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FIRST RESTATEMENT OF THE BY-LAWS OF THE ASSOCIATION OF APARTMENT  
OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO

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**FIRST RESTATEMENT OF THE BY-LAWS OF THE ASSOCIATION OF APARTMENT  
OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO**

WHEREAS, by Declarations of Horizontal Property Regime all dated January 14, 1988, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Land Court Document Nos. 1525757, 1541100, and 1546776, and noted on Certificates of Title shown on the attached Exhibit "A", James K. Schuler & Associates, Inc., a Hawaii corporation, Developer, submitted the property described in the Declarations and Condominium Maps 654, 661, and 666 known as the Cliffside Villages at Waipio, Phases I, II, and III to the provisions of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes (See endnote 1); and

WHEREAS, the Declarations provided for the organization and operation of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, PHASES I, II, and III (the "Association") in accordance with By-Laws dated January 14, 1988, which were filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Land Court Document Nos. 1525758, 1541101 and 1546777 ("the By-Laws"); and

WHEREAS, the three phases of the project and their governing documents were merged into a single condominium project, "The Cliffside Villages at Waipio", governed by a single association by a certificate of merger dated June 13, 1989 and recorded as Document No. 1643985; and

WHEREAS, the Association of Apartment Owners of the Cliffside Villages at Waipio filed Articles of Incorporation dated May 12, 1995 with the Department of Commerce and Consumer Affairs thereby changing its name to "Association of Apartment Owners of the Cliffside Villages at Waipio, Inc."

WHEREAS, the Declaration was amended by documents all dated March 8, 1989, recorded as Document Nos. 1621530, 1621607 and 1621531, respectively, and further amended by a document dated March 25, 1998 and recorded as Document No. 2450532; and

WHEREAS, the By-Laws were amended by a document dated April 11, 2000 and recorded as Document No. 2623719; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers the Board of Directors of the Association of Apartment Owners of the Cliffside Villages at Waipio, Inc., (the "Association") established by the By-Laws to restate the By-Laws to include any amendments to them and to conform them to the provisions of Chapter 514A, Hawaii Revised Statutes, 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 July 27, 2000, the Board of Directors resolved to restate the By-Laws in accordance with Section 514A-82.2, Hawaii Revised Statutes.

NOW THEREFORE, the By-Laws are hereby restated to read as follows:

## ARTICLE I

### ASSOCIATION OF OWNERS

Section 1.01 Qualification and Membership. All owners of apartments of the Condominium ("Owners" or "Apartment Owners") 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 or her ownership of such apartment ceases for any reason, at which time his or her membership in the Association shall automatically cease; provided that:

(a) to such extent and for such purposes, including voting, as shall be provided by lease of any apartment registered under Chapter 501 or recorded under Chapter 502 of the Hawaii Revised Statutes, as amended (i.e., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or recorded in the Bureau of Conveyances of the State of Hawaii), the lessee of such apartment shall be deemed the Owner thereof;

(b) the purchaser of an apartment pursuant to an agreement of sale duly recorded or filed of record in the State of Hawaii shall have all the rights of an Apartment Owner, including the right to vote, provided that the seller thereunder may retain the right to vote on certain matters substantially affecting his or her security interest in the apartment, in accordance with Section 514-83 of the Condominium Act, as the same may be amended from time to time; and

(c) if 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 such trust shall be deemed to be the Owner or Owners of said apartment to the extent of their interest therein, unless the trustee notifies the Association to the contrary 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 be continued to be recognized by the Association as the Owner and shall have all of the rights and obligations of ownership.

Notwithstanding anything in these By-Laws to the contrary, at all times prior to a first apartment conveyance as defined in Section 1.03 below, the Declarant shall act in any and all matters as the Association and its Board of Directors.

Section 1.02 Place of Meetings. Meetings of the Association shall be held at the Condominium or such other suitable place within the State of Hawaii convenient to the Owners, as may be designated by the Board of Directors of the Association (the "Board").

Section 1.03 Annual Meetings. At any time following the issuance by the appropriate county agency of a certificate of occupancy for the Condominium, the first annual meeting shall be held at the call of the Declarant upon the giving notice thereof otherwise in accordance with Section 1.05 of this Article to all Apartment Owners; provided, the Declarant shall call the first annual meeting and give such notice thereof, and the first annual meeting shall be held:

(a) not later than one hundred and eighty (180) days after the first apartment conveyance is duly recorded or filed of record in the State of Hawaii, if apartments to which are appurtenant forty percent (40%) or more of the common interests have been sold and the conveyance thereof so recorded; and

(b) if such number of apartments have not been sold and recorded or filed within said one hundred and eighty (180) day period, promptly thereafter as soon as such number of apartments have been sold and recorded or filed; except that

(c) if such number of apartments have not been sold and recorded or filed at the end of one (1) year after the recordation of the first apartment conveyance, then promptly upon the request of Owners of apartments to which are appurtenant ten percent (10%) of the common interests.

