i) has made a significant and lasting contribution to the restaurant industry in the State of Hawai`i and (ii) is presently engaged in the restaurant business in Hawai`i, as an Honorary Member. Honorary Members shall be elected for life and shall have all rights and privileges of Regular Membership, including voting rights, but shall not be required to pay annual dues.

Section 2.2 Admission for Membership. Eligible persons may be admitted to membership (except as an Honorary Member) at any time, subject to completion of the membership application and payment of dues and application fee, if any.

Section 2.3 Voting Rights.

(a) Except as otherwise provided in Section 2.1(e) above and in Section 3.2 below, only Regular Members or their designated representative shall have the right to vote, with each Regular Member having one (1) vote.

(b) Non-voting members shall have no rights with respect to derivative actions or approval of any corporate action, and shall not be included for the purposes of determining any quorum.

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Section 2.4 Annual Meeting. The annual meeting of the members shall be held on such day in the first five months following the close of each fiscal year as the Board of Directors shall designate, or, if the Board of Directors shall not have designated such day by the end of the third month following the close of the fiscal year, then on the first Monday of April in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following. At the annual meeting, the members entitled to vote for directors shall elect the directors, shall transact any general business which may be brought before the meeting, and may take any other corporate action as may be appropriate. At the annual meeting, the Chairperson shall report on the activities of the Association during the previous year and the Chairperson and the Treasurer shall report on the financial condition of the Association.

Section 2.5 Special Meetings. Special meetings of the members may be held at any time upon the call of the Chairperson or the Board of Directors, or five percent (5%) of the voting members. The Association shall hold a minimum of two (2) membership meetings per year, one of which shall be the annual meeting.

Section 2.6 Notice of Meetings. A written notice of every meeting of the members, stating whether it is an annual or a special meeting, the place, day and hour thereof, and the purpose therefor shall be given by the Secretary or by the person or persons calling the meeting, not less than ten (10) days nor more than sixty (60) days before the day set for such meeting. Such notice shall be given to each voting member in any of the following ways: (a) by leaving the same with the member personally, or (b) by mailing it, postage prepaid, addressed to the member at the member's address as it appears on the records of the Association, or (c) by email, facsimile or other electronic transmission to the address specified by the member. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of any meeting shall in no way invalidate the meeting or any proceedings thereat. Notice of any special meeting shall include a description of the matters for which the meeting is called.

Section 2.7 Waiver of Notice. A member may waive any notice in writing signed by the member entitled to notice, and delivered to the Association for inclusion in the minutes or filing with the corporate records. A member's attendance at a meeting (a) waives objection to lack of notice or defective notice, unless the member at the beginning of the meeting objects to the holding of the meeting or to transacting business at the meeting; and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Section 2.8 Quorum. Unless otherwise required by law, the Articles or these Bylaws, ten percent (10%) of the votes entitled to be cast on a matter shall be present or represented at a meeting of members to constitute a quorum on that matter. Unless one-third or more of the voting power is present in person or by proxy, the only matters

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that may be voted upon at an annual or special meeting of the members are those matters that are described in the meeting notice.

Section 2.9 Voting Requirements. Unless otherwise required by law, the Articles or these Bylaws, if a quorum is present, the affirmative vote of the votes represented is the act of the members.

Section 2.10 Adjournment. Any meeting of the members may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting (unless a new record date must be fixed pursuant to law). Such adjournment may be to such time and to such place as shall be determined by a majority vote of the members present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum at the original meeting as originally called.

Section 2.11 Establishment of Membership Dues. Dues and admission fees, if any, for each class of membership, whether voting or nonvoting, shall be established by the Board of Directors of the Association.

Section 2.12 Termination of Membership for Failure to Pay Dues. Notwithstanding anything herein to the contrary, the Board of Directors may terminate the membership of any member, whether voting or nonvoting, if such member fails to pay membership dues within thirty (30) days after they are due, and the Association provides at least thirty (30) days prior written notice of termination and the reason therefor.

Section 2.13 Termination of Member for Cause. The Board of Directors may also terminate the membership of any member "for cause", provided that the member has been given reasonable notice of the reasons for termination and an opportunity to appear before the Board of Directors to be heard with respect to the proposed termination. Conduct of a member which is out of harmony with the purposes of the Association shall be deemed "cause" justifying termination.

