

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

The original of this document was  
recorded as follows:

Doc 4116485  
CTN AS LISTED HEREIN  
DATE DEC 05, 2011 08:02 AM TIME

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail ☐ Pickup ☐ To:

RICHARD S. EKIMOTO, ESQ.  
1132 Bishop Street, Suite 902, Honolulu, HI 96813  
Telephone: (808) 523-0702

G:\CLIENT\LILIUOKALANI GARDENS AT WAIKIKI\DOCS\Second By-Laws final.wpd

This document contains 57 pages

**SECOND RESTATED BYLAWS OF THE ASSOCIATION OF  
APARTMENT OWNERS OF LILIUOKALANI GARDENS AT WAIKIKI**

WHEREAS, by Declaration of Horizontal Property Regime dated March 1, 1983, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (hereinafter referred to as the "Land Court") as Document No. 1155070 and duly noted on Transfer Certificate of Title Nos. listed on Exhibit "1" attached hereto, the Trustees of the Liliuokalani Trust, as fee owners, and Haseko Development, Inc., a Hawaii corporation, as developer, did submit the property described in said Declaration to the provisions of the Horizontal Property Act (now known as the ("Condominium Property Act"), Chapter 514B, Hawaii Revised statutes, as amended;

WHEREAS, said Declaration of Horizontal Property Regime, as amended (hereinafter referred to as the "Declaration"), provided for the organization of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki (hereinafter referred to as the "Association");

WHEREAS, the Bylaws of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki was recorded in the Land Court as Document No. 1155071;

WHEREAS, the Restated Bylaws of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki was recorded in the Land Court as Document No. 2212907;

WHEREAS, Hawaii Revised Section 514B-109 authorizes the Board of Directors of the Association established by the By-Laws to restate the By-Laws to include in them any amendments and to conform its provisions to the provisions of HRS Chapter 514B and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on November 3, 2011, the Board of Directors resolved to restate the By-Laws, pursuant to HRS Section 514B-109, in the manner set forth herein;

NOW, THEREFORE, the Bylaws are hereby restated as set forth below. Each Bylaw provision that has been restated has been identified in the endnotes attached hereto. Said provisions have been restated solely for the purposes of information and convenience. To the extent that there is any conflict between the restated provisions of the Bylaws and the statute or statutes being implemented, the provisions of the restated Bylaws shall be subordinate to said statute or statutes. The restated version of the Bylaws correctly sets forth, without change, the corresponding provisions of the Bylaws, as amended. This restated version of the Bylaws shall supersede the first restated Bylaws, the original Bylaws and all prior amendments thereto; provided, however, that in the event of any conflict, the Second Restated of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki shall be subordinate to the original Bylaws and all prior amendments thereto.

9th IN WITNESS WHEREOF, the parties hereto have executed these presents this day of November, 2011.

ASSOCIATION OF APARTMENT OWNERS OF  
LILIUOKALANI GARDENS AT WAIKIKI

By:

Mark C. Smith  
Type Name

Its:

President

By:

Larry Jackson  
Type Name

Its:

Treasurer

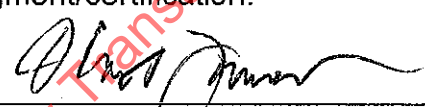
STATE OF HAWAII )

: SS.

CITY & COUNTY OF HONOLULU )

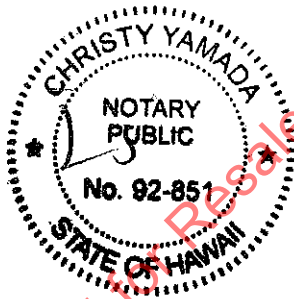
On this \_\_\_\_\_ day of NOV 15 2011, 20\_\_\_\_, in the First Circuit of the State of Hawaii, before me personally appeared MARK A. SMITH, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the PRESIDENT of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki, a Hawaii Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Second Restated Bylaws of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated NOV 9 2011 and contained 57 pages at the time of this acknowledgment/certification.

  
Notary Public, State of Hawaii

**CHRISTY YAMADA**

Printed Name of Notary Public  
My Commission Expires: 12/15/2012



Doc. Date: NOV 9, 2011 Pages 57

Notary Name: CHRISTY YAMADA First Circuit

Doc. Description 2nd restated

Bylaws of AOAD

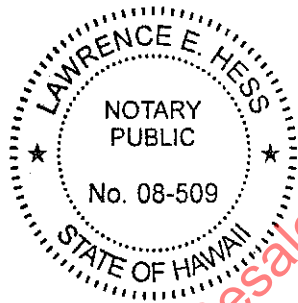
 NOV 15 2011

Notary Signature Date

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

On this 9<sup>th</sup> day of NOVEMBER, 2011, in the First Circuit of the State of Hawaii, before me personally appeared HARRY G. JACKSON, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the TREASURER of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki, a Hawaii Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Second Restated Bylaws of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated NOV 09 2011 and contained 57 pages at the time of this acknowledgment/certification.



[Signature]  
Notary Public, State of Hawaii

**LAWRENCE E HESS**

Printed Name of Notary Public

My Commission Expires: 10/26/2012

Not Valid for Resale Property Transactions

## **SECOND RESTATED BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF LILIUOKALANI GARDENS AT WAIKIKI**

THE TRUSTEES OF THE LILIUOKALANI TRUST (the "Trustees"), whose principal place of business and post office address is 161 South King Street, Honolulu, Hawaii 96813, are the owners in fee of the land (the "Land") described in the Declaration of Condominium Property Regime (the "Declaration") recorded concurrently with these Bylaws of the Association of Apartment Owners of Liliuokalani Gardens at Waikiki (the "Bylaws") and further described in Exhibit "A" attached to the Bylaws recorded in the Land Court as Document No. 1155071.

The Trustees have leased the Land to HASEKO DEVELOPMENT, INC., a Hawaii corporation (the "Developer") under that certain Lease dated November 1, 1982 and filed in the Office of the Assistant Registrar of the Land Court (the "Land Court") as Document No. 1138467 and noted on Transfer Certificate of Title No. 216,296.

The Developer and the Trustees are desirous of submitting the Land and the buildings to be constructed thereon to a condominium property regime (formerly known as a horizontal property regime) by filing and recording a Declaration of Condominium Property Regime (originally called a Declaration of Horizontal Property Regime) and adopting these Bylaws, all as provided for by the Condominium Property Act (formerly known as the Horizontal Property Act), Chapter 514B, Hawaii Revised Statutes, as amended (the "Act").

The Trustees and the Developer hereby declare that all of the property described above is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of such property. The Bylaws shall constitute equitable servitudes, liens and covenants running with the Land and the apartments established thereon and shall be binding upon all parties having or acquiring any right, title or interest therein.

*(The remainder of this page is intentionally left blank. Table of Contents to follow.)*

SECOND RESTATED BYLAWS OF THE ASSOCIATION OF  
APARTMENT OWNERS OF LILIUOKALANI GARDENS AT WAIKIKI

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. Introductory Provisions.....	9
Section 1. <u>Definitions</u> .....	9
Section 2. <u>Conflicts</u> .....	10
Section 3. <u>Application</u> .....	10
ARTICLE II. Association of Owners.....	10
Section 1. <u>Membership</u> .....	10
Section 2. <u>Annual Meetings</u> .....	10
Section 3. <u>Place of Meetings</u> .....	11
Section 4. <u>Special Meetings</u> .....	11
Section 5. <u>Notice of Meetings and Other Notices</u> .....	11
Section 6. <u>Adjournment of Meetings</u> .....	11
Section 7. <u>Voting</u> .....	11
Section 8. <u>Proxies and Pledges</u> .....	12
Section 9. <u>Order of Business</u> .....	13
Section 10. <u>Cumulative Voting</u> .....	14
Section 11. <u>Quorum</u> .....	14
Section 12. <u>Majority Vote</u> .....	14
Section 13. <u>Majority of Apartment Owners</u> .....	14
Section 14. <u>List of Members</u> .....	14
Section 15. <u>Minutes of Meetings</u> .....	14
Section 16. <u>Right of Inspection and Copying</u> .....	15
Section 17. <u>Committees</u> .....	15
ARTICLE III. Board of Directors.....	15
Section 1. <u>Number and Qualification</u> .....	15
Section 2. <u>Powers and Duties</u> .....	15
Section 3. <u>Employment of Managing Agent</u> .....	18
Section 4. <u>Election and Term of Office</u> .....	18
Section 5. <u>Removal of Directors</u> .....	19
Section 6. <u>Vacancies</u> .....	19
Section 7. <u>Annual Meetings</u> .....	19
Section 8. <u>Regular Meetings</u> .....	19
Section 9. <u>Special Meetings</u> .....	19
Section 10. <u>Waiver of Notice</u> .....	20
Section 11. <u>Rules of Order</u> .....	20
Section 12. <u>Open and Executive Session</u> .....	20
Section 13. <u>Quorum of Board of Directors</u> .....	20
Section 14. <u>Compensation</u> .....	20
Section 15. <u>Conflict of Interest</u> .....	20

Section 16.	<u>Liability and Indemnity of the Board of Directors and Officers</u>	21
Section 17.	<u>Fidelity Bonds</u>	21
Section 18.	<u>Documents Provided To Board Members</u>	22
Section 19.	<u>Notice of Board Meetings</u>	22
ARTICLE IV.	<u>Officers</u>	22
Section 1.	<u>Designation</u>	22
Section 2.	<u>Election of Officers</u>	22
Section 3.	<u>Removal of Officers</u>	22
Section 4.	<u>President</u>	22
Section 5.	<u>Vice President</u>	22
Section 6.	<u>Secretary</u>	23
Section 7.	<u>Treasurer</u>	23
Section 8.	<u>Agreements, Contracts, Deeds, Checks and Other Instruments</u>	23
Section 9.	<u>Compensation of Officers</u>	23
Section 10.	<u>Auditor</u>	23
ARTICLE V.	<u>Maintenance and Alteration of Premises</u>	24
Section 1.	<u>Maintenance and Repair of Apartments</u>	24
Section 2.	<u>Lanais</u>	24
Section 3.	<u>Alterations and Additions to Apartments</u>	24
Section 4.	<u>Maintenance and Repair of Common Elements</u>	24
Section 5.	<u>Alteration of the Project</u>	25
Section 6.	<u>Alterations over \$10,000.00 - Consent of Trustees</u>	25
Section 7.	<u>Use of the Project</u>	25
ARTICLE VI.	<u>Common Expenses, Apartment Expenses, Taxes and Accounting</u>	27
Section 1.	<u>Common Expenses</u>	27
Section 2.	<u>Payment as Agent</u>	31
Section 3.	<u>Taxes and Assessments</u>	31
Section 4.	<u>Default in Payment of Assessments</u>	31
Section 5.	<u>Waiver</u>	33
Section 6.	<u>Collection from Tenants and Rental Agents</u>	33
Section 7.	<u>Books of Account</u>	34
Section 8.	<u>Balance Sheet</u>	34
Section 9.	<u>Pro Forma Budget</u>	34
ARTICLE VII.	<u>Insurance and Restoration</u>	34
Section 1.	<u>Fire and Extended Coverage Insurance</u>	34
Section 2.	<u>Comprehensive Liability Insurance</u>	36



Section 3.	<u>Insurance Against Damage to Exterior</u>	
	<u>Glass and Additional Risks</u> .....	37
Section 4.	<u>Miscellaneous Insurance Provisions</u> .....	37
Section 5.	<u>Damage and Destruction</u> .....	37
Section 6.	<u>Notice of Right to Vote Against</u>	
	<u>Rebuilding</u> .....	40
ARTICLE VIII.	<u>Mortgages</u> .....	40
Section 1.	<u>Notice of Unpaid Common Expenses</u> .....	40
Section 2.	<u>Notice of Default</u> .....	40
Section 3.	<u>Examination of Books</u> .....	40
Section 4.	<u>Mortgage Protection</u> .....	41
Section 5.	<u>Notice to Board of Directors</u> .....	41
Section 6.	<u>Additional Notices to Mortgagees</u> .....	41
Section 7.	<u>Mortgagee Approval</u> .....	42
ARTICLE IX.	<u>Condemnation</u> .....	42
ARTICLE X.	<u>General Provisions</u> .....	44
Section 1.	<u>Rules and Regulations</u> .....	44
Section 2.(a)	<u>Abatement and Enjoinment of Violations</u>	
	<u>by Apartment Owners</u> .....	44
Section 3.	<u>Attorney's Fees and Expenses</u>	
	<u>of Enforcement</u> .....	45
Section 4.	<u>Right of Access</u> .....	46
Section 5.	<u>Owners May Incorporate</u> .....	46
Section 6.	<u>Arbitration of Grievances and Disputes</u> .....	46
Section 7.	<u>Representation of the Association</u>	
	<u>and Owners</u> .....	46
Section 8.	<u>Notices</u> .....	46
Section 9.	<u>Captions</u> .....	47
Section 10.	<u>Gender</u> .....	47
Section 11.	<u>Waiver</u> .....	47
Section 12.	<u>Interpretation</u> .....	47
Section 13.	<u>Amendment</u> .....	47
Section 14.	<u>Severability</u> .....	47
Section 15.	<u>Eviction of Tenants</u> .....	47
Section 16.	<u>Lease/Fee Purchase</u> .....	48



## ARTICLE I

### INTRODUCTORY PROVISIONS

SECTION 1. Definitions. The terms used in these Bylaws shall have the meanings given to them in the Act, except as expressly provided otherwise:

- (a) "Apartment" refers to the Apartments identified in and created under the Declaration. The Project includes both Commercial Apartments and Residential Apartments as defined in the Declaration.
- (b) "Apartment Lease" refers to the lease of an Apartment from the Trustees to an Apartment Owner filed in the Land Court.
- (c) "Apartment Mortgagee", "Mortgagee of an Apartment" and similar terms refer to the Mortgagee of the leasehold estate under any Apartment Lease filed in the Land Court.
- (d) "Apartment Owner" or "Owner" means a person owning severally or as a cotenant an Apartment and the common interest appertaining thereto; provided that:
  - (i) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease filed in the Land Court, a lessee of an Apartment shall be deemed to be the Owner thereof;
  - (ii) The purchaser of an Apartment pursuant to an agreement of sale filed in the 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" as that term is used in the Act; and
  - (iii) In the event that any interest in an Apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the Owner or owners of the Apartment to the extent of their interest therein except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an Apartment Owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the Owner and shall have all of the rights and obligations of ownership.
- (e) "Apartment Owners", "Association of Owners", "Association" and similar terms refer to the Association of Apartment Owners of the Project.