The term "apartment conveyance" shall mean and refer to the transfer of any interest in an apartment to a person other than the Declarant by written instrument "duly, recorded or filed of record" in the State of Hawaii (i.e., filed in said Office of the Assistant Registrar of the Land Court, or recorded in said Bureau of Conveyances), whereby such person acquires any right to vote at a meeting of the Association, whether the right to vote is acquired by deed, lease, agreement of sale or otherwise; excluding, however, the acquisition of any right to vote by way of a mortgage or similar device or by instrument expressly declared not to be an apartment conveyance within the meaning of this section. The term "first apartment conveyance" shall mean and refer to the first such transfer.

The Managing Agent shall call the first annual meeting and give notice thereof as required by this Section 1.03, if the Declarant shall so authorize the Managing Agent or if the Declarant shall fail or neglect so to do. At the first annual meeting the Apartment Owners shall elect the Board. Thereafter, the annual meetings of the Apartment Owners shall be held on such date as the Board shall designate within three (3) months following the end of the fiscal year established for the Association. At such subsequent meetings successor directors shall be elected by ballot of the Apartment Owners as provided in Section 2.03. The Apartment Owners may transact such other business at the first and subsequent annual meetings as may properly come before them.



Section 1.04 Special Meetings. Special meetings of the Association may be held at any time upon the call of a majority of a quorum of the Board, or upon a petition signed by not less than twenty-five percent (25%) of the owners and presented to the Secretary (and if the Regulatory Agreement referred to in the Condominium Declaration is executed and recorded or filed of record in the State of Hawaii, at the request of the Federal Housing Commissioner or his duly authorized representative). The business considered shall be limited to that stated in the notice of the special meeting, unless at least eighty percent (80%) of the Owners present, either in person or by proxy, decide otherwise.

Section 1.05 Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every Owner according to the Association's record of ownership (and if the Regulatory Agreement referred to in the Condominium Declaration is executed and recorded or filed of record, to the Director of the local insuring office of the Federal Housing Administration), at least fourteen (14) days before the date set for such meeting. The notice shall state whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting, the agenda thereof, and the purpose therefore, and shall include a standard proxy form authorized by the Association, if any. The notice shall be given in any of the following ways:

- (a) by delivering it to him or her personally, or
- (b) by leaving it at his or her apartment in the Condominium or at his or her usual residence or place of business, or
- (c) by mailing it, postage prepaid, addressed to him or her at his or her address as it appears on the Association's record of ownership.

If notice is given pursuant to the provisions of this section, the failure of any Owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any Owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner, unless he or she 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. Any Owner may waive notice, before, at or after any meeting by written waiver filed with the Secretary. Upon written request for

notices delivered to the Board, the holder of any duly recorded mortgage from an Owner, or the holder of the seller's or purchaser's interest under any duly recorded agreement of sale of an apartment may obtain a copy of any and all notices permitted or required to be given to the Owner of an apartment, whose interest is subject to said mortgage or agreement of sale.

**Section 1.06 Quorum; Definition of a Majority (or Other Percentage) of Owners.**

The presence at any meeting in person or by proxy of not less than a majority of the Owners shall constitute a quorum, and the acts of a majority of the Owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein, or in the Condominium Declaration or in the Condominium Act. The term "majority (or other percentage) of Owners" means the Owners of apartments to which are appurtenant a majority (or other percentage) of the common interests as established by the Condominium Declaration.

**Section 1.07 Voting.** Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Condominium Declaration. Votes may be cast in person or by proxy by the respective Owners as shown in the record of ownership of the Association. An executor, administrator, guardian, personal representative or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him or her in such capacity, whether or not the same shall have been transferred to his or her name in the Association's record or ownership, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his or her share of ownership in such apartment. Votes allocated to any area which constitutes a common element under Section 514-13(h) of the Condominium Act, whether or not so designated in the Declaration, shall not be cast at any Association meeting.