Section 2.14 No Liability. A member of the Association is not, as such, personally liable for the acts, debts, liabilities or obligations of the Association.

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**ARTICLE 3
BOARD OF DIRECTORS**

Section 3.1 Number and Qualification of Directors. The number of directors of the Association shall be a minimum of twenty-seven (27) with a maximum of forty-nine (49) plus one additional director for each County Chapter. All directors shall be individuals. The Chairperson of each County Chapter shall be an ex-officio voting member of the Board of Directors.

Section 3.2 Election of Directors. The directors, other than ex-officio directors, shall be appointed as follows: directors elected from the Regular Membership shall be twenty-one (21) up to a maximum of thirty-eight (38). Directors elected from the Allied Membership shall be six (6) up to a maximum of eleven (11). Only established senior leadership employed with a Regular Member or an Allied Member shall be eligible for election as a director. Each member shall be limited to not more than one (1) seat on the Board of Directors. Any vacancies in board director seats shall not preclude the Board of Directors from conducting business provided there is a quorum as defined in section 3.10.

Section 3.3 Terms of Directors. The term of office of a director elected from the Regular Membership shall be three (3) years and the term of office of a director elected from the Allied Membership shall be two (2) years. The terms of the directors shall be staggered so that a minimum of five (5) directors from the Regular Membership are elected each year and a minimum of three (3) directors from the Allied Membership are elected each year. No director may serve more than three (3) consecutive full terms. After an interval of one (1) year off the Board following service for three (3) consecutive full terms, an individual may again be elected to the Board.

Section 3.4 Annual Meeting. The annual meeting of the Board of Directors shall be held immediately following the annual meeting of members, or at such other time as may be specified by the Chairperson or the Chairperson Elect. At the annual meeting of the Board, the Board shall appoint the officers of the Association, shall transact any general business that may be brought before the meeting, and shall take such other corporate action as may be appropriate.

Section 3.5 Regular Meetings. The Board of Directors shall establish not less than six (6) regular meetings of the Board each year, to be held at such places and at such times as the Board may from time to time determine. When any such regular meeting or meetings shall be so established, no further notice thereof shall be required. The Board may meet in executive session during which all persons other than voting directors shall be excused from the meeting.

Section 3.6 Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairperson or by any two (2) directors.

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Section 3.7 Notice of Special Meetings. Notice of meetings of the Board of Directors, stating the place, day and time thereof, shall be given to each director by the Secretary or by the person or persons calling the meeting: (a) by leaving the notice with the director personally or by leaving the notice at the director's residence or usual place of business at least five (5) days before the date of the meeting; (b) by personal telephone call to the director at least five (5) days before the date of the meeting; (c) by email, facsimile or other electronic notice to the director at the address specified by the director, at least five (5) days before the date of the meeting; or (d) by mailing the notice, first class postage prepaid, addressed to the director at the director's address as it is shown on the records of the Association, at least ten (10) days prior to the time of the meeting.

Section 3.8 Waiver of Notice. A director may waive any notice in writing signed by the director, and delivered to the Association for inclusion in the minutes or filing with the corporate records. A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director at the beginning of the meeting or prior to the vote on a matter not properly noticed objects to lack of notice and does not thereafter vote for or assent to the objected to action.

Section 3.9 Place of Meetings. All meetings of the Board of Directors shall be held at the principal office of the Association or at such other place as is stated in the call for the meeting.

Section 3.10 Quorum and Vote. Unless otherwise required by law, the Articles or these Bylaws, a quorum of the Board of Directors shall consist of (i) a minimum eleven (11) directors with (ii) the total number of Regular Member directors present always being at least one greater than the total number of Allied Member directors present. Unless otherwise required by law, the Articles or these Bylaws, if a quorum is present, the affirmative vote of the directors present is the act of the Board. Voting by proxy shall not be permitted.

Section 3.11 Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors entitled to vote on the subject matter of the meeting. The consent shall be filed with the corporate records reflecting the action taken. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

Section 3.12 Participation by Conference Telephone. Members of the Board of Directors or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can simultaneously hear each other. Participation by this means shall constitute presence in person at a meeting.