- (f) "Board" and "Board of Directors" means the Board of Directors of the Association.
- (g) "Common Elements" means those things designated as common elements in the Declaration, including the Limited Common Elements.
- (h) "Filed in the Land Court" refers to the filing of any document with the Office of the Assistant Registrar of the Land Court of the State of Hawaii and the registration of such document in accordance with Chapter 501 of the Hawaii Revised Statutes, as amended ("HRS").
- (i) "Limited Common Elements" means those Common Elements identified as Limited Common Elements in the Declaration.
- (j) "Project" means the Liliuokalani Gardens at Waikiki condominium project.
- (k) "Property" means the Land, the buildings, and all other improvements thereon (including the Apartments and the Common Elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto or intended for use in connection therewith.

SECTION 2. Conflicts. The Bylaws are set forth to comply with the requirements of the Act. In case any of the Bylaws conflict with the Act or the Declaration, the provisions of the Act or the Declaration, in that order, shall control.

SECTION 3. Application. All present and future owners, mortgagees, tenants and occupants of Apartments and their guests and employees, and any other persons who may use the Property in any manner are subject to the Bylaws, the Declaration and the Rules and Regulations. The acceptance of an Apartment Lease, assignment of lease, conveyance or similar instrument or the entry into a lease or the act of occupancy of an Apartment shall constitute an agreement that the Bylaws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and shall be complied with.

## ARTICLE II

### ASSOCIATION OF OWNERS

SECTION 1. Membership. All Apartment Owners of the Project shall constitute the Association. 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 ceases for any reason, at which time his membership in the Association shall automatically cease. The Developer, as the Owner of any unsold Apartments shall be entitled to vote the interest of each such Apartment. It is intended that the Association shall qualify as a "Homeowner's Association" under Section 528 of the Internal Revenue Code.

SECTION 2. Annual Meetings. The annual meetings of the Apartment Owners shall be held during the month of May of each year or at such other time as the

Board of Directors may designate. At such meetings the Board of Directors shall be elected by ballot of the Apartment Owners in accordance with the requirements of Section 4 of Article III of the Bylaws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

SECTION 3. Place of Meetings. Meetings of the Apartment Owners shall be held at the address of the Project or elsewhere within the State of Hawaii as determined by the Board of Directors.

SECTION 4. Special Meetings. Special meetings of the Apartment Owners may be held at any time upon the call of the President or any three (3) Directors or upon a petition of not less than twenty-five percent (25%) of the Owners. Upon receipt of such call or petition, the Secretary shall send written notice of the meeting to all Owners. If the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the Bylaws; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition.

SECTION 5. Notice of Meetings and Other Notices. Written notice of all meetings, annual or special, stating the date, time, and place of the meeting and whether it is annual or special and stating the items on the agenda for such meeting and containing a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws shall be given by mailing such notice, postage prepaid, at least fourteen (14) days before the date assigned for the meeting to the Owners at their addresses at the Property or at the addresses given to the Board for the purpose of service of such notices. Upon written request for notices delivered to the Board, the director of the local insuring office of the Federal Housing Administration and any Apartment Mortgagee may obtain a copy of any and all notices permitted or required to be given to the Owner whose interest is subject to such mortgage. Upon notice being given in accordance with the provisions hereof, the failure of any Owner to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of any Apartment Owner or Apartment Mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof. Each Owner shall keep the Board informed of any changes in address.

SECTION 6. Adjournment of Meetings. Any meeting of the Association may be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the Owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

SECTION 7. Voting. The total vote to which each Apartment is entitled shall be the vote assigned to such Apartment pursuant to the Declaration; provided, however, that any votes allocated to an area which constitutes a common element under Section 514B-108(a)(8), HRS, shall not be cast at any meeting of the Association, whether or not

it is so designated in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. A personal representative, guardian, trustee, or beneficiary of a trust which qualifies as an Owner under Article I, Section 1(d)(iii) of these Bylaws may vote in person or by proxy at any meeting of the Association the vote for any Apartment owned or controlled by him in such capacity, 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 cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such Apartment. The purchaser of an Apartment pursuant to an Agreement of Sale filed in the Land Court shall have all the rights of an Owner, including the right to vote, except as to those matters retained by the Seller under the Agreement of Sale pursuant to Section 514B-124 of the Act.

**SECTION 8. Proxies and Pledges.** (a) The authority given by any Apartment Owner to another person or entity to represent him at meetings of the Association shall be in writing, signed by such Owner and filed with the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and shall contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given and the date that the proxy is given. Proxy forms may be revoked by a written instrument filed with the Secretary or by the death or incapacity of such Owner. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments and may designate any person, including the Board of Directors as an entity, as proxy and may be limited as the Owner desires and indicates. No proxy shall be irrevocable unless coupled with a financial interest in the Apartment.

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. Any one of two or more persons owning any Apartment may give or revoke a proxy for the entire vote of such Apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. Any proxy given by a cotenant or cotenants for only a share of an Apartment's vote in proportion to the share of ownership of such cotenant or cotenants shall be revocable only by such cotenant or cotenants. Any proxy given by a cotenant or cotenants for only a share of an Apartment's vote may be exercised to cast the entire vote for such Apartment in the absence of protest by another cotenant or the holder of a proxy from another cotenant, and, in case of such protest, each cotenant or holder of a proxy from a cotenant, as the case may be, shall be entitled to only a share of such Apartment's vote in proportion to the respective shares of ownership in such Apartment.

(b) No Managing Agent or resident manager, if any, shall solicit, for use by such Managing Agent or resident manager, any proxy from any Apartment Owner, nor shall such Managing Agent or resident manager cast any proxy vote at any meeting of the Association, except for the purpose of establishing a quorum. No member of the Board of Directors who uses funds of the Association to solicit proxies, shall cast any proxy votes for the election or reelection of members of the Board of Directors unless the proxy form specifically authorizes such Board member to vote in the election or reelection of the Board

directors and the Board first posts notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days prior to its distribution of proxies; provided that if the Board receives, within seven days of the posting, a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall:

- (1) mail to all Owners a proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or
- (2) mail to all Owners a proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

The statements shall not exceed one single-sided 8-1/2" x 11" page, indicating the Owners' qualifications to serve on the Board or reasons for wanting to receive proxies.

Proxies may be given to the Board of Directors provided that the proxy form shall contain a box wherein the Owner may indicate that the Owner wishes the vote to be shared with each Board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the Owner that the vote be made on the basis of the preference of the majority of the Board. No officer shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising his or her right as an Apartment Owner.

SECTION 9. Order of Business. The order of business at all annual meetings of the Apartment Owners shall be generally as follows:

- (a) Roll call;
- (b) Statement of Secretary attesting that proper notice of meeting was given;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Report of Board of Directors;
- (f) Reports of committees;
- (g) Election of inspectors of election (when so required);
- (h) Election of members of the Board of Directors (when so required);
- (i) Unfinished business;
- (j) New business;
- (k) Adjournment.



All meetings of the Association shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

SECTION 10. Cumulative Voting. Election of Directors shall be by cumulative voting, and each Owner may cast for any one or more nominees to the Board of Directors a vote equivalent to the vote which such Owner is entitled to multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his vote and give all thereof to one nominee or to distribute his vote in such manner as he shall determine among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected.

SECTION 11. Quorum. Except as otherwise provided in the Bylaws, the presence in person or by proxy of Owners having at least fifty percent (50%) of the total authorized votes of all Apartment Owners shall constitute a quorum at all meetings of the Apartment Owners. In the absence of a quorum at a meeting, a majority of those present may adjourn the meeting to another time, but may not transact any further business. Such adjournment shall be to a time not less than forty-eight (48) hours from the time set for the meeting that is being adjourned. If a time and place for the adjourned meeting is not fixed by those in attendance at the meeting or a new date is fixed for the new meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members of the Association in the manner prescribed for regular meetings.

SECTION 12. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding upon all Apartment Owners for all purposes unless the Declaration or the Bylaws or Hawaii law requires a higher percentage.

SECTION 13. Majority of Apartment Owners. As used in these Bylaws, the term "majority of Apartment Owners" shall mean those Apartment Owners having more than fifty percent (50%) of the authorized votes present at any meeting of the Apartment Owners; and any specified percentage of the Owners means Owners having the specified percentage of the total votes in the Association.

SECTION 14. List of Members. The resident manager, if any, or Managing Agent, as referred to in Section 3 of Article III hereof, or Board of Directors shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements of sale, if any, covering any Apartment. The list shall be maintained at a place designated by the Board of Directors. In connection therewith each Owner shall promptly cause to be duly recorded or filed of record the Apartment Lease or other conveyance to him of such Apartment and shall file a copy of such document with the Board of Directors through the Managing Agent. Every Apartment Owner shall pay to the Association or the Managing Agent on demand a service charge, in an amount fixed from time to time by the Board of Directors, but in no event more than \$100, for the registration on the records of the Association of any change of ownership of an Apartment.

SECTION 15. Minutes of Meetings. The minutes of the meetings of the Association and the Board of Directors and the Association's financial statements shall be available for examination by Owners and their Mortgagees at convenient hours at a place designated by the Board of Directors and shall be mailed to any Owner upon the Owners'

request. The minutes of the meetings of the Board of Directors and the Association shall include the recorded vote of each Board member on all motions, except motions voted upon in executive session.

**SECTION 16. Right of Inspection and Copying.** The membership list described in Section 14 of this Article II, and the minutes of meetings of the Association and the Board of Directors described in Section 15 of this Article II shall be made available for inspection and copying by any Owner or by his duly appointed representative at any reasonable time and for a purpose reasonably related to his interest as an Owner at the office of the Association or at such other place within the Project as the Board of Directors shall prescribe. The Board of Directors shall establish reasonable rules with respect to notice to be given to the custodian of the records by the Owner desiring to make inspection, and the hours and days of the week when such inspection may be made and payment of the cost of reproducing copies of documents requested by the Owner. Every member of the Board of Directors shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts or copies of the documents at his own expense. The Board shall at all times comply with Section 514B-153 and Section 514B-154, Hawaii Revised Statutes, and its subsections, when responding to requests by Owners to inspect and/or photocopy the documents referred to herein and/or to other documents of the Association.

**SECTION 17. Committees.** The Association may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

### ARTICLE III

#### BOARD OF DIRECTORS

**SECTION 1. Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of five (5) persons, all of whom shall be Owners, co-owners, 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. No resident manager of the Project shall serve on the Board of Directors. There shall not be more than one representative on the Board of Directors from any one Apartment.