Section 1.08 Proxies and Pledges. (a) A proxy, to be valid, must be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must 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.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the Apartment Owner desires and indicates.

(c) All proxy forms, at the minimum, shall contain boxes wherein the owner may indicate that the proxy is given:

- (1) For quorum purposes only;
- (2) To the individual whose name is printed on a line next to this box;
- (3) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
- (4) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy. (See endnote 2)

(d) Nothing in (a), (b) or (c) above shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an 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.

(e) No resident manager or Managing Agent shall solicit, for use by such manager or Managing Agent, any proxies from any Apartment Owner of the Association which employs him or her, nor shall he or she cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(f) If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to above, the Board shall post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all Owners a proxy form containing either (1) the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements, or (2) no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements. The statement shall not exceed one hundred (100) words, indicating the Owner's qualifications to serve on the Board and the reasons for wanting to receive proxies. The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by Owners; provided that the Board may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board may prohibit commercial solicitations. (See endnote 3)

Section 1.09 Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the Owners present, without notice other than the announcement at such meeting; provided if a quorum is not then present, the adjournment must be to a date not less than five (5) days nor more than thirty (30) days from the original meeting date. 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 1.10 Order of Business. The order of business at all meetings of the Association shall be follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of Federal Housing Administration representative, if any.
- (f) Report of committees.
- (g) Election of directors (when so required).
- (h) Unfinished business.
- (i) New business.

Section 1.11 Conduct of Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order.

Section 1.12 Minutes of Association Meetings. The Secretary of the Association shall cause all minutes of Association meetings to be recorded and maintained at such place as the Board shall designate; provided that the Board may delegate the recording and maintaining of the minutes to the Managing Agent. The minutes of meetings of the Association shall be made available to each Owner and his or her authorized representative for inspection and copying at such designated place at convenient hours designated by the Board; provided, that said minutes shall be mailed to any Owner upon his or her request. Minutes of meetings of the Association shall be approved at the next succeeding meeting, minutes of all meetings shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting. (See endnote 4)

Section 1.13 . List of Apartment Owners and Record of Ownership. (a) The Board shall keep an accurate and current list or members of the Association, and their current addresses, and also the names and addresses of the vendees under an agreement of sale, and shall maintain said list at such place as shall be designated by the Board; provided that the Board may delegate the keeping of said list to the Managing Agent or

resident manager. Said list shall be made available to each Owner and his or her authorized representative for inspection and copying as the Board may provide from time to time in the Rules and Regulations; provided that, in any case said list shall be made available, at cost, to any Owner who furnishes to the Board, the Managing Agent or resident manager a duly executed and acknowledged affidavit stating that the list: (1) will be used by such Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters, and (2) shall not be used by such Owner or furnished to anyone else for any other purpose.

(b) Every Owner shall promptly cause to be duly recorded or filed of record the deed, lease, assignment, agreement of sale, or other conveyance to him or her of such apartment or other evidence of his or her title thereto and shall file a copy of such conveyance with and present such other evidence of his or her title to the Board through the Managing Agent, and shall also promptly so file each change in his or her current address. Every Owner shall likewise duly and promptly so record and file each mortgage on his or her Apartment. The Board shall keep or cause to be kept a list of such mortgagees.

Section 1.14 Availability of Condominium Documents. An accurate copy of the Condominium Declaration, these By-Laws, the Rules and Regulations, if any, a sample original conveyance document, all Public Reports issued by the Real Estate Commission on this Condominium and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of those documents and other documents provided for in section 514A-83.5 of the Condominium Act to Owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs. In the event that the Condominium is not managed by managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association. (See endnote 5)

## ARTICLE II

### BOARD OF DIRECTORS

Section 2.01 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The board shall be composed of seven (7) persons. All Directors shall be Owners or Co-Owners or vendees under an agreement of sale, or an officer of any corporate Owner of any 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. In the case of fiduciary owners, the fiduciaries or officers or employees of such fiduciaries shall be eligible to serve as directors. There shall not be more than one representative on the Board from any one apartment. No resident manager of the Condominium shall serve on the Board. (See endnote 6)

Section 2.02 Powers. The Board shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things for such purpose as are not by law, the Condominium Declaration or these By-Laws directed to be exercised or done only by the Owners.