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Section 3.13 Removal of Directors. The voting members of the Association may remove one or more directors elected by them with or without cause if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director, and the meeting notice must state that one of the purposes of the meeting is removal of the director. A director elected by the Board may be removed without cause by the vote of two-thirds of the directors then in office, provided that a director elected by the Board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the Board. Any director may be removed for missing three out of five consecutive meetings if a majority of the directors then in office vote for the removal.

Section 3.14 Director Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors of the same class, i.e. Regular Members or Allied Members. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office. A director elected by the Board shall continue to serve only until his replacement is duly elected by the members of the Association and qualified.

Section 3.15 Powers. Except as otherwise provided in the Hawai'i Nonprofit Corporation Act, all corporate powers shall be exercised by or under the authority of the Board of Directors, including the management of the Association's affairs.

Section 3.16 Nominating Committee. There shall be a nominating committee of three directors, who shall be elected by the Board of Directors at least sixty (60) days before the end of the fiscal year. At least one (1) member of the Nominating Committee shall not be an officer of the Association. The Nominating Committee shall nominate one or more individuals to stand for election to each directorship to be filled by the members at the annual meeting. Any three (3) directors elected by the Regular Members may submit the names of other individuals with their qualifications to the Nominating Committee, which individuals shall be added to the slate of nominees for election to the Board of Directors if such individuals are eligible for election. The Nominating Committee, in consultation with the Chairperson Elect, shall also nominate individuals to serve as officers of the Association to be appointed at the annual meeting of the Board.

Section 3.17 Advisory Board. One or more members may be appointed to an Advisory Board by the Chairperson for a one (1) year term with the approval of the Board of Directors. An Advisory Board Member shall not be required to be a member of the Association, shall have no voting rights and shall be assessed no dues or fees.

Section 3.18 Committees of the Board. The Board of Directors, by resolution adopted by the Board, may designate and appoint one or more committees of the Board. Each committee shall be chaired by a director and, except for the Executive,

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Finance and Nominating Committees, may include, on a non-voting basis, one or more individuals who are not directors.

(a) Each committee shall have one or more directors, who shall serve at the pleasure of the Board. The creation of the committee and appointment of members to it must be approved by a majority of all directors in office when the action is taken.

(b) The provisions in these Bylaws relating to the Board's meetings, action without meetings, notice, waiver of notice, quorum and voting shall apply to committees of the Board and their members.

(c) To the extent provided by the Board, each committee of the Board may exercise the Board's authority; provided, however, a committee of the Board may not:

(1) Authorize distributions;

(2) Approve or recommend to members dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Association's assets;

(3) Elect, appoint or remove directors or fill vacancies on the Board or on any of its committees;

(4) Adopt, amend or repeal the Articles of Incorporation or Bylaws;

(5) Authorize the sale, lease, exchange or mortgage of all or substantially all of the property of the Association.

(d) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct required by law.

Section 3.19 Standing Committees. The standing committees of the Association shall include: Executive, Finance, Membership, Government Relations, Education, Fundraising, and Constitution and Bylaws committees. The Chairperson may also create and appoint directors to chair Ad Hoc Committees as he/she may deem advisable to assist in the conduct of the affairs of the Association for a specific task or term, in addition to those specified in the Bylaws.

Section 3.20 Executive Committee. The Executive Committee shall consist of the Chairperson, Chairperson Elect, Vice Chairperson, Treasurer, Secretary and the immediate Past Chairperson. The Executive Committee shall have the power and authority (i) to appoint, employ and remove necessary employees and agents, including

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an auditor or firm of accountancy to audit receipts and disbursements of the Association annually, and to fix their compensation and terms of their employment and prescribe their duties, and (ii) such other powers and duties as may be determined by the Board of Directors.