**SECTION 2. Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except such as by law, the Declaration or these Bylaws may not be delegated to the Board of Directors by the Apartment Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the Common Elements;
- (b) Preparation annually of a budget of the common expenses required for the affairs of the Association (including, without limitation, the operation and



maintenance of the Property) and determination of the amounts of monthly and special assessments;

(c) 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;

(d) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Apartment Owners;

(e) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements;

(f) Adoption and amendment of the Rules and Regulations covering the details of the operation and use of the Property, together with enforcement of the Rules and Regulations and applicable provisions of the Declaration and these Bylaws;

(g) Opening bank accounts on behalf of the Association of Apartment Owners and designating the signatories required therefor;

(h) Obtaining insurance for the Property, including the Apartments, pursuant to the provisions of Article VII hereof;

(i) Making additions and improvements to or alterations of the Property and repairs to and restoration of the Property in accordance with the other provisions of these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(j) Procuring legal and accounting services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of these Bylaws and any other material documents affecting the Project;

(k) Purchasing any other materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other common expenses which the Board is required to secure, make or pay pursuant to these Bylaws or by law or which in its opinion shall be necessary or proper for the operation of the building or the enforcement of these Bylaws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the particular actions or negligence of the Owners of particular Apartments, the cost thereof shall be specially assessed to the Owners of such Apartments;

(l) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the Common Elements;

(m) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Elements rather than merely against the interest therein of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and

severally liable for the cost of discharging it and the costs incurred by the Board by reason of such lien;

(n) Maintenance and repair of any Apartment if such maintenance and repair is necessary, in the discretion of the Board, to protect the Common Elements or any other portion of the buildings and the Owner or Owners of the Apartment shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair delivered by the Board to the Owner or Owners, provided that the Board shall levy a special assessment against such Apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(o) Purchasing or leasing or otherwise acquiring in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of all Apartment Owners, any Apartments and leasing any Apartments so acquired.

(p) Purchasing Apartments at foreclosure or other judicial sales in the name of the Board of Directors or its nominee, corporate or otherwise, on behalf of all Apartment Owners;

(q) Collecting in a separate account and disbursing to the Trustees the rent payable by each Owner pursuant to each Apartment Lease. Rent shall be collected monthly and paid semiannually at the times, in the manner and in the amounts specified in each Apartment Lease. In addition, reserves equal to two months' rent shall be maintained for each Apartment Lease to cure delinquencies. This provision is mandatory and may not be amended without the written consent of the Trustees;

(r) Notification in writing of all institutional holders of first mortgages on Apartments in the Project, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to, or taking of, the common elements of the Project if such loss or taking, as determined by the Board, exceeds Ten Thousand Dollars (\$10,000.00);

(s) Notification in writing to the institutional holder of the first mortgage on any Apartment in the Project, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to such Apartment that has been reported to the Board by the Owner of the Apartment to be in excess of One Thousand Dollars (\$1,000.00);

(t) Appointing a manager or Managing Agent or both and delegating to them or either of them such of its powers as it deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

(u) Establishment of such penalties and fines and any interest thereon as it deems appropriate with respect to enforcement of the provisions of the Declaration, the Bylaws and the Rules and Regulations, including penalties and fines and any interest thereon for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder; provided such penalties and fines and any interest thereon are not inconsistent with the law or the provisions herein. The unpaid amount of such penalties and fines and any interest thereon against any Apartment Owner shall constitute a lien against his interest in his Apartment which may be foreclosed by the Board of

Directors or Managing Agent in the same manner as provided herein and in the Act for common expenses; provided, however, that the lien for such penalties and fines and any interest thereon shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Apartment and to all sums unpaid on mortgages of record which were filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii prior to the filing of a notice of lien by the Association; and

(v) Borrowing money and pledging security for the use and enjoyment of the Project by the Apartment Owners; provided, however, that the Board of Directors shall not borrow in excess of \$20,000.00 without first obtaining the written approval of Apartment Owners owning at least fifty percent (50%) of the common interest in the Common Elements and at least fifty percent (50%) of the Apartments at the Project.

**SECTION 3. Employment of Managing Agent.** The Board of Directors shall at all times employ a responsible Managing Agent, duly registered with the Real Estate Commission of the State of Hawaii as required by 514B-132, Hawaii Revised Statutes, to manage and control the Property. The Managing Agent shall be experienced in the management of multi-unit condominium projects and shall comply with all the requirements of 514B-132, Hawaii Revised Statutes, and with such administrative functions and powers as shall be delegated by the Board. The compensation of the Managing Agent shall be specified by the Board.

The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration of the Common Elements and any additions or alteration thereto, (c) the purchase, maintenance and replacement of any equipment, (d) provision for service of all utilities to the buildings and the various Apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, (i) purchase of such insurance as is contemplated by these Bylaws, (j) custody and control of all funds, (k) maintenance of books and records on a cash basis and (l) preparation of financial reports.

No decision by the Board of Directors to terminate professional management of the Project may be made without the prior written consent of at least seventy-five percent (75%) of the institutional holders of first mortgages on Apartments (based upon one vote for each such first mortgage).

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

Upon written request of any Apartment Owner, the Managing Agent shall deliver a written statement of the status of the account of such Apartment Owner.

**SECTION 4. Election and Term of Office.** Election of Directors shall be by cumulative voting by secret ballot at each annual meeting of the Apartment Owners and any special meeting called for that purpose. Each member of the Board of Directors shall be elected to serve for a term of two (2) years. Each member of the Board of Directors

shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners.

**SECTION 5. Removal of Directors.** At any regular or special meeting of Apartment Owners, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Apartment Owners and a successor shall then or thereafter be elected by a majority of Apartment Owners for the remainder of the term to fill the vacancy thus created. Any member of the Board of Directors whose removal is proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting. In addition, if any Director shall fail to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a vote of a majority of the other members may remove him and select a replacement to serve his unexpired term.

**SECTION 6. Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Directors until the next annual or special association meeting (unless sooner removed) at which meeting, the owners shall elect a replacement for the remainder of the term, if any. Any Director elected by the Apartment Owners to fill a vacancy caused by removal shall serve for the remainder of the term of the member whose vacancy he fills (unless sooner removed). Death, incapacity, or resignation of any Director, or his ceasing to be or be deemed an Owner of an Apartment, shall cause his office to become vacant.

**SECTION 7. Annual Meetings.** The first meeting of the Board of Directors following the annual meeting of the Association shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present thereat. At such meeting the Board shall elect the officers of the Association for the ensuing year. Notice of the annual Board of Directors meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting and may be included with any notice of the annual meeting of the Association.

**SECTION 8. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place within the Project as shall be determined from time to time by a majority of the members of the Board of Directors, but at least two (2) such meetings, in addition to the annual meeting of the Board, shall be held during each fiscal year. Unless the Board of Directors determines otherwise, meetings shall be held monthly. Notice of the time and place for each regular meeting of the Board of Directors shall be given to each member of the Board of Directors at least three (3) business days prior to the day named for such meeting. Both regular and special Board meetings may be conducted by means of telephone conference calls.

**SECTION 9. Special Meetings.** Special meetings of the Board of Directors may be called by the President on eight (8) hours notice to each member of the Board of Directors, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall



be called by the President or Secretary in like manner and on like notice by the written request of at least two (2) members of the Board of Directors other than the President.

SECTION 10. Waiver of Notice. Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

SECTION 11. Rules of Order. All meetings of the Board of Directors shall be conducted in accordance with the most recent available edition of Robert's Rules of Order.

SECTION 12. Open and Executive Sessions. Regular and special meetings of the Board of Directors shall be open to all Owners. Owners who are not members of the Board of Directors may participate in any deliberation or discussion of the Board of Directors other than executive session unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors may with the approval of a majority of a quorum of the Board of Directors adjourn a meeting and reconvene in executive or private session to discuss and vote upon personnel matters, pending or threatened litigation, and orders of business of a similar nature. The nature of any and all business to be considered in executive or private session shall first be announced in open session.

SECTION 13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business; and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, 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 might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 14. Compensation. No member of the Board of Directors shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such Director; provided, however, that no Association funds shall be expended by directors for travel, directors' fees or per diem unless owners are informed and a majority approve of the expenses. Notwithstanding the foregoing, directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the state, all other travel expenses incurred under this subsection shall be subject to the requirements of Section 514B-107(d), Hawaii Revised Statutes.

SECTION 15. Conflict of Interest. A member of the Board of Directors shall not cast any proxy vote at any meeting of the Board of Directors or vote at any

meeting of the Board of Directors on any issue in which he has a conflict of interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that disclosure was made. The determination of whether a conflict of interest exists as to a particular director or directors shall be determined by a majority of the disinterested directors, which determination shall be conclusive and binding on all parties. In the event of a conflict of interest, a majority of the disinterested directors shall constitute a quorum.

**SECTION 16. Liability and Indemnity of the Board of Directors and Officers.** The members of the Board of Directors and Officers of the Association shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association of Owners shall obtain and maintain at the Association's expense a policy of directors' and officers' liability insurance covering the Directors and Officers of the Association and shall indemnify each Director and Officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director or Officer, or by reason of any past or future action taken, authorized or approved by him or any omission to act as such Director or Officer, whether or not he continues to be such Director or Officer, or by reason of any past or future action taken, authorized or approved by him or any omission to act as such Director or Officer, whether or not he continues to be such Director or Officer at the time of the incurring or imposition of such costs, expenses or liabilities, but not including such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer. In the absence of a final adjudication of the existence or nonexistence of a Director's or officer's liability to the Association, the determination of whether a Director or officer has acted with gross negligence or willful misconduct may be made (1) by the Board of Directors by a majority vote or a quorum consisting of disinterested Directors, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel selected by the Board of Directors, or (3) if a quorum of disinterested directors so directs, by a majority vote of the Apartment Owners. The foregoing right of indemnification shall not be exclusive of other rights which any Director or Officer may have and shall inure to the benefit of the heirs and personal representatives of each Director or Officer.

**SECTION 17. Fidelity Bonds.** The Board of Directors shall require that all directors, officers, employees and agents of the Association handling or responsible for funds belonging to or administered by the Association furnish adequate fidelity bonds in favor of the Association. The Board shall at all times secure fidelity bonds as required by Chapter 514B, Hawaii Revised Statutes. The Managing Agent shall furnish a fidelity bond in an amount not less than \$50,000. The premiums on such bonds shall be paid by the Association. Such bonds shall in no event be in an amount less than one and one-half times the Association's estimated annual operating expenses and reserves or such amounts required by law and every such bond shall:

(a) Provide that the bond(s) may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior written notice to the Board, the first mortgagees and every other person in interest who shall have requested such notice; and

(b) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

SECTION 18. Documents Provided To Board Members. The Association, at its expense, shall provide all Board members with a current copy of the Association's Declaration, Bylaws, and House Rules, and annually, with a current version of Chapter 514B, Hawaii Revised Statutes, with amendments.

SECTION 19. Notice of Board Meetings. Whenever practicable, notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board.

#### ARTICLE IV

#### OFFICERS

SECTION 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by and from the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary. All officers shall be members of the Board of Directors. An Owner shall not simultaneously act as an officer of the Association and an employee of the Managing Agent employed by the Association.

SECTION 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

SECTION 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

SECTION 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Apartment Owners and the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association. He shall also have such other powers and duties as may be provided by the Bylaws as assigned to him from time to time by the Board.

SECTION 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act.



If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act temporarily in the place of the President. The Vice President shall also perform such other duties as shall be imposed upon him by the Board of Directors or by the President.

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the Apartment Owners and the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. Duties of the Secretary may be delegated to the Managing Agent subject to the Secretary's supervision.

SECTION 7. Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to the Managing Agent subject to the Treasurer's supervision.

SECTION 8. Agreements, Contracts, Deeds, Checks and Other Instruments. All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the Bylaws as hereafter provided, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated by the Board of Directors.

SECTION 9. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer; provided, however, that no Association funds shall be expended by officers for travel, directors' fees or per diem unless Owners are informed and a majority approve of these expenses.

SECTION 10. Auditor. The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant; provided that the members of the Association may by majority vote at any annual meeting require that the yearly audit be conducted by a certified public accountant or a firm of certified public accountants. The Board of Directors shall make available a copy of the annual audit to each Apartment Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon all official proxy forms a box wherein the Owner may indicate that the Owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the Owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each Apartment Owner at least thirty (30) days prior to the annual meeting; and

- (2) The annual audit to all Owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month proceeding the date on which notice of the annual meeting is mailed. Any institutional holder of a first mortgage on an apartment may request, and the Association shall provide it with, a copy of any annual audited financial statement within ninety (90) days following the end of any fiscal year of the Association.

## ARTICLE V

### MAINTENANCE AND ALTERATION OF PREMISES

SECTION 1. Maintenance and Repair of Apartments. Each Owner of an Apartment shall, at the Owner's expense, keep the Apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his Apartment. Each Owner shall be responsible for the maintenance, repair and replacement of any plumbing fixtures, windows, water heater, heating or cooling equipment, lighting fixtures, refrigerator, garbage disposal, range and similar equipment installed in his Apartment and not part of the Common Elements. Notwithstanding the foregoing, the windows of the Project may be cleaned by the Association and the expense of such cleaning treated as a common expense, if the Association so elects. For this purpose, the easement granted for maintenance through the rooftop lanais may be used. Each Apartment Owner shall perform promptly all repair and maintenance work to his Apartment, the omission of which would adversely affect any Common Element or any other Apartment, and shall be responsible for all loss and damage caused by his failure to do so.