Section 2.03 Election and Term. Election of directors shall be by secret written ballot at each annual meeting and any special meeting called for this purpose. Directors shall hold office for a period of two (2) years and until their respective successors have been elected, subject to the removal provisions contained herein; except that at the first annual meeting, the number of persons equal [to] a majority of Directors (but no more) who receive the largest number of votes shall be elected for a term of two (2) years, and the remaining persons shall be elected for a term of one (1) year. Thereafter, at the expiration of the term of office of each of the initial members of the Board, each successor member shall be elected for a term of two (2) years. (See endnote 7)

Section 2.04 Cumulative Voting for Election of Directors. Cumulative voting is required for the elections of directors. Each Owner may give all of his or her cumulated votes to one nominee or distribute his or her cumulated votes in such manner as he or she shall determine[d] among any, some or all of the nominees. The nominees receiving the



largest number of votes on the foregoing basis, up to the number of directors to be elected, shall be deemed elected. (See endnote 8)

Section 2.05 Inspectors for Voting and Elections. Before the meeting of the Association, the Board must appoint inspectors of the voting at the meeting, including the voting for the election of directors. The number of inspectors will be either 1 or 3. The inspector or inspectors will: (a) determine the number of votes that may be cast; the authenticity, validity and effect of proxies, pledges and other documents purporting to give any person the right to represent, act and vote for an Owner; (b) receive votes, ballots and consents; (c) hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes; (d) count and tabulate all votes and consents; (e) decide when the polls will close; (f) determine the results of all votes and elections; (g) do other acts that may be proper to conduct the vote or election with fairness to all Owners (h) perform such duties impartially, in good faith, to the best of his, her or their ability and as quickly as practical. The decision, act or certificate of a majority of inspectors, if there are 3, or of a single inspector will be effective. Any facts stated in any effective report or certificate are presumed to be accurate.

Section 2.06 Nominees for Election to the Board. The Board will appoint a committee to nominate Owners for election to the Board at each annual meeting. This committee will make their selections at least 60 days before the date of each of these meetings. The list of nominees must also include any qualified person nominated in any petition signed by at least 5% of the Owners and received by the Board 60 days before the meeting. This list of nominees must be sent to each Owner. If the list is prepared before the notice of meeting is sent, it must be sent with the notice. Each person nominated must be placed on the ballot at the meeting. But at the meeting any Owner present may nominate any other qualified person for director, and the person nominated must be added to the ballot.

Section 2.07 Vacancies. Vacancies in the Board caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person



so elected shall be a director until his or her successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his or her continuous absence from the State of Hawaii for more than six (6) months, or his or her ceasing to be qualified under Section 2.01 shall cause his or her office to become vacant.

Section 2.08 Removal of Directors. (a) At any regular or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by vote of a majority of Owners and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at such meeting. If such removal and replacement is to occur at a special meeting, the call for such meeting shall be by the president or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) 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 for the special meeting in accordance with these By-Laws. Except as otherwise provided in this Section, including but not limited to the following provision regarding cumulative voting, such meeting shall be scheduled, noticed and conducted, and such removal and replacement shall be, in accordance with the other applicable provisions of these By-Laws. However, unless the entire Board is removed, no individual Director shall be removed if the votes cast against removal would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors being elected at the most recent election were then being elected.

(b) The other members of the Board may (but are not required) to remove any Director who is not present at 3 or more consecutive regular meetings of the Board. But if before he or she is removed, he or she is present at any meeting held later, he or she must miss at least 3 more consecutive meeting before he or she may be removed.

Section 2.09 Annual Meeting. An organizational meeting of the Board shall be held at the place of and immediately following each annual meeting of the Association, and no specific notice shall be necessary to any Directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present; provided, further, that a general notice of such annual meeting of the Board shall be given with and contained in the notice of the annual meeting of the Association. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 2.10 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar quarter of every year. Whenever practicable, notice of regular meetings of the Board shall be posted at a prominent place or places within the common elements of the Condominium seventy-two hours prior to a meeting or simultaneously with notice to the Board, and shall be given to each Director, personally or by mail, telephone or telegraph, at least fourteen (14) days, if practicable, prior to the date of such meeting. (See endnote 9)

Section 2.11 Special Meeting. Special meetings of the Board may be called by the President on at least eight (8) hours notice to each Director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. On the written request of at least two (2) Directors, special meetings of the Board shall be called by the President or the Secretary in like manner and with like notice. Notice shall also be posted in the same manner as specified in Section 2.10. Notwithstanding anything in these By-Laws to the contrary, the Declarant, when acting as the Board as provided in Section 1.01, may act without a formal meeting and without call or notice.