**ARTICLE 4
OFFICERS**

Section 4.1 Appointment and Term. The officers of the Association shall be a Chairperson, a Chairperson Elect, an immediate Past Chairperson, a Vice Chairperson, a Treasurer and a Secretary. Each of the officers, except for the Chairperson and the immediate Past Chairperson, shall be appointed at the annual meeting of the Board or at such other time as the Board may determine, shall be appointed from directors elected by the Regular Members, and shall serve for a term of one (1) year and until their successors have been appointed and duly installed. The Chairperson Elect shall succeed to the office of Chairperson and the Chairperson shall succeed to the office of immediate Past Chairperson.

Section 4.2 Subordinate Officers and Agents. The Board of Directors may appoint or employ such subordinate officers, including Assistant Treasurers and Assistant Secretaries, agents and employees as may be deemed proper, who shall serve at the pleasure of the Board and who shall have such powers and duties as may be assigned to them by the Board. The authority to employ agents and employees and fix their powers and duties may be delegated by the Board to any person. Any officer of the Association may also be a subordinate officer, agent or employee of the Association.

Section 4.3 Salaries. The salaries and compensation, if any, of all officers, subordinate officers, agents and employees shall be determined by the Board of Directors.

Section 4.4 Bonds. Any officer, subordinate officer, agent or employee may be required by the Board of Directors to give a surety company bond for the faithful discharge of such person's duties in such sum as the Board may require and such bond shall be deposited as the Board may direct.

Section 4.5 Chairperson. The Chairperson shall preside at all meetings of the Board of Directors and the Executive Committee. Subject to the control of the Board, the Chairperson shall be the chief executive officer of the Association, shall exercise general supervision and direction over the management and conduct of the affairs of the Association and shall have the right to inspect at all times any and all of the records, accounts and property of the Association. The Chairperson shall also have such other powers and duties as are given elsewhere by law or in these Bylaws and as may be assigned from time to time by the Board.

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Section 4.6 Vice-Chairperson. The Vice Chairperson (or Vice-Chairpersons, in order of priority of appointment) shall assume and perform the duties of the Chairperson in the absence or disability of the Chairperson or whenever the office of Chairperson is vacant. Each Vice-Chairperson shall have such other powers and duties as may be given to such Vice-Chairperson by law or in these Bylaws and as may be assigned from time to time by the Board of Directors.

Section 4.7 Treasurer. The Treasurer shall be responsible for all funds of the Association and for the payment of all bills. The Treasurer shall present a written report of the financial condition and transactions of the Association annually, and when requested to do so, at all regular meetings of the Board of Directors for their consideration. The Treasurer shall have such other powers and perform such other duties incidental to the office of the Treasurer as may be assigned from time to time by the Board of Directors.

Section 4.8 Secretary. The Secretary, when requested, shall attend and keep the minutes of meetings of the Board of Directors and of any committee in books provided for that purpose. The Secretary shall be responsible for all records and files of the Association. The Secretary shall give all notices provided by these Bylaws and shall have such other powers and perform the duties incidental to the office of the Secretary and such other powers and duties as may be provided in these Bylaws or as may be assigned from time to time by the Board. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.

Section 4.9 Absence of Treasurer or Secretary. In the absence or inability to act of the Treasurer, the duties thereof shall be performed by such Assistant Treasurer as may have been designated by the Board of Directors, or, if none, then by the Secretary. In the absence or inability to act of the Secretary, the duties thereof shall be performed by such Assistant Secretary as may have been designated by the Board, or if none, then by the Treasurer.

Section 4.10 Removal of Officers. The Board of Directors may, at any time, remove from office or discharge from employment, for cause or without cause, any officer, subordinate officer, agent or employee appointed by it or by any person under authority delegated by it, except so far as such removal would be contrary to law.

Section 4.11 Loans to Directors and Officers Prohibited. The Association may not lend money to or guaranty the obligation of a director or officer of the Association. The fact that a loan or guaranty is made in violation of this section shall not affect the borrower's liability on the loan.

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**ARTICLE 5
COUNTY CHAPTERS**

Any County may petition the Board of Directors to become a County Chapter, whenever there are at least ten (10) members, the majority of which are Regular Members in said County.

A chapter shall promote and abide by the purposes and policies of the Association.

The duly elected Chapter Chairperson of each admitted Chapter shall become an ex officio voting member of the Board of Directors for the tenure of such Chairperson's office.