SECTION 2. Lanais. Each Owner shall be responsible for the care and maintenance of any lanais which are included in his Apartment, including the rooftop lanais which are part of the penthouse Residential Apartments. However, no Owner may paint or otherwise decorate his lanais without prior approval by the Board of Directors. It is intended that the exterior of the buildings shall present a uniform appearance, and, to effect that end, the Board may require the painting of each lanai and regulate the type and color of paint to be used. The Board is authorized to contract for the painting of all of the lanais and to make payment therefor out of the maintenance fund. No awnings, shades, jalousies or other device shall be erected or placed on the lanais so as to be visible from the exterior without written permission from the Board of Directors.

SECTION 3. Alterations and Additions to Apartments. Subject to the provisions of the Act, no Owner of an Apartment shall, without the prior written consent of the Board, make any structural alterations in or additions to his Apartment or make any alterations in (including painting, awnings, jalousies and screens) or additions to the exterior of his Apartment or to the Common Elements.

SECTION 4. Maintenance and Repair of Common Elements. All maintenance, repairs and replacements of the Common Elements, whether located inside or outside of the Apartments, shall be made only by or at the direction of the Board of Directors and be charged to all the Owners as a common expense; provided, that the costs

of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment constituting a lien on such Owner's Apartment in accordance with Section 4 of Article VI hereof. Notwithstanding the foregoing, all costs of maintenance, repair, replacement, additions and improvements to any Limited Common Element shall be charged to the Owner of the Apartment or Apartments to which such Limited Common Element is appurtenant as a special assessment constituting a lien on such Owner's Apartment in accordance with Section 4 of Article VI of the Bylaws.

SECTION 5. Alteration of the Project. (a) Additions, alterations, repairs or improvements to the Common Elements of the Project may be made only by or at the direction of the Board of Directors, except as provided for in the Declaration. No Owner may, except with the written permission of the Board of Directors, make any alteration, addition, repair or improvement to any of the Common Elements including, without limitation, Common Elements within, encompassing or adjacent to his Apartment, except that such approval shall not be required for additions, alterations, repairs or improvements required by law.

(b) Whenever in the judgment of the Board of Directors the common elements shall require additions, alterations, or improvements with a total cost of less than One Hundred Thousand Dollars (\$100,000.00), the Board of Directors may proceed with such additions, alterations, or improvements and shall assess the cost thereof as a common expense. Any additions, alterations, or improvements costing in excess of One Hundred Thousand Dollars (\$100,000.00) may be made by the Board of Directors only after obtaining approval by a majority of the Owners. The approval of the Owners shall not be required for repairs made by the Board of Directors on behalf of the Association.

SECTION 6. Alterations over \$10,000.00 - Consent of Trustees. Neither any Apartment Owner nor the Association will make or suffer any additions, alterations, or improvements of the Project, change the grading or drainage of the Project, where the same involves an expenditure in excess of \$10,000.00 in any one instance, except in accordance with complete plans and specifications and detailed plot plans therefor first approved (as to the attractiveness of the exterior design and structural integrity) in writing by the Trustees. The Association will deposit with Developer, before commencing construction of any improvements or before remodeling, or altering the Project, where the same involves an expenditure in excess of more than Ten Thousand Dollars (\$10,000.00), a bond or certificate thereof naming the Trustees as obligee, in a penal sum not less than one hundred percent (100%) of the cost of such construction, remodeling, or altering and in form and with surety satisfactory to the Trustees, securing the completion of such construction, remodeling, or altering free and clear of all mechanics' and materialmen's liens. No approval of the Trustees shall be required for repairs made by the Association.

SECTION 7. Use of Project.

(a) All Apartments of the Project shall be used only for purposes specified in the Declaration.

(b) All common elements of the Project shall be used only for their respective purposes as designed, subject to: (i) the right of the Board of Directors, upon the approval of the Owners of sixty-seven percent (67%) of the common interests, to change the use of the common elements, provided that changing common element open

spaces or landscaped spaces to other uses shall not require an amendment to the declaration, and minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the board; (ii) the right of the Board of Directors, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the Apartment Owners for an originally intended special purpose, as determined by the Board of Directors; provided that unless the approval of the Owners of sixty-seven percent (67%) of the common interests is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice; (iii) the right of the Board of Directors to lease or otherwise use for the benefit of the Association those common elements not falling within subsection (ii) above, upon obtaining: (A) the approval of the Owners of sixty-seven percent (67%) of the common interests, including all directly affected Owners and all Owners of Apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on Apartments with respect to which Owner approval is required by the foregoing clause (A), if such lease or use would be in derogation of the interest of such mortgagees; and (iv) the exclusive use of the limited common elements as provided in the Declaration. The requirements of Article V, Section 7(b)(ii) and (iii) shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by subsection 514B-140(d).

(c) No Apartment Owner or occupant shall place, store or maintain in the corridors, stairways, walkways, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such Common Elements.

(d) Every Apartment Owner and 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 now 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 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 the Trustees and also approved by a majority of Apartment Owners (or such larger percentage required by law or the Declaration) including all Owners of Apartments thereby directly affected; provided, however, that the above restriction shall not apply to signs approved by the Trustees and displayed by the Developer for sales purposes prior to the completion of sales of all the Apartments.

(f) No Apartment Owner shall decorate or landscape any entrance of his Apartment or any other portion of the Project except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

(g) All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.



(h) No garments, rugs or other objects shall be hung from the windows or facades of the Project.

(i) 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.

(j) 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 purpose.

(k) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project; provided, however, that notwithstanding any other provision herein, a disabled individual may keep a service animal if it is reasonably necessary to afford the disabled individual equal opportunity to use and enjoy the dwelling.

(l) 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, windows or roofs thereof.

(m) No Apartment Owner or occupant shall erect, place or maintain any television or other antennas on the Project visible from any point outside of the Project.

(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.

## ARTICLE VI

### COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING

**SECTION 1. Common Expenses.** (a) Expenses Included. Accounting for common expenses shall commence with respect to each Apartment as of the date of issuance by the appropriate County authority of a Certificate of Occupancy comprehending the Apartment. Common expenses shall be assessed and paid as provided in subsection (b) below and shall include all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Apartment and the common interest in the Common Elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance (including fire and other casualty and liability insurance), costs of repair, reinstatement, rebuilding and replacement of the premises, costs of yard, janitorial and other similar services, wages, accounting and legal fees, management fees, start-up fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the Common Elements and the cost of all utility services (including water, electricity, gas, garbage disposal and any similar services including fees and costs incidental to the operation of the private sewage treatment facility as described in the Declaration) unless separately metered, in which case the amounts shall be charged to each Apartment and shall be payable by the Owner of such Apartment. The common expenses shall also include such

amounts as the Board of Directors may deem proper to make up any deficit in the common expense assessments for any prior year and a maintenance reserve fund for the operation and maintenance of the Property, including, without limitation, anticipated needs for working capital of the Project, and for replacements, repairs and contingencies. If there should be any excess assessments on hand at the end of any year, they shall be used to pay common expenses in the following year, unless Apartment Owners having more than fifty percent (50%) of the common interests vote to return such unexpended sums to the Apartment Owners. The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Apartment by the Board or its designee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or the Bylaws. The Board of Directors shall also have the right, as a common expense, to install additional or separate meters to gauge utility use.

(b) Method of Determining and Paying Assessments. The Owner of each Apartment shall be liable for and pay a share of the common expenses in proportion to his undivided interest in the common elements appurtenant to his Apartment, except as provided in Section 1(c) of this Article VI with respect to utility expense and insurance in accordance with Section 514B-42 of the Act. Assessments of common expenses shall be payable in monthly installments on the first day of each month, commencing with respect to each Apartment on the first day of the first month following issuance of a Certificate of Occupancy by the appropriate County agency comprehending such Apartment. The rate of the monthly installments of common expenses shall be determined by the Board of Directors. The Board of Directors shall determine from time to time the rate of common expense assessments and shall send written notice to each Apartment Owner of the amount of the monthly installments applicable to such Owner's Apartment. The Board of Directors may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board of Directors shall send to all Apartment Owners written notice of any such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. The Board is also authorized to impose special assessments for such other purposes as the Board determines to be necessary or appropriate from time to time, including, but not limited to, to pay for major improvements, repairs, alterations, and/or additions. Any portion of an Owner's assessments used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid-in-surplus. Payments of common expenses shall be made to the Board as agent of the Owners of the Apartments, and the Board shall transmit such payments on behalf of each such Owner to the third person entitled to such payments from each Owner.

(c) Utilities and Insurance Expense. Common expenses for utility services and insurance for the Property shall be specially apportioned as follows:

(1)(i) The cost of insurance coverage and utility services furnished for or attributable to the Common Elements (except Limited Common Elements) shall be charged to all Apartment Owners as a common expense.

(ii) The cost of insurance coverage and utility services furnished for or attributable to the Residential Apartments (as defined in the Declaration) shall be charged to and divided among the Residential

Apartment Owners in proportion to the ratio that the common interests appurtenant to their respective Apartments bear to the sum of the common interests appurtenant to all of the Residential Apartments.

(iii) The costs of insurance coverage and utility services furnished for or attributable to each Commercial Apartment and its appurtenant Limited Common Elements, if any, shall be charged to the Owner of each such Apartment.

(2) The Board shall, if obtainable at reasonable cost, require that any insurer providing coverage pursuant to Article VII hereof provide an allocation of the cost of such insurance among (i) the Common Elements (excluding Limited Common Elements), (ii) the Residential Apartments as a group and (iii) each Commercial Apartment and its appurtenant Limited Common Elements, if any. The costs of such coverage shall be paid as provided in subsection (c)(1).

(3) The cost of all separately metered utility services furnished to (i) the Common Elements or (ii) the Residential Apartments taken as a group or (iii) a single Commercial Apartment and its Limited Common Elements, if any, shall be paid by the Owners of such Apartments as provided in subsection (b). The cost of all separately metered utility services furnished to the Commercial Apartments or their appurtenant Limited Common Elements taken as a group shall be charged to and divided among the Owners of such Apartments as provided in subsection (c)(5).

(4) When the consumption of utility services by (i) the Common Elements or (ii) the Residential Apartments taken as a group or (iii) any Commercial Apartment or its appurtenant Limited Common Elements or both, is measured by check meter or any similar device, the Owners of such Apartments shall pay a share of the total costs of such utility services proportionate to the ratio that their consumption (as measured by the check meter) bears to the total consumption as measured on the common meter. The proportionate share so determined shall then be charged to and paid by such Apartment Owners as provided in subsection (c)(1)(iii). The costs of all check metered utility services furnished to the Commercial Apartments or their appurtenant Limited Common Elements or both taken as a group shall be charged to and divided among the Owners of such Apartments as provided in subsection (c)(5).

(5) For the apportionment of the costs of utility services which are not separately metered or check metered, and for the apportionment of the cost of insurance coverage where the insurer does not provide an allocation of the costs as provided in paragraph (c)(2), from time to time during each calendar year but at least once in each calendar year, the Board shall estimate the costs of fire, liability, hazard, workmen's compensation and other insurance and the cost of water, electricity, gas, fuel, oil, sewage, drainage and other utility services furnished for or attributable to (1) each Commercial Apartment and its appurtenant Limited Common Elements, if any, (2) all Residential Apartments and (3) all Common Elements (other than Limited Common Elements), each as a ratio of the cost of each of such



insurance policies and such utility services for each of the above-described areas as it compares to the total cost of these policies and services for the entire Property. In making such allocations, the Board may seek advice from engineers, accountants, insurance consultants and such other experts as it deems appropriate. Such ratios, as adjusted, from time to time, shall be used to determine the portions of each such expense payable by the Apartment Owners as provided in subsection (c)(1); provided, however, that if the Owners of more than fifty percent (50%) of the common interests appurtenant to the Residential Apartments or the Owners of more than fifty percent (50%) of the common interests appurtenant to the Commercial Apartments object in writing to the allocation made by the Board, the matter shall be submitted to an independent certified public accountant selected by the Board for determination, which shall be final and binding on all the Apartment Owners, and if no objection is made within four (4) months after any allocation made by the Board, the Board's allocation shall be final and binding. If an objection is filed by the Residential or Commercial Apartment Owners, all Apartment Owners shall continue to pay the common expenses according to the allocations determined by the Board until such time as any adjustment may be made by the independent certified public accountant after which adjustments in the payment of the expenses will be made to take into account the accountant's determination.