Section 2.12 Open Meetings. (a) All Board meetings, other than executive sessions, will be open to all Owners. Owners who are not on the Board may take part in any discussion or deliberation, unless a majority of a quorum of the Board votes otherwise. If there is not enough room for all the Owners wishing to attend at the place of the meeting, the Board must adjourn and reconvene the meeting as soon as possible where there is enough room. (See endnote 10)

(b) The Board may, upon the vote of a majority of a quorum of the Board, adjourn any meeting and reconvene in a closed executive session to discuss and vote upon: (1) personnel matters; and (2) lawsuits in which the Association is or may become involved. But before adjourning to executive session, the Board must announce the general nature of all business that will be considered there. (See endnote 11)

Section 2.13 Waiver of Notice. Before or at any meeting of the Board any Director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice to him or her of such meeting. If all the Directors are present at any meeting of the Board, no notice thereof to any Director shall be required, and any business may be transacted at such meeting.

Section 2.14 Quorum of Board. At all meetings of the Board a majority of the total number of Directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at any meeting at which a quorum is present shall be the acts of the Board. Any such meeting may be adjourned to such place and time as may be determined by a majority of Directors present without notice other than an announcement at such meeting; provided if the meeting is adjourned for more than 24 hours, notice must be given to those Directors who are absent. At any such adjourned meeting at which a quorum is present any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 2.15 No Proxy Voting; Conflicts of Interest. A Director shall not cast any proxy vote at any meeting of the Board. Nor shall a Director vote at any board meeting on any issue in which the Director has a conflict of interest. A Director shall disclose the nature of the conflict of interest prior to a vote at the meeting, and the minutes of the meeting shall record the fact that a disclosure was made. The determination of whether a conflict of interest exists as to any one or more Directors may be made by a majority of the other Directors, and, if made shall be conclusive and binding on all parties.

Section 2.16 Conduct of Meetings. All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order.

Section 2.17 Minutes of Board Meetings. (a) The Secretary of the Association shall cause all minutes of Board meetings to be recorded and maintained at such place as the Board shall designate; provided that the Board may delegate the recording and maintaining of such minutes to the Managing Agent. Said minutes shall include the recorded vote of each Board member on all motions except motions voted on in executive session. The minutes of meetings of the Board shall be made available to each Owner and his or her authorized representative for inspection and copying at such designated place at convenient hours designated by the Board; provided, that said minutes shall be mailed to any Owner upon his or her request.

(b) Minutes of meetings of the Board shall be approved at the next succeeding meeting and in no event later than the second succeeding meeting.

(c) Minutes of all Board meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. (See Endnote 12)

Section 2.18 Executive And Other Committees. The Board may establish one or more committees to serve at its pleasure. The Board may appoint any two or more Directors or any one or more Directors and other Owners to serve on committees. The Board may also designate one or more Directors to serve as alternate members on any committee, to replace any member who is absent at a meeting of that committee. Such appointments require the vote of a majority of all Directors. The purpose of the committee, its members and its authorities and duties must be stated in the minutes of the meetings of the Board before these appointments will be effective. Each committee will automatically be dissolved at the time of the next annual meeting of the Board.

Each committee appointed may (but does not have to) be given all the powers and authorities of the Board. But it may not: adopt, amend or repeal the Condominium

Declaration, these By-Laws or the Rules and Regulations; fill vacancies on the Board, or in any office of the Association, or in any committee; amend or repeal any resolution of the Board unless by its express terms such resolution is made so amendable or repealable; appoint any other committees of the Board or the members of these committees; approve any transaction (a) between the Association and one or more of its Directors; or (b) between the Association and any entity in which one or more of its Directors have a material financial interest; incur any debt or other obligation in excess of \$10,000; take any other action which by the express terms of the Condominium Declaration, these By-Laws, or the Condominium Act must be taken only upon the vote or approval of the Board itself.

Each committee must govern itself in the same manner as the Board is governed by these By-Laws.

Section 2.19. Documents Provided to Board. Each Board member will be supplied with a current version of Chapter 514A, Hawaii Revised Statutes, the Declaration and the By-Laws for the project, at Association expense. (See endnote 13)

Section 2.20. Duty of Directors. Each Board member shall owe the Association a fiduciary duty in the performance of the Board member's responsibilities. (See Endnote 14)

### ARTICLE III

#### OFFICERS

Section 3.01 Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by and, in the case of the President from, the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgement may be necessary. An owner shall not simultaneously act as an officer of the Association and an employee of the Managing Agent employed by the Association. (See endnote 15)

Section 3.02 Election and Term. The officers of the Association shall be elected annually by the Board at its annual meeting and shall hold office at the pleasure of the Board.