All Chapter membership dues shall be at the established Hawai'i Restaurant Association rates then scheduled and shall be paid directly to the Association. A percentage of the Chapter's dues shall be available for disbursement to the County Chapter according to the policies of the Association.

**ARTICLE 6
EXECUTION OF INSTRUMENTS**

Section 6.1 Authorized Signatures. All checks, drafts, notes, bonds, acceptances, deeds, proprietary leases, contracts and all other instruments shall be signed by such person or persons as shall be provided by general or special resolution of the Board of Directors, and, in the absence of any such general or special resolution applicable to any such instrument, then such instrument shall be signed by (a) the Chairperson or Vice Chairperson, and (b) the Treasurer, Secretary, Assistant Treasurer or Assistant Secretary.

**ARTICLE 7
RECORDS**

Section 7.1 Corporate Records. The Association shall keep and maintain such records as are required by law, including without limitation: minutes of all meetings of its members and Board of Directors; a record of all actions taken by the members or directors without a meeting; a record of all actions taken by committees of the Board of Directors; appropriate accounting records; a record of the members of the Association, including their name, address, class of membership, and voting entitlement; the Association's Articles of Incorporation and Bylaws, and all amendments thereto then in effect; the Association's three latest annual financial statements; a list of the names and business or home addresses of the Association's current directors and officers; and a

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copy of the latest domestic nonprofit corporate annual report form filed with the Department of Commerce and Consumer Affairs.

**ARTICLE 8
STANDARDS OF CONDUCT FOR DIRECTORS AND OFFICERS,
LIMITATION OF LIABILITY**

Section 8.1 Standards of Conduct for Officers and Directors; Limitation of Liability. Officers and directors shall discharge their duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer or director reasonably believes to be in the best interests of the Association. In discharging their duties, officers and directors are entitled to rely on information, opinions, reports, and statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the director or officer reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants, or other persons as to matters the officer or director reasonably believes are within the person's professional or expert competence; and (c) for directors, a committee of the Board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence. An officer or director is not acting in good faith if the officer or director has knowledge concerning the matter in question that makes reliance unwarranted. Officers and directors shall not be liable to the Association or any third party for any action taken or not taken as an officer or director if they discharged their duties in compliance with the above standards. Notwithstanding the above, any person who serves as a director or officer of the Association without remuneration or expectation of remuneration shall not be liable for any damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties.

Section 8.2 Director Conflict of Interest Transaction. A conflict of interest transaction is a transaction with the Association in which a director of the Association has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the Association at the time it was entered into or is approved as provided in accordance with the standards and proceedings specified in (a) the Hawai'i Nonprofit Corporations Act or any successor statute thereto, and (b) any other applicable federal or state law.

Section 8.3 Directors not Liable as Trustees. A director shall not be deemed to be a trustee with respect to the Association or with respect to any property held or administered by the Association, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

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Section 8.4 Liability for Unlawful Distributions. Unless a director complies with the standards of conduct governing the director's discharge of duties set forth in Section 8.1 above, a director who votes for or assents to a distribution made in violation of the Hawai`i Nonprofit Corporations Act, or any successor statute thereto, shall be personally liable (to the extent required by law) to the Association for the amount of the distribution that exceeds what could have been distributed without violating such laws.

**ARTICLE 9
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 9.1 Indemnification. The Association may indemnify each Agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative ("proceeding") -- other than an action by or in the right of the Association -- by reason of the fact that such person is or was an Agent of the Association against the obligation to pay a judgment, settlement, penalty or fine, or reasonable expenses actually incurred by the Agent in connection with the proceeding ("liability") if the Agent acted in good faith and in a manner that the Agent acting in an official capacity reasonably believed to be in the best interests of the Association, or, if the Agent was not acting in an official capacity, not opposed to the best interests of the Association, and, with respect to any criminal proceeding, had no reasonable cause to believe that the Agent's conduct was unlawful.

Section 9.2 Prohibition. Notwithstanding the above, the Association may not indemnify a director's liability where the director's liability has been determined:

- (a) in connection with a proceeding by or in the right of the Association;
- or
- (b) in connection with any other proceeding whether or not involving action in an official capacity, in which the director was found liable on the basis of the director's improper receipt of a personal benefit.