Notwithstanding the foregoing, allocations shall be subject to the following rule of convenience: if any expense less than \$250 is subject to allocation between or among Common Elements, the Residential Apartments or the Commercial Apartments, but in the sole judgment of the Board, the precise allocation is uncertain or can be made only after a substantial expenditure of time or money, the whole or any part of such expense may be allocated among the Common Elements, the Residential Apartments and the Commercial Apartments as the Board in its sole discretion shall determine, and any such allocation shall be final and binding except in a clear case of abuse of discretion.

(d) Improvements Reserve Fund. In addition to the maintenance reserve fund referred to in subsection 1(a) of this Article VI, from time to time, as specifically directed by the Association at any annual or special meeting, the Board may establish and maintain one or more Improvements Reserve Funds by the monthly assessment. Each such Fund shall be earmarked for a specific capital improvement which shall have been specifically authorized by the Association at any annual or special meeting and the amount of such Fund shall be such annual amount as the Association determines to be adequate (but no more) to provide for the particular capital improvement, whether it be the repair, restoration, and replacement of the Common Elements and the furniture, fixtures, and mechanical equipment thereof, and for such other improvement as may be specifically authorized by the Association. The assessments for the funds shall be deemed conclusively to be savings of the Owners held for their benefit for common expenses of a capital nature. Each such Fund shall be deposited in a separate account with a safe and responsible depository and may be in the form of a cash deposit or may be invested in obligations of or fully guaranteed as to principal by an agency of the United States of America. Disbursements from the Fund shall be made only upon authorization of the Board. The proportionate interests of each Owner in the Fund and all interest earned thereon shall not be withdrawn or assigned separately, but shall be deemed to be

transferred with each Apartment even though not mentioned or described expressly in the instrument of transfer. If the Fund exceeds the costs of the particular improvement, or if the planned improvement is for any reason not implemented within a reasonable time (in any event not more than ten (10) years) after creation of the Fund, the Fund remaining shall be distributed to all Owners or shall be transferred to such other reserve account(s) or general account(s) of the Association as the Board shall direct from time to time. In the event that the condominium property regime created by the Declaration is ever terminated, the Fund shall be distributed to the Owners in accordance with Hawaii law. Commencing January 1, 1993, the Association will comply with the provisions of Chapter 514B, Hawaii Revised Statutes, relating to reserves. To the extent that this section or any other provision in these Bylaws or the Declaration is inconsistent with Chapter 514B, Hawaii Revised Statutes, the provisions of Chapter 514B, Hawaii Revised Statutes, shall control.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses. Each Owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration, of all common expenses; and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be made by the Owner. The Board collecting the common expenses shall not be liable for payment of such common expenses as principal but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owners.

SECTION 3. Taxes and Assessments. Each Owner of an Apartment shall be obligated to have the real property taxes for such Apartment and its appurtenant interest in the Common Elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Apartment and the common interest in the Common Elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the Common Elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the Common Elements, the Board may pay such taxes or assessments as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Section 4 of this Article VI.

SECTION 4. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same are assessed and, in the case of an Apartment owned by more than one person, shall be the joint and several obligation of such co-owners. If the Owner shall fail to pay his assessment when due, such Owner shall pay a late fee for each such default or defaults in such amount as shall be determined by the Board of Directors from time to time. An additional late fee, in such amount as is determined by the Board from time to time, shall be assessed each subsequent month that all or a portion of the delinquent amount remains unpaid. The Board of Directors may also impose interest at the maximum rate of interest then allowed by law on all delinquent assessments from the date of such default until paid.

Late fees and interest charged under this provision shall constitute a lien against the Apartment of the delinquent Owner, which lien may be foreclosed upon in like manner as in mortgage of real property. Said lien shall have the same priority as liens for common expenses of the Association as provided by the Act. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits to enforce such assessment obligations. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought in the name of the Board on behalf of the Association or in the name of the Association, by and through the Board. Any judgment rendered in any such action shall include, where permissible under any law, a sum for attorneys' fees in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the mortgagee of such Owner if: 1) such mortgagee has furnished its name and address to the Board; 2) such mortgagee has provided proof of a valid mortgage against the Apartment of the defaulting Owner; and 3) such mortgagee has requested copies of such notices) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. Notwithstanding the foregoing, the failure of the Board to give notice of default to any mortgagee shall not create a defense in favor of any defaulting Apartment Owner with respect to any claim of the Association against said defaulting Apartment Owner. The Board may file a claim of lien against the Apartment of such delinquent Owner, even though no demand shall have been first made. Such claim of lien shall state (i) the name of the delinquent Owner, (ii) a designation of the Apartment against which the claim of lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper offset), (iv) that the claim of lien is made by the Board pursuant to the terms of these Bylaws and the Act, and (v) that a lien is claimed against such Apartment in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of enforcement, including attorneys' fees, if any. Such claims of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board and shall be dated as of the date of the execution by such attorney or the last such Board member to execute such claim of lien. The Association, by and through its Board, shall at all times have all remedies provided for under Section 514B-146, Hawaii Revised Statutes, as that provision may be amended from time to time. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Apartment (or the fact that all assessments due are paid if such is the case)

within fifteen (15) days after demand therefor and upon payment of a reasonable fee in such amount as is determined by the Board from time to time. If any claim of liens is filed and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest and any costs of enforcement), then upon demand of the Owner and payment of a reasonable fee in such amount as is determined by the Board from time to time, the Board, acting by any two members or by its attorney, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original claim of lien, the amount claimed, the document number where such lien is filed in the Land Court, and that the lien is fully satisfied, released and discharged.

(d) Notwithstanding any provision to the contrary contained in these Bylaws, if an Owner shall fail to pay an assessment when due, the Board of Directors may, in its discretion, upon ten (10) days written notice to the Owner, declare due and owing the entire unpaid balance of such Owner's projected common expense assessments for the remainder of the fiscal year in which the default occurs. If the Board of Directors subsequently makes adjustments in the projected common expense assessments for the relevant fiscal year causing either an increase or decrease in the monthly installments owed by such Owner, then the Owner shall pay the deficiency or receive a credit for the adjusted amount of the installments within thirty (30) days after the date of the transmittal of notice by the Association to such Owner of such increase or decrease.

(e) All late fees, expenses, costs, and attorneys' fees assessed against an Owner shall be promptly paid on demand to the Association by the Owner. The Board of Directors shall be authorized to adopt a policy whereby payments received from Owners may be applied toward the indebtedness of such Owners to the Association in such order as the Board of Directors may specify, subject to any notice requirements of the Condominium Property Act, as amended. For example, the Board of Directors may adopt a policy whereby payments from Owners shall be applied in the following order: 1) toward the payment of expenses, costs, and attorneys' fees assessed against the delinquent Owner; 2) toward the payment of late fees assessed against the delinquent Owner; and 3) the balance remaining, if any, toward the payment of common expense assessments. Such acceptance and application of payments shall not be construed as a waiver of any rights the Association shall have against such Owners for any and all outstanding amounts due and owing to the Association and the Board of Directors, at its sole discretion, may refuse acceptance of any payment which may be insufficient to satisfy all amounts due and owing to the Association.

**SECTION 5. Waiver.** The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder or to exercise any right or option herein contained or to serve any notice or to institute any action or summary proceeding shall not be construed as a waiver or a relinquishment for the future, of such covenant, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach; and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

**SECTION 6. Collection from Tenants and Rental Agents.** If an Owner at any time rents or leases his Apartment and defaults for a period of thirty (30) days or more in



the payment of the Owner's share of the common expenses, the Board may, so long as such default continues, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Apartment or from any rental agent of such Owner who is in receipt of proceeds from the rental or lease of such Owner's Apartment the rent due or becoming due from such lessee or rental agent to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, late fees, and attorneys' fees and costs, if any; and any such payment of such rent to the Board by the lessee or rental agent shall be a full and sufficient discharge of such lessee or rental agent as between such lessee or rental agent and the Owner to the extent of the amount so paid; but no such demand or acceptance of rent from any lessee or rental agent shall be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. If the Board makes any such demand upon the lessee or rental agent, the lessee or rental agent shall not have the right to question the right of the Board to make such demand, but shall be obligated to make such payments to the Board as demanded by the Board with the effect as aforesaid; provided, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

SECTION 7. Books of Account. The Board, on behalf of all Owners, will maintain or cause to be maintained books of account of the common expenses in accordance with recognized accounting practices and will have such books of account available for inspection by any Owner or his authorized representative at reasonable business hours at the address of the Project or elsewhere in the State as determined by the Board of Directors.

SECTION 8. Balance Sheet. Within ninety (90) days after the end of each fiscal year of the Association, the Board will render or cause to be rendered to each Owner a balance sheet and a statement of all receipts and disbursements, including assessments received and receivable, during the preceding year. Any Owner may, at his expense, cause an audit or inspection to be made of the books and records of the Association.

SECTION 9. Pro Forma Budget. A pro forma operating statement for each fiscal year shall be distributed, not less than sixty (60) days before the beginning of the fiscal year, by the Board of Directors to each Owner.

## ARTICLE VII

### INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance. The Board shall procure and at all times maintain from a company or companies qualified to do business in Hawaii having a financial rating by Best's Insurance Reports of Class VI or better (and, if necessary to procure the required coverage, from other companies) a policy or policies (hereinafter in this Section 1 called the "Policy") of fire insurance, with extended coverage endorsement or such broader forms of protection as the Board shall determine (including flood insurance under the provisions of the Federal Flood Disaster Protection Act of 1973, if the Project is located in an identified flood hazard area as designated by the Department of Housing and Urban Development), for an amount as nearly as practicable equal to the full replacement cost without deduction for depreciation, with an Inflation Guard

Endorsement, covering the Apartments and fixtures therein and the buildings, fixtures and building service equipment and the Common Elements and, whether or not part of the Common Elements, all exterior and interior walls, floors and ceilings, in accordance with the as-built condominium plans and specifications, but excluding any improvements made by an Owner, which the Owner himself may insure, and excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Association of Apartment Owners. The Policy:

(a) Shall contain no provision limiting or prohibiting other insurance by the Owner of any Apartment, but 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, proration, or contribution, by reason of any such other insurance;

(b) Shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board or the Trustees, and, if obtainable, shall not relieve the insurer from liability by reason of any breach of warranty or condition caused by the Board, the Trustees or the Owner or tenant of any Apartment or by reason of any act or neglect of the Board or the Owner or tenant of any Apartment;

(c) Shall provide that the Policy may not be cancelled or substantially modified by the insurer except by giving to the Board, the Trustees and the Owner and any mortgagee of each Apartment who shall have requested such notice from the insurer thirty (30) days' written notice of such cancellation;

(d) Shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to the Declaration and Section 5 of this Article VII not to repair, reinstate, rebuild or restore the damage or destruction;

(e) Shall contain a waiver by the insurer of any right of subrogation to any right of the Board, the Trustees, or Apartment Owners against any of them or any other persons under them;

(f) Shall provide that any loss shall be adjusted with the insured and the Owner and mortgagee of any Apartment directly affected by the loss;

(g) Shall contain a standard mortgage clause which:

(i) Shall name the holder of any mortgage affecting any Apartment whose name shall have been furnished to the Board and to the insurer;

(ii) Shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board, the Trustees or the Owner or tenant of any Apartment;

(iii) Shall waive (A) any provision invalidating such mortgage clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, (B) any requirement that the mortgagee pay any premium (provided, that if the Board fails to pay any premium due or to become due under the Policy, the mortgagee may pay the same prior to termination of the Policy by reason of

nonpayment of such premium), (C) any contribution clause and (D) any right to be subrogated to the right of any mortgagee against the Owner or lessee of any Apartment or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability against the mortgagor or Owner, but without impairing the mortgagee's right to sue any person for any loss or deficiency not covered by the insurance proceeds;

(iv) Shall provide that, without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause, if in excess of Ten Thousand Dollars (\$10,000.00), shall be payable to a corporate trustee selected by the Board who shall be a bank or trust company or real estate management company doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000.00), herein referred to as the "Insurance Trustee" or "Trustee"; and

(v) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees of any Apartment, in their order of priority;

(h) Shall provide for payment of the proceeds to the Insurance Trustee if the total proceeds payable on account of any one casualty exceed Ten Thousand Dollars (\$10,000.00);

(i) Shall require the insurer, at the inception of the Policy and on each anniversary date thereof, to provide the Board of Directors with a written summary, in layman's terms, of the Policy, which summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates, which information the Board of Directors shall provide to each Owner;

(j) Shall, if obtainable without additional expense, be accompanied by the certificate of a licensed insurance broker or agent certifying that the Policy complies with and satisfies the requirements of this Section 1.