Section 3.03 Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board, and his or her successor elected, at any regular meeting of the Board or any special meeting called for such purpose.

Section 3.04 President. The President shall be the chief executive of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board, he or she shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. The President shall also have such other powers and duties as may be provided by these By-Laws or assigned to him or her from time to time by the Board, including, but not limited to, the power to appoint committees from among the Owners from time to time as the President may in his or her discretion decide to be appropriate to assist in the conduct of the affairs of the Association.

Section 3.05 Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice President shall also have such other powers and duties as may be assigned to him or her from time to time by the Board. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act temporarily in the place of the President.

Section 3.06 Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, maintain and keep a minute book wherein resolutions shall be recorded, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary. The duties of the Secretary may be delegated to the Managing Agent.

Section 3.07 Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showings all receipts and disbursements, and for the preparation of all required financial data. The Treasurer shall be responsible for the deposit and custody in the name of the Association of all moneys



and other valuable effects of the Association in such depositories as may be designated by the Board; and he or she shall, in general, perform all the duties incident to the office of Treasurer. The duties of the Treasurer may be delegated to the Managing Agent.

#### ARTICLE IV ADMINISTRATION

Section 4.01 Delegation of Management to the Board. On behalf of the Association, the Board shall at all times administer the affairs of the Association and manage and operate the Condominium in accordance with the Condominium Act, the Condominium Declaration, these By-Laws, and the Rules and Regulations, as the same shall be lawfully amended from time to time, and the Declaration for Joint Use referred to in the Condominium Declaration. If the Regulatory Agreement referred to in the Condominium Declaration is executed by the Declarant, recorded or filed of record in the State of Hawaii, the term "Condominium Declaration" as used herein shall mean and include the Regulatory Agreement. For these purposes, the Board shall have such powers and duties as may be necessary or proper therefor. Said powers and duties shall include all of the powers and duties of the Association, except whereby express provision of the Condominium Act, the Condominium Declaration, or these By-Laws, any such power or duty is to be exercised by the Association at large.

By way of illustration, and not in limitation, the Board shall have the following powers and duties:

- (a) Operation, care, upkeep and maintenance of the common and limited elements;
- (b) Employment, supervision and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements; provided the Association's employees shall not engage in selling or renting apartments in the project except Association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the Association members (See endnote 16);

(c) Purchase, maintenance and replacement of any equipment and provision of utility services required for the common elements;

(d) Provision at each apartment of utility services either at the expense of such apartment or as a common expense as determined by the Board in accordance with the Condominium Declaration and these By-Laws;

(e) Making additions and improvements to or alterations of the Condominium and repairs to and restoration of the Condominium in accordance with the other provisions of the Condominium Declaration and these By-Laws, including, but not limited to, provisions regarding damage or destruction by fire or other casualty or provisions regarding condemnation or eminent domain proceedings;

(f) Maintenance and repair of any apartment if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements (including limited common elements) or any other portion of the buildings and if the Owner or Owners of said apartment shall have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said 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;

(g) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Condominium or any part thereof which may in the opinion of the Board constitute a lien against the Condominium or against the common elements (including limited 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 for the costs incurred by the Board by reason of such lien;

(h) Adoption and amendment of the administrative rules and regulations covering the details of the operation and use of the Condominium.



- (i) Preparation annually of a budget of the common expenses and other charges required for the affairs of the Association (including, without limitation, the operation and maintenance of the Condominium), and determination of the amounts of monthly and special assessments and reserves, and preparation and maintenance of full and accurate books of account and other records and information, and providing or making available the same and giving notices, all in accordance with the provisions of the Condominium Declaration, these By-Laws, and the Condominium Act;
- (j) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Owners;
- (k) Opening bank accounts on behalf of the Association and designating the signatories required therefor and borrowing money for Association purposes;
- (l) Obtaining insurance and bonds for the Condominium as required by, Sections 514A-86, 514A-95, and 514A-95.1 of the law, the Condominium Declaration and these By-Laws (See endnote 19);
- (m) Procuring legal and accounting services necessary or proper for the operation of the Condominium or the interpretation, enforcement or implementation of the Condominium Declaration, these By-laws and any other material documents affecting the Condominium;
- (n) Purchasing any other materials supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and common expenses and other charges which the Association or the Board is required to secure, make or pay pursuant to the Condominium Declaration, these By-Laws or by law, or which in its opinion shall be necessary or proper for the operation of the buildings or the enforcement of the Condominium Declaration or these By-Laws; 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 Owner or Owners of particular apartment(s), the cost thereof shall be specially assessed to such Owner or Owners;