Section 9.3 Limitation. Indemnification permitted in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

Section 9.4 Expenses. To the extent that an Agent has been wholly successful on the merits or otherwise in defense of any proceeding to which the Agent was a party because the Agent is or was an Agent of the Association, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection therewith.

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Section 9.5 Determination and Authorization. The Association may not indemnify a director unless authorized in the specific case after a determination has been made that the director has met the standard of conduct set forth in Section 9.1 above. The determination shall be made by the Board of Directors by a majority vote of a quorum consisting of directors who are not at the time parties to the proceeding. If such quorum cannot be obtained, the determination shall be made by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate) consisting solely of two or more directors who are not at the time parties to the proceeding. If such a committee cannot be designated, the determination shall be made by special legal counsel selected by majority vote of the full Board (in which selection directors who are parties may participate).

Section 9.6 Advancement of Expenses. Expenses, including counsel fees, incurred by an Agent in defending a proceeding may be paid by the Association in advance of the final disposition of such proceeding as authorized by the Board of Directors in a particular case, provided:

(a) the Agent furnishes the Association with a written affirmation of the Agent's good faith belief that the Agent has met the standard of conduct described in Section 9.1 above;

(b) the Agent agrees in writing, by the Agent's unlimited general obligation, to repay the advance if it is ultimately determined that the Agent did not meet the standard of conduct; and

(c) a determination is made that the facts then known to the Board, committee or legal counsel authorizing the advance would not preclude indemnification under Section 9.1 above.

Any decision to advance expenses under this section shall be made in the same manner specified in Section 9.5 above.

Section 9.7 Notice to Members. If the Association indemnifies or advances expenses to a director in connection with a proceeding by or in the right of the Association, the Association shall report an indemnification or advance in writing to the voting members with or before the notice of the next meeting of members.

Section 9.8 Non-Exclusive Rights. The immunity from liability and the indemnification provided for in this Article shall not be deemed exclusive and shall be in addition to any rights to which any Agent of the Association may otherwise be or become entitled by law, by resolution or by contract, provided that the resolution or contract is consistent with the standards set forth in Section 9.1 above and the Hawai'i Nonprofit Corporations Act.

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Section 9.9 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any Agent against any liability asserted against or incurred by the Agent in his capacity as an Agent of the Association or arising out of the Agent's status as such, whether or not the Association would have the power to indemnify the Agent against such liability under the provisions of this Article.

Section 9.10 Definitions. For purposes of this Article, "Agent" shall mean any person who is or was a director, officer, committee member, or volunteer of the Association, and shall include a director who serves at the Association's request as a director, officer, employee or agent of another business. ("Director" includes the estate or personal representative of a director unless the context requires otherwise.)

Section 9.11 Employee Benefit Plans. The immunity from liability and the indemnification provided for in this Article shall not apply to the extent it is inconsistent with those provisions of the Employee Retirement Income Security Act of 1974 limiting exculpatory agreements and indemnification with respect to any breach of fiduciary duty by any fiduciary of the Association's employee benefit plans. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of Section 9.1 above.

**ARTICLE 10
AMENDMENTS TO BYLAWS**

Section 10.1 Procedure. These Bylaws may be altered, amended, or repealed by the Board of Directors or voting members of the Association, at a meeting duly called and held if notice of the proposed amendments shall have been given in the call for such meeting.

**ARTICLE 11
PARLIAMENTARY PROCEDURE**

Robert's Rules of Order – the most recent edition – shall be the authority on all questions of procedure which arise or may arise at all meetings of the members, the Board of Directors and the Board's committees.

**BYLAWS of
HAWAI`I RESTAURANT ASSOCIATION**
(a Hawai`i nonprofit corporation)

SECRETARY'S CERTIFICATE

HAWAI`I RESTAURANT ASSOCIATION
(a Hawai`i nonprofit corporation)

I HEREBY CERTIFY that I am the duly elected, qualified and acting Secretary of Hawai`i Restaurant Association, and that the attached Bylaws were duly adopted by said Association and are currently effective.

Date: _____

Secretary