**SECTION 2. Comprehensive Liability Insurance.** The Board shall procure and maintain at the Association's expense from a company or companies qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) a policy or policies (hereinafter in this Section 2 called the "Policy") of public liability insurance to insure the Board, the Trustees, the Developer, each Apartment Owner, and the Managing Agent and other employees of the Association of Apartment Owners against claims for personal injury, death and property damage arising out of the condition of the Property or activities thereon or construction work under a Comprehensive General Liability form, with minimum limits of not less than \$300,000 for damage to property, not less than \$300,000 for injury to one person and not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, or such higher limits as the Trustees may from time to time establish with due regard to the prevailing business practices in the State of Hawaii as reasonably adequate for the Trustees' protection, and from time to time upon receipt of the Policy cause to be deposited promptly with the Trustees, current certificates of the insurance, without prejudice to the rights of the Owners to maintain additional insurance. The Policy:



(a) Shall, if obtainable, not relieve 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, or because of any breach of warranty or condition caused by the Owner of any Apartment or any act or neglect of the Owner or tenant of any Apartment;

(b) Shall provide that the Policy may not be cancelled by the insurer except by giving to the Board, the Trustees and to the Owner of each Apartment and any mortgagee who shall have requested such notice of the insurer in writing thirty (30) days' written notice of such cancellation;

(c) Shall contain a waiver by the insurer of any right of subrogation to any right of the Board, the Trustees, the Developer or the Owners against any of them or any other persons under them; and

(d) Shall contain a "severability of interest" endorsement, precluding the insurer from denying the claim of an Apartment Owner because of negligent acts of the Association or other Owners.

SECTION 3. Insurance Against Damage to Exterior Glass and Additional Risks. The Board may produce insurance against damage to exterior glass and such additional risks as the Board may deem advisable for the protection of the Apartment Owners of a character normally carried with respect to properties of comparable character and use.

SECTION 4. Miscellaneous Insurance Provisions. The Board shall review not less than annually the adequacy of its insurance program. The Board shall then report in writing its conclusions and actions taken on such review to the Trustees, each Owner and any Apartment Mortgagee who shall have requested such notice. At the request of any mortgagee of any Apartment, the Board shall furnish to such mortgagee a copy of the Policy described in Section 1 of this Article and of any other policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Board shall be available for inspection by an Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Owners of Apartments to insure such Apartments and the contents thereof for their own benefit at their own expense.

SECTION 5. Damage and Destruction. If a building is damaged by fire or other casualty which is insured against and the damage is limited to a single Apartment, the insurance proceeds shall be used by the Board or the Insurance Trustee for payment of the contractor retained by the Board to rebuild or repair such Apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If the insurance proceeds are insufficient to pay all costs of repair, the remaining deficiency shall be paid from the maintenance fund. If the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on all the Owners of Apartments in the proportions prescribed pursuant to the Declaration for the allocation of common expenses. The special assessment shall be secured by the lien created under Section 4 of Article VI of the Bylaws.

If such damage extends to two or more Apartments or extends to any part of the Common Elements:

(a) If the Owners of the Apartments do not within sixty (60) days after such casualty or, if by such date the insurance loss has not been finally adjusted, within thirty (30) days after such final adjustment, agree in writing in accordance with the provisions of the Declaration and this Section 5 that the building or any portion thereof need not be rebuilt or repaired, or if the Owners at an earlier date agree to rebuild immediately, then the Board shall contract to repair or rebuild the damaged portions of the building or buildings, including all Apartments so damaged, as well as Common Elements:

(i) In accordance with plans and specifications therefor which will restore the same in conformity with the design immediately prior to the destruction, or

(ii) If reconstruction in accordance with such design is not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be approved by the Board and the Trustees, provided that, if such modified plan eliminates any Apartment and such apartment is not reconstructed, the Insurance Trustee shall pay to the Owner of such Apartment the portion of the insurance proceeds allocable to such Apartment (less the proportionate share of such Apartment in the cost of debris removal) and shall disburse the balance of the insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance proceeds are insufficient to pay all the costs of repairing and rebuilding all damaged Apartments as well as the Common Elements, and the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of Apartments in the proportions prescribed pursuant to the Declaration for the allocation of common expenses. The special assessment shall be secured by the lien created under Section 4 of Article VI hereof.

If a decision is made with the consent of the Trustees in accordance with the Declaration, this section and the Act, not to repair or rebuild all or any lesser number of damaged or destroyed Apartments, the insurance proceeds allocable to any Apartment which is not to be rebuilt (hereinafter called an "eliminated Apartment"), less the proportionate share of such Apartment in the cost of debris removal, shall be paid to the Owner and any mortgagee of the eliminated Apartment as their interests may appear. The remaining insurance proceeds shall be paid to the Insurance Trustee who shall apply such moneys to repair and rebuild any portion of the building that is to be reconstructed in accordance with this section. If a decision is made to eliminate an Apartment, the common interests and other rights of the remaining Apartment Owners in the Project shall be adjusted by amendment of the Declaration pursuant to Section 514B-37, HRS, and the Declaration; provided, that the common interest of any Owner shall not be altered without his consent. The Owner of any eliminated Apartment shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, if the Declaration is not amended so as to discharge the Owners of eliminated Apartments of all

obligations to the Project and so as to adjust equitably the common interests appurtenant to those Apartments not eliminated, the Owner of any eliminated Apartment may, pursuant to Section 514B-144(g), HRS, convey his interest to the Board of Directors on behalf of all other Apartment Owners and thereby be discharged of all obligations to the Project. The Owner of any eliminated Apartment may, in addition to his allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate.

(b) The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, subject to the following conditions:

(i) An architect or engineer (who may be an employee of the Board) shall be in charge of the work;

(ii) Each request for payment shall be made on seven (7) days' prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that (A) all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials) and (B) when added to all sums previously paid out by the Insurance Trustee, the sum requested does not exceed the value of the work done to the date of such certificate;

(iii) Each request for payment shall be accompanied by waivers of liens satisfactory to the Insurance Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or other evidence satisfactory to the Insurance Trustee showing that no mechanics', materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the premises or any part of the work;

(iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law or regulation to render occupancy of the premises legal;

(v) The fees and expenses of the Insurance Trustee as determined by the Board and the Insurance Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Insurance Trustee;

(vi) The Insurance Trustee may impose other reasonable conditions consistent with the foregoing.

(c) Upon completion of the work and payment in full therefor, any remaining insurance proceeds then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners and mortgagees of the Apartments in proportion to the respective common interests appurtenant to the Apartments.

(d) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Apartment Owner or lessee. To the extent that any loss, damage or destruction to the Property of any Apartment Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Apartment Owner, or the Association. All policies of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation by the insurers.

SECTION 6. Notice of Right to Vote Against Rebuilding. Within ten (10) days after the occurrence of any damage or destruction with respect to which some or all of the Apartment Owners will have the right, pursuant to the Declaration, to vote against any proposed rebuilding or restoration, the Board of Directors shall send notice to the Trustees and to all such Owners so entitled to vote. Such notice shall recite the nature and extent of damage, the right of specified Owners to vote against rebuilding or restoration, the percentage of votes necessary to prevent rebuilding or restoration, the time when or within which any such vote must be cast, the place and manner in which any such vote must be cast, and any other information deemed relevant by the Board of Directors.

## ARTICLE VIII

### MORTGAGES

SECTION 1. Notice of Unpaid Common Expenses. The Board of Directors, whenever so requested in writing by a mortgagee of an interest in an Apartment, provided that: 1) such mortgagee has furnished its name and address to the Board; and 2) such mortgagee has provided proof of a valid mortgage against the Apartment of the Owner, shall promptly report any then unpaid assessments for common expenses due from the Owner of the Apartment involved.

SECTION 2. Notice of Default. When giving notice to an Apartment Owner of a default in paying common expenses or other default, the Board of Directors shall send a copy of such notice to each holder of a mortgage covering such Apartment or interest therein provided that: 1) such mortgagee has furnished its name and address to the Board; 2) such mortgagee has provided proof of a valid mortgage against the Apartment of the defaulting Owner; and 3) such mortgagee has requested copies of such notices. The failure to give such notice to any mortgagee shall not create a defense in favor of any defaulting Apartment Owner with respect to any claim of the Association against said defaulting Apartment Owner.

SECTION 3. Examination of Books. Each mortgagee of an Apartment who has furnished its name and address to the Board and submitted proof of a valid mortgage interest against the Apartment, shall be permitted to examine the books of account of the Association at reasonable times on business days, and each mortgagee shall have the right to require the submission of annual reports and other financial data; provided, however, that this provision is not intended to permit mortgagees to examine and/or receive documents that Owners would not otherwise be entitled to examine and/or receive under the provisions of the Declaration, these Bylaws, and/or Chapter 514B, Hawaii Revised Statutes.



SECTION 4. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Apartment and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any mortgage of such interests made for value, provided that such mortgage is valid and is recorded prior to the recordation of a notice of lien instrument by the Association. After the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Apartment if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Section 4 of Article VI hereof.

(b) All taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Hawaii shall relate only to the individual Apartments and not to the Project as a whole.

(c) The Declaration and Bylaws shall not give an Apartment Owner or any other party priority over any rights of first mortgages of Apartments pursuant to their mortgages in the case of a distribution to Apartment Owners of insurance proceeds or condemnation awards for losses to or a taking of apartment units, Common Elements or both.

(d) No amendment to this Section 4 shall affect the rights of the holder of any such mortgage filed in the Land Court prior to the filing of such amendment who does not join in the execution thereof.

SECTION 5. Notice to Board of Directors. An Owner who mortgages his interest in an Apartment shall notify the Board of Directors of the name and address of his mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the note and mortgage with the Board of Directors. The Board of Directors shall maintain such information in a book entitled "Mortgages of Apartments".

SECTION 6. Additional Notices to Mortgagees. A holder or insurer of a first mortgage who submits proof of a valid mortgage against an Apartment, upon written request to the Association, (such request to state the name and address of such holder or insurer and the apartment number), will be entitled to:

(a) Timely written notice of any proposed amendment to the Declaration or the Bylaw effecting a change in (i) the boundaries of an Apartment, (ii) the common interest appertaining to the Apartment, or (iii) the purposes to which the Apartment, the Limited Common Elements appurtenant thereto or the Common Elements are restricted;

(b) Prior written notice of any proposed termination of the Condominium Property Regime;

(c) Prior written notice of any actual or threatened condemnation or eminent domain proceedings affecting the Condominium Property Regime or any portion thereof;



(d) Timely written notice of any significant damage or destruction, as determined by the Board, to the Common Elements;

(e) A copy of all pleadings filed in any lawsuit, administrative proceeding or other action affecting the Project or any portion thereof upon payment of a reasonable fee;

(f) A copy of any bond required to be posted before commencing or permitting construction of any improvements on the Project;

(g) Prior written notice of any proposal to subdivide, encumber, sell or transfer the Common Elements or any part thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause); and

(h) Timely written notice of all meetings of the Association; and the holder or insurer of a first mortgage shall be permitted to designate a representative to attend all such meetings.

**SECTION 7. Mortgagee Approval.** Subject to provisions in the Declaration and Bylaws requiring a greater vote, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage held), and Owners (other than the Developer) of the individual Apartments have given their prior written approval, the Association shall not be entitled to:

- (a) by act or omission, seek to abandon or terminate the Project,
- (b) change the common interest appurtenant to any individual apartment;
- (c) partition or subdivide any apartment;
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Project shall not be deemed a transfer within the meaning of this clause); or
- (e) use hazard insurance proceeds for losses to the Project or any part thereof (whether to Apartments or to common elements) for other than the repair, replacement or reconstruction of the same, except as otherwise provided by the Declaration, the Bylaws or the Act.

## ARTICLE IX

### CONDEMNATION

In the event of a taking in condemnation or by eminent domain of part or all of the improvements of the Project, the proceeds of any award of compensation attributable to the taking of the improvements shall be payable to a condemnation trustee (the "Condemnation Trustee") which shall be a bank, trust company or real estate management company designated by the Board doing business in Hawaii and having net

assets of not less than Five Million Dollars (\$5,000,000.00). Proceeds allocable to the Land, exclusive of improvements, shall be paid to the Trustees as fee owner.

In the event all or any of the Apartments are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each Apartment so each Apartment so taken, the amount of the condemnation proceeds allocable to each apartment (including the Apartment's appurtenant interest in the common elements) shall be determined by a real estate appraiser ("Appraiser") who shall be a member of the American Institute of Real Estate Appraisers, or any successor organization and who shall have acted on behalf of the Apartment Owners in the condemnation proceedings; or, if no such Appraiser shall have acted on behalf of the Apartment Owners or if more than one Appraiser shall have acted on behalf of the Apartment Owners, then an Appraiser with such qualifications shall be selected by the Board of Directors to determine the amount of condemnation proceeds allocable to each Apartment, subject to the right of the affected Apartment Owners, by majority vote within fifteen (15) days after all such affected Apartment Owners receive notice of the appointment of such Appraiser and their right to vote thereon, to require that the Appraiser consist of a panel of three (3) appraisers, in which event the Board of Directors shall select three (3) qualified appraisers to act as Appraiser, and the decision of any two (2) of them shall be the decision of the Appraiser.