(o) Purchasing or leasing or otherwise acquiring any apartment in the name of the Board or its nominee, corporate or otherwise, on behalf of all Owners;

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

(q) Organizing corporations to act as designees of the Board in acquiring title to or leasing of apartments on behalf of all Owners;

(r) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), and otherwise dealing with apartments acquired by, and subleasing apartments leased by, the Board or its designee, corporate or otherwise, on behalf of all Owners;

(s) Enforcement of the Condominium Declaration, these By-Laws and the Rules and Regulations, as the same may be lawfully amended from time to time, including the establishment of such penalties, fines, charges and additional assessments as it deems appropriate therefor in accordance with the provisions of said documents; and

(t) Enforcement and administration of, including the power to make amendments to, the Declaration for Joint Use referred to in the Condominium Declaration.

Section 4.02 Managing Agent. Except as herein otherwise provided with respect to the initial Managing Agent, the Board shall employ a responsible corporation which meets all the requirements of Section 514A-95 of the law as Managing Agent to manage the Condominium subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 of this Article and such other powers and duties and at such compensation and for such term as the Board may establish; provided, however, that the term of any contract with a Managing Agent may not exceed three (3) years; provided, further, that if the initial Managing Agent is the Declarant or any affiliate of the Declarant within the meaning of Section 514A-84(a) of the Condominium Act, then the contract shall not have a term exceeding one (1) year and shall contain a provision that the contract may be terminated by either party thereto on not more than sixty (60) days' written notice, and in any event any management contract negotiated by the Declarant shall not exceed one (1) year. The Board may in its discretion limit any

of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent. The Declarant has and reserves the power to designate the initial Managing Agent for the Condominium. (See endnote 20)

Section 4.03 Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

Section 4.04 Representation. The President or the Managing Agent, subject to the direction of the Board, shall 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 rights of any Apartment Owners individually to appear, sue or be sued. Service of process on two or more Owners in any such action, suit or proceeding may be made on the President or the Managing Agent.

Section 4.05 Compensation of Officers and Directors; Educational Expenses. No officer or director shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses reasonably incurred in the course of so acting. Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses. The directors may expend association funds, which shall not be deemed to be compensation to them, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include 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 section shall be subject to the requirements of Section 514A-82(b)(10) of the law. (See endnote 21)

Section 4.06 Liability, and Indemnity of the Board of Directors and Officers. The members of the Board and officers shall not be liable to the Owners of any mistake of judgment or otherwise, except for their own individual negligence or willful misconduct. The Association shall (a) obtain and maintain at the Association's expense a policy of directors' and officers' liability insurance covering all directors and officers, in accordance with the Condominium Declaration, and (b) indemnify each director and officer against all costs, expenses and liabilities including the amounts of judgments, amounts paid in compromise settlement and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him or her in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he or she may be involved as a party or otherwise by reason of his or her being or having been such director, or by reason of any past or future action taken or authorized or approved by him or her or any omission to act as such director, whether or not he or she continues to be such director at the time of the incurring or imposition of such costs, except such costs, expenses or liabilities as shall relate to matters as to which he or she shall in such action, suit, or proceeding be finally adjudged to be, or shall be, liable by reason of his or her negligence or willful misconduct toward the Association in the performance of his or her duties as such director or officer. As to whether or not a director or officer was liable by reason of negligence or willful misconduct toward the Association in the performance of his or her duties as such director or officer, in the absence of such final adjudication such liability, the Board and each director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board. The foregoing right of indemnification is not exclusive of other rights to which any such director or officer may be entitled as a matter of law or otherwise, and inures to the benefit of the -heirs, Personal representatives and assigns of each such director and officer.

Section 4.07 Rules and Regulations. The Declarant shall initially and the Board may thereafter from time to time establish and amend such uniform rules and regulations (the 'Rules and Regulations') not inconsistent with the Condominium Declaration, other provisions of these By-Laws, the Declaration for Joint Use referred to in the Condominium

Declaration and the Regulatory Agreements, if any, as the Declarant or the Board, as the case may be, may deem necessary for the management and control of the Condominium and the affairs of the Association. However, before the Board may amend and establish the Rules and Regulations all Apartment Owners shall first be given notice thereof in the same manner as notice is to be given for meetings of the Association's and an opportunity to be heard thereon. The Board shall include in the Rules and Regulations provisions dealing with those subjects that in other sections of these By-Laws, are referred to as required to be stated or contained in the Rules and Regulations. Each Owner and other person and occupant having any interest in the Condominium shall take such interest in all respects subject to the Rules and Regulations, which shall for this purpose be deemed to be a part hereof ; and each Owner and such other person and occupant shall abide by all the Rules and Regulations, as the same now are or may from time to time be amended, and shall see that the same are faithfully observed by his or her invitees, guests, employees and undertenants.

Section 4.08 Enforcement Generally. (a) The Board shall have the full power and authority to enforce compliance with the Condominium Act, the rules and regulations of the Real Estate Commission of the State of Hawaii ("REC") regarding Condominiums, the Condominium Declaration (which shall mean and include the Regulatory Agreement if executed and duly recorded or filed of record in the State of Hawaii), these By-Laws, and the Rules and Regulations, as the same may be amended from time to time (in this Section collectively called the "governing law and documents"), in any manner provided for herein or by law or in equity.

(b) Without limiting the generality of part (a) of this Section, and in addition to the specific powers stated in [of] the Condominium Declaration and these By-Laws with respect to default in the payment of assessments, for any violation of the governing law and documents the Board shall have the following cumulative rights: (a) to bring a suit for damages; (b) to bring a suit for specific enforcement thereof; (c) to suspend the privileges of the Owner as a member of the Association; (d) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any violation;



or (e) to fine the Owner, in accordance with such reasonable provisions as are from time to time stated in the Rules and Regulations or elsewhere in these By-Laws. (See endnote 22)

(c) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collection any delinquent assessments against any Owner's apartment; (ii) foreclosing any lien thereon, (iii) enforcing any provision of the governing law or documents, or (iv) the rules and regulations of REC, against an Owner, occupant, tenant, employee of an Owner, or any person who may in any manner use the Condominium 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.

If any claim by an Owner is substantiated in any action against an Association, any of its officers or directors, or the Board to enforce any provision of the governing law or documents, then all reasonable and necessary expenses, costs and attorneys' fees incurred by an Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless: (1) the Owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or (2) the Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless. If any claim by an Owner is not substantiated in any court action against the Association, any of its officers or directors, or its Board to enforce any provision of the Declaration, By-Laws, House Rules, or the law, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an Association shall be awarded to the Association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under part VII of the Condominium Act, and made a good faith effort to resolve the dispute under any of those procedures. (See endnote 23)

(d) The Board shall give a defaulting Owner notice and an opportunity to appear at a hearing before the Board and state any reasons he or she has against a suspension or fine, unless the suspension or fine is due to the Owner's failure to pay regular or special assessments or to pay for late charges, interest, attorney's fees and other collection costs on such assessments. The notice must be in writing and must state: the purpose of the hearing; the reasons for the suspension or fine; and the place and date of the hearing. Said notice must be deposited in the U. S. mail, addressed to the Owner in default at least twenty-five (25) days before the scheduled hearing date. The Board's decision made after the hearing will be final, whether or not the defaulting Owner attends. The Board must give written notice of its decision to the defaulting Owner, which decision shall become effective within four (4) days after it is deposited in the U.S. mail addressed to the defaulting Owner.

(e) The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the provisions of the governing law and documents, or to exercise any right or option provided for therein, or to serve any notice or to institute any action or summary proceeding, shall not be construed as a waiver or a relinquishment of such provision, right, option or action. Instead, each such provision, right, option or action shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner, with or without knowledge by the Board of the breach of any provision of the governing law and documents, shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision thereof shall otherwise 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. The foregoing shall apply without regard to the number of violations which may occur with[out] or without action to enforce the applicable provision of the governing law and documents. (See endnote 24)

Section 4.09 Right of Access. Each Owner and occupant hereby grants a right of access to his or her apartment to the Manager and/or Managing Agent and/or any other person authorized by the Board, the resident manager or the Managing Agent, for the

purpose of making inspections or for the purpose of correcting any condition originating in his or her apartment and threatening another apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or other common elements in his or her apartment or elsewhere in the building; provided that requests for entry are made in writing in advance and that any such entry is at a time reasonably convenient to the Owner or occupant. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately whether the Owner or occupant is present at the time or not. (See endnote 25)

Section 4.10 Books of Account. (a) The Board will maintain or cause to