If the entire Project is taken, the Condemnation Trustee shall pay to each Apartment Owner and mortgagee, as their interests may appear, the portion of the condemnation proceeds determined by the Appraiser to be allocable to the Owner's Apartment.

In the event of a partial taking of the Project in which (i) any Apartment is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the Apartment and to the Board of Directors, then such Apartment shall be removed from the Project and the Condemnation Trustee shall disburse to the Owner and any mortgagee of such Apartment, as their interests may appear, in full satisfaction of their interests in the Apartment, the portion of the proceeds of such award allocable to such eliminated or removed Apartment after deducting the proportionate share of such Apartment in the cost of the debris removal.

In the event of any partial taking of the Project, the Board shall, subject to the provisions of the preceding sentence concerning the removal of an Apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or, if repair and restoration in accordance with such design are not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be approved by the Board, the Trustees and the mortgagee of record of each Apartment in the Project remaining after such taking. Such work shall be undertaken, and disbursements therefor shall be made, in the manner prescribed in Section 5(b) of the Article VII hereof. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, the Board shall pay such excess costs from the maintenance fund; and, if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of the remaining Apartments in the proportions prescribed for their sharing of common expenses. Such special assessment shall be secured by the lien created under Section 4 of Article VI hereof.

If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and any mortgagee of a removed Apartment and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Apartment Owners in accordance with their interest in the Common Elements prior to the condemnation.

## ARTICLE X

### GENERAL PROVISIONS

**SECTION 1. Rules and Regulations.** The Board may establish and amend such Rules and Regulations as the Board may deem necessary for the operation and use of the Common Elements, including, without limitation, such aspects of the operation and use of the Apartments as may affect the operation and use of the Common Elements. Each Owner shall abide by all such Rules and Regulations, as the same may from time to time be amended and shall see that the same are faithfully observed by the invitees, guests, employees, and tenants of the Owner; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the Apartments.

**SECTION 2.(a) Abatement and Enjoinment of Violations by Apartment Owners.** The violation of any of the Rules and Regulations, the breach of any of these Bylaws or the breach of any provision of the Declaration shall give the Board of Directors the rights in addition to any other rights set forth in these Bylaws:

1. To enter the Apartment during reasonable hours in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these Bylaws or the Declaration, and the Board of Directors shall not thereby be guilty of any trespass; or

2. To enjoin, abate or remedy by appropriate legal proceedings, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be paid by the defaulting Apartment Owner on demand; or

3. To impose monetary penalties upon Apartment Owners, tenants and employees of an Apartment Owner, and any other person who may in any manner use the Project (hereinafter collectively referred to as "owners and other persons") and, at its discretion, to establish a schedule of the penalties to be imposed. In the event that such a schedule is established, the Board of Directors may authorize the Managing Agent or resident manager to impose the aforementioned penalties upon owners and other persons in accordance with said schedule. The Board shall be empowered to collect any unpaid penalties in the same manner as is provided herein and in the Declaration for the collection of unpaid common expense assessments.

4. To recover any damages incurred and/or penalties imposed as a result of such violation.

(b) **Arbitration.** Any person penalized by the Board of Directors, the Managing Agent or the resident manager hereunder may request an arbitration pursuant to Article X, Section 6A hereof on: (i) whether such violation or breach exists, and (ii) whether the penalty or penalties imposed by the Board of Directors, the Managing

Agent or the resident manager are justified and reasonable; provided however, that nothing contained herein shall be interpreted to prevent or delay the Board of Directors, the Managing Agent or the resident manager from enjoining, abating, removing or remedying any violation or breach which may impair or in any way affect the value of the Property, the safety of the Project or the use, enjoyment, safety or health of any Apartment Owner.

SECTION 3. Attorneys' Fees and Expenses of Enforcement. (a) Every Apartment Owner shall pay to the Association promptly on demand:

(1) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

(i) Collecting any delinquent assessments against any Owner's Apartment;

(ii) Foreclosing any lien thereon;

(iii) Enforcing any provision of the Declaration, these Bylaws, the Rules and Regulations, and the Act or the rules and regulations of the real estate commission;

against any Apartment Owner, occupant, tenant, employee of an Apartment Owner, or any other person who may in any manner use the Project shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.

(b) All reasonable and necessary expenses, costs and attorneys' fees incurred by the Apartment Owner shall be awarded to such Apartment Owner if any claim is substantiated in any action against the Association, any of its officers or directors or its Board of Directors to enforce any provision of the Declaration, these Bylaws, or the Rules and Regulations of the Act; provided that no such award shall be made in any derivative action unless:

(i) the Apartment Owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or,

(ii) the Apartment Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

(c) The unpaid amount of such costs and expenses against any Apartment Owner shall constitute a lien against his interest in his Apartment which may be foreclosed by the Board of Directors or Managing Agent as herein provided and in the same manner as provided in the Act for common expenses; provided, however, that the lien for such costs and expenses (including attorneys' fees) shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Apartment and to all sums unpaid on mortgages of record which were filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii prior to the filing of the notice of lien by the Association.



SECTION 4. Right of Access. The Managing Agent and any other person authorized by the Board of Directors or the Managing Agent shall have a right of access to any Owner's Apartment for the purposes of making inspections or correcting any condition existing in an Apartment and threatening another Apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in an Apartment or elsewhere in the building, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be granted and effective immediately, whether the Owner is present at the time or not.

SECTION 5. Owners May Incorporate. The Board of Directors is authorized to incorporate the Association as a non-profit corporation under the laws of the State of Hawaii. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles or Charter and Bylaws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

SECTION 6. Arbitration of Grievances and Disputes. At the request of any party, any grievance or dispute concerning or involving one or more Owners of Apartments and the Association, the Board of Directors, the Managing Agent or one or more other Owners of Apartments relating to the interpretation, application or enforcement of Chapter 514B, HRS or the Declaration, these Bylaws or any House Rules adopted pursuant to Article X, Section 1, above, shall be submitted to arbitration as provided by Chapter 514B, HRS. The award of any costs, expenses and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses and legal fees shall be binding upon all parties, provided, however, that Owners shall at all times have all rights afforded by Chapter 514B, HRS, including, but not limited to, the right to trial de novo and to file a motion to set aside or modify an arbitration award, as provided for under Chapter 514B, HRS. Nothing in this Section shall be interpreted to require the arbitration of any grievance or dispute which is either exempt from arbitration pursuant to Chapter 514B, HRS, or determined to be unsuitable for arbitration pursuant to Chapter 514B, HRS.

SECTION 7. Representation of the Association and Owners. The President or Managing Agent subject to the direction of the Board of Directors, may represent the Association or any two or more Owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the Common Elements or more than one 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 right of any Owners individually to appear, sue or be sued. Service of process on two or more Owners in any such action, suit or proceeding in which the President and/or Managing Agent has elected to represent the Association or any two or more Owners may be made on the President or the Managing Agent.

SECTION 8. Notices. All notices to the Association shall be mailed or delivered to the Board of Directors in care of the Managing Agent, or, if there is no Managing Agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate by notice in writing to all Owners and all mortgagees of Apartments. All notices to any Owner shall be mailed or delivered to the building or to such other address designated by him in writing given to the Board of



Directors. Any notices to mortgagees of Apartments shall be sent by mail to their respective addresses, as designated by them in writing given to the Board of Directors. All notices to Owners and mortgagees shall be deemed to have been given when mailed. All notices given to the Association, the Board of Directors, or the Association's Managing Agent shall be deemed given when received. In the event any Apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Apartment remains vested in the trust beneficiary or beneficiaries, notice shall be deemed given sufficiently for all purposes if it is in writing and is delivered personally or by registered or certified mail to the trustee of any such trust or to any beneficiary whose name and address has theretofore been furnished to the Board of Directors.

SECTION 9. Captions. The captions herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or prescribe the scope of these Bylaws or the intent of any provision hereof.

SECTION 10. Gender. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context requires.

SECTION 11. Waiver. No restriction, condition, obligation or provision in these Bylaws shall be deemed abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

SECTION 12. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of Apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

SECTION 13. Amendment. Except as otherwise provided herein, the provisions of these Bylaws, other than this section, may be amended pursuant to Section 514B-108(e), HRS, by the vote or written consent of Apartment Owners owning at least sixty-seven percent (67%) of the common interest in the Common Elements, and evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association of Apartment Owners, which amendment shall be effective upon filing in the Land Court; provided, however, that in addition to specific sections requiring the Trustees' consent, no amendment to Articles V, VI or IX of these Bylaws will be of legal effect without the written consent of the Trustees to the amendment, which consent shall not be unreasonably withheld.

SECTION 14. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

SECTION 15. Eviction of Tenants. The violation of any of the House Rules, the breach of any of these Bylaws or the breach of any provision of the Declaration, or violation of the Act by a tenant or occupant other than an Owner, shall give the Board the right in addition to any other rights or remedies provided by law, the Declaration or these Bylaws, to initiate and prosecute to conclusion a legal action to terminate any lease, rental agreement or other occupancy right of such tenant or occupant and/or to obtain a court order directing such tenant or occupant immediately to permanently vacate such

Apartment and to refrain from re-entering the Project and in such event, the Association shall have no liability to the Owner for lost rentals or any other consequence of such termination or removal.

SECTION 16. Lease\Fee Purchase. Notwithstanding any other provision contained herein: (i) the Board of Directors shall have the power to do all such things as it deems necessary or appropriate to seek and secure the agreement of the Owner of the leased-fee interest (hereinafter referred to as the "fee owner") in the land underlying the Project and the apartments and improvements thereon (hereinafter in this Section 16 called the "Property") to sell its interest in the Property to the Association and/or the Association members and to take all other action incidental to the consummation of such sale, including, but not limited to, obtaining appraisals and hiring attorneys and experts at the common expense of the Association; (ii) if the fee owner agrees to sell its interest in the Property, then the Board of Directors, on behalf of the Association, shall have the power to purchase any remaining portion of such interest upon the sale of at least seventy percent (70%) of such interest to the Association members (or persons or parties other than the Association), and to take action as is necessary, as determined in the sole judgment of the Board, to close such sale, including, but not limited to, arranging for and obtaining any needed financing for the purchase, signing documents, and creating corporations and/or establishing land trusts to hold title to the Property or any portion thereof so acquired; (iii) if the fee owner is willing to agree to sell its interest in the Property directly to Association members, the Board of Directors shall have the power to waive the right of first refusal as set forth in Chapter 514C, HRS. In this event, the Board of Directors shall have the power, but not the obligation, to negotiate the sale to the owners and to take all other actions incidental to the consummation of such sale as it shall, in its sole judgment, deem necessary to assist members of the Association; and (iv) the Board of Directors shall have the right to advise the members of the Association with respect to any proposals from the fee owner; provided, however, that the Association and the Owners shall hold the Board of Directors harmless from and against any and all claims related to any of the actions authorized by this Section 16 including, but not limited to, providing advice to Owners and undertaking to assist members of the Association as described above.

In the event that the Association acquires any portion of the fee owner's interest in the Property in the manner stated in the preceding paragraph, the Board of Directors shall be empowered to take all such action as it deems necessary or appropriate to administer the interest so acquired, including but not limited to conveying such interest into a land trust, setting, arbitrating, and collecting lease rents, and selling and/or conveying all or any portion of such interest at such price or prices as may be established by the Board of Directors from time to time. All costs incurred by said Board of Directors in connection with any efforts on behalf of the Association to acquire or administer any interest of the fee owner in the Property, including but not limited to all costs associated with obtaining any needed financing in connection with such acquisition and administering any portion of the Property acquired pursuant to this Section 16 shall constitute a common expense of the Association.

Upon the acquisition of the fee owner's interest in the Property by the Association and/or the Association members (or others) as aforesaid, all approval and other requirements pertaining to such fee owner, as contained herein and in the Declaration, shall thereupon become null and void and of no effect. The term fee owner

as used in this Section 16 shall include any assignees or other subsequent holders of the fee owner's interest in the Property.

Not Valid for Resale Property Transactions

## ENDNOTES

1. Article II, Section 4 of the Bylaws has been restated to conform with Section 514B-121(b), Hawaii Revised Statutes.
2. Article II, Section 7 of the Bylaws has been restated to incorporate the language of the Amendment of Bylaws that was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1261911. It has been further restated to change the reference to 514A-13(h) to 514B-108(a)(8) and the reference to 514A-83 to 514B-124.
3. Article II, Section 8 of the Bylaws has been restated to conform with provisions of Section 514B-123, Hawaii Revised Statutes, and to incorporate language from the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911.
4. Article II, Section 15 of the Bylaws has been restated to conform with Section 514B-126(a), Hawaii Revised Statutes.
5. Article II, Section 16 has been restated to conform with Section 514B-153 and Section 514B-154, Hawaii Revised Statutes.
6. Article III, Section 3 of the Bylaws has been amended to restate the language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911. It has further been restated to conform with 514B-132, Hawaii Revised Statutes.
7. Article III, Section 5 of the Bylaws has been restated to conform with 514B-106(f), Hawaii Revised Statutes.
8. Article III, Section 6 of the Bylaws has been restated to conform with 514B-106(b), Hawaii Revised Statutes.
9. Article III, Section 11 of the Bylaws has been restated to incorporate language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911.
10. Article III, Section 12 of the Bylaws has been restated to conform with Section 514B-125, Hawaii Revised Statutes.
11. Article III, Section 14 of the Bylaws has been restated to conform with Section 514B-107(d) and Section 514B-107(f), Hawaii Revised Statutes.
12. Article III, Section 17 of the Bylaws has been restated to conform with the provisions of Section 514B-143(a)(3), Hawaii Revised Statutes.
13. Article III, Section 18 of the Bylaws has been restated to conform with the provisions of Section 514B-107(e), Hawaii Revised Statutes.
14. Article III, Section 19 of the Bylaws has been restated to conform with the provisions of Section 514B-125(d), Hawaii Revised Statutes.

15. Article IV, Section 1 of the Bylaws has been restated to conform with the provisions of Section 514B-107(c), Hawaii Revised Statutes.
16. Article IV, Section 9 of the Bylaws has been restated to conform with the provisions of Section 514B-107(d), Hawaii Revised Statutes.
17. Article IV, Section 10 of the Bylaws has been restated to conform with the provisions of Section 514B-150, Hawaii Revised Statutes, and to incorporate language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911.
18. Article V, Section 7(b) of the Bylaws has been restated to incorporate language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911. It has further been restated to conform with 514B-38, Hawaii Revised Statutes.
19. Article V, Section 7(k) of the Bylaws has been restated to conform with the provisions of the Federal Fair Housing Act and 515-3, Hawaii Revised Statutes.
20. Article VI, Section 1(a) of the Bylaws has been restated to incorporate language from the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911.
21. Article VI, Section 1(b) of the Bylaws has been restated to conform with 514B-42, Hawaii Revised Statutes.
22. Article VI, Section 1(d) of the Bylaws has been restated to change the references to 514A to 514B.
23. Article VI, Section 4(b) of the Bylaws has been restated to change the reference to 514A-90 to 514B-146.
24. Article VII, Section 5(a) of the Bylaws has been restated to change the reference to 514A-13 to (b) to 514B-37 and 514A-92 to 514B-144(g).
25. Article VIII, Section 3 of the Bylaws has been restated to change the reference to 514A to 514B.
26. Article VIII, Section 4(a) of the Bylaws has been restated to conform with Section 514B-146, Hawaii Revised Statutes.
27. Article VIII, Section 4(b) of the Bylaws has been restated to conform with Section 514B-146, Hawaii Revised Statutes.
28. Article X, Section 2(a) of the Bylaws has been restated to incorporate language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911.
29. Article X, Section 3 of the Bylaws has been restated to incorporate language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 1261911.
30. Article X, Section 6 of the Bylaws has been deleted pursuant to the Amendment of the Bylaws filed, as aforesaid, as Document No. 2212905.



31. Article X, Section 6A of the By-Laws has been renumbered as Article X, Section 6 to incorporate language of the Amendments of the Bylaws (as Section 6A) filed, as aforesaid, as Document No. 1261911 and as Document No. 2212905. It has further been restated to change the references to 514A to 514B.
32. Article X, Section 13 of the Bylaws has been restated to conform with the provisions of Section 514B-108(e), Hawaii Revised Statutes.
33. The following By-Laws provisions have been restated to incorporation language of the Amendment of the Bylaws filed, as aforesaid, as Document No. 2212905.

Article I, Section 2  
Article II, Section 1  
Article II, Section 2  
Article II, Section 5  
Article II, Section 7  
Article II, Section 9  
Article II, Section 11  
Article III, Section 2(r)  
Article III, Section 2(s)  
Article III, Section 4  
Article III, Section 2(u)  
Article III, Section 2(v)  
Article III, Section 3  
Article III, Section 4  
Article III, Section 6  
Article III, Section 9  
Article III, Section 15  
Article IV, Section 1  
Article V, Section 5(b)  
Article V, Section 6  
Article VI, Section 1(b)  
Article VI, Section 1(d)  
Article VI, Section 4  
Article VI, Section 4(a)  
Article VI, Section 4(b)  
Article VI, Section 4(c)  
Article VI, Section 4(d)  
Article VI, Section 4(e)  
Article VI, Section 6  
Article VIII, Section 1  
Article VIII, Section 2  
Article VIII, Section 3  
Article VIII, Section 6  
Article X, Section 1  
Article X, Section 5  
Article X, Section 6A  
Article X, Section 7  
Article X, Section 8  
Article X, Section 15  
Article X, Section 16

Article X, Section 3(c)

34. The references to the Horizontal Property Regime have been changed to the Condominium Property Regime and references to the Horizontal Property Act have been changed to the Condominium Property Act pursuant to the Amendment of the Bylaws filed, as aforesaid, as Document No. 2212905.

All provisions of the By-Laws which have been restated to implement the provisions of Chapter 514B, Hawaii Revised Statutes, have been restated solely for the purpose of information and convenience. In the event of any conflict, the restated provisions shall be subordinate to the provisions of Chapter 514B, Hawaii Revised Statutes.

Not Valid for Resale Property Transactions

Exhibit "1"

Liliuokalani Gardens at Waikiki  
Land Court Condo Map No. 487

List of Current Transfer Certificate of Title Numbers

<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
201	869,086	413	862,299	617	867,261
202	863,296	414	966,942	618	864,157
203	867,421	415	867,329	619	965,880
204	285,045	416	959,000	620	866,825
211	863,341	417	866,146	701	857,815
212	863,135	418	962,467	702	866,349
213	285,045	419	861,688	703	861,896
214	1,032,896	420	861,827	704	972,754
215	285,045	501	873,992	705	1,025,852
216	865,178	502	867,260	706	967,307
217	868,578	503	864,206	707	873,424
218	865,272	504	862,245	708	932,265
219	285,045	505	285,045	711	865,076
220	880,824	506	1,029,606	712	866,398
301	868,246	511	926,487	713	956,364
302	868,775	512	863,136	714	866,754
303	285,045	513	1,018,762	715	285,045
304	285,045	514	940,846	716	860,997
305	867,759	515	1,007,290	717	862,300
306	1,017,486	516	966,985	718	983,898
311	285,045	517	864,723	719	867,330
312	964,706	518	866,972	720	977,123
313	890,571	519	865,181	801	868,248
314	978,882	520	864,795	802	863,353
315	992,316	601	861,923	803	928,890
316	285,045	602	285,045	804	861,895
317	285,045	603	860,795	805	869,658
318	285,045	604	863,937	806	967,391
319	285,045	605	995,829	807	864,722
320	285,045	606	859,796	808	866,243
401	871,237	607	868,402	811	859,754
402	1,016,279	608	993,929	812	859,797
403	960,888	611	949,564	813	867,269
404	860,831	612	913,295	814	285,045
405	285,045	613	285,045	815	285,045
406	1,014,235	614	964,030	816	864,158
411	865,180	615	862,777	817	864,159
412	868,247	616	867,424	818	861,828

**Exhibit "1"**

**Liliuokalani Gardens at Waikiki  
Land Court Condo Map No. 487**

**List of Current Transfer Certificate of Title Numbers**

<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
819	863,444	1101	1,032,892	1403	285,045
820	870,321	1102	869,469	1404	1,011,432
901	870,699	1103	859,660	1405	870,670
902	285,045	1104	285,045	1406	868,406
903	862,929	1105	1,008,238	1407	924,552
904	959,196	1106	871,395	1408	863,134
905	285,045	1107	862,776	1411	953,064
906	875,850	1108	869,087	1412	1,033,185
907	864,278	1111	285,045	1413	285,045
908	865,780	1112	868,850	1414	865,812
911	285,045	1113	1,022,214	1415	866,241
912	868,119	1114	874,961	1416	862,778
913	865,179	1115	285,045	1417	869,083
914	862,302	1116	285,045	1418	975,981
915	285,045	1117	285,045	1419	868,938
916	860,718	1118	861,741	1420	938,410
917	943,075	1119	903,026	1501	862,311
918	878,595	1120	966,952	1502	864,153
919	864,280	1201	878,835	1503	285,045
920	870,896	1202	868,727	1504	865,915
1001	879,957	1203	954,680	1505	867,419
1002	285,045	1204	878,836	1506	880,831
1003	871,267	1205	869,153	1507	869,088
1004	955,053	1206	971,316	1508	909,142
1005	888,678	1207	285,045	1511	285,045
1006	865,075	1208	875,710	1512	864,903
1007	868,034	1211	878,969	1513	860,179
1008	868,500	1212	864,772	1514	862,989
1011	865,321	1213	869,294	1515	285,045
1012	906,396	1214	869,745	1516	981,506
1013	957,957	1215	959,672	1517	981,855
1014	866,242	1216	858,058	1518	868,722
1015	960,847	1217	863,736	1519	858,725
1016	285,045	1218	910,754	1520	285,045
1017	894,586	1219	864,796	1601	864,155
1018	866,944	1220	867,048	1602	868,577
1019	285,045	1401	285,045	1603	865,074
1020	285,045	1402	920,575	1604	285,045

Exhibit "1"

Liliuokalani Gardens at Waikiki  
Land Court Condo Map No. 487

List of Current Transfer Certificate of Title Numbers

<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
1605	861,894	1811	868,502	2017	876,390
1606	873,387	1812	868,770	2018	868,123
1607	285,045	1813	868,771	2101	1,018,630
1608	867,431	1814	957,736	2102	954,053
1611	862,007	1815	869,090	2103	862,244
1612	1,000,854	1816	956,144	2104	868,334
1613	898,041	1817	961,257	2105	862,008
1614	863,105	1818	868,025	2106	285,045
1615	924,473	1901	962,979	2107	862,145
1616	866,244	1902	866,971	2108	947,158
1617	285,045	1903	862,931	2111	864,161
1618	285,045	1904	285,045	2112	962,318
1619	866,245	1905	285,045	2113	958,080
1620	868,120	1906	965,926	2114	868,335
1701	285,045	1907	977,804	2115	1,011,507
1702	859,402	1908	863,746	2116	865,072
1703	867,761	1911	1,029,939	2117	868,044
1704	862,144	1912	859,143	2118	1,013,886
1705	952,048	1913	857,816	2201	873,399
1706	862,938	1914	1,008,373	2202	285,045
1707	901,136	1915	863,936	2203	285,045
1708	1,007,152	1916	994,665	2204	900,504
1711	960,887	1917	285,045	2205	285,045
1712	285,045	1918	285,045	2206	863,336
1713	863,376	2001	859,857	2207	956,437
1714	892,109	2002	861,687	2208	861,892
1715	869,988	2003	868,250	2211	964,705
1716	861,096	2004	285,045	2212	986,441
1717	862,779	2005	285,045	2213	862,937
1718	859,856	2006	867,501	2214	980,782
1801	1,013,391	2007	866,636	2215	867,762
1802	864,156	2008	285,045	2216	863,108
1803	981,010	2011	868,121	2217	385,045
1804	868,028	2012	868,122	2218	867,868
1805	868,117	2013	890,373	2301	976,078
1806	868,249	2014	285,045	2302	864,279
1807	862,939	2015	968,976	2303	1,021,031
1808	860,178	2016	954,572	2304	939,217



Exhibit "1"

Liliuokalani Gardens at Waikiki  
Land Court Condo Map No. 487

List of Current Transfer Certificate of Title Numbers

<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
2305	965,613	PH17	861,829
2306	870,110	PH18	972,106
2307	285,045	COMM 1	980,400
2308	928,749	COMM 2	978,455
2311	875,694	COMM 3	980,401
2312	874,962		
2313	285,045		
2314	859,142		
2315	865,782		
2316	859,865		
2317	866,216		
2318	862,780		
2401	860,796		
2402	987,774		
2405	873,386		
2406	902,180		
2407	953,389		
2408	986,394		
2411	1,031,187		
2412	285,045		
2413	867,867		
2414	866,246		
2417	858,718		
2418	864,724		
PH1	285,045		
PH2	285,045		
PH3	285,045		
PH4	862,084		
PH5	285,045		
PH6	285,045		
PH7	285,045		
PH8	285,045		
PH11	869,082		
PH12	285,045		
PH13	285,045		
PH14	862,006		
PH15	868,057		
PH16	866,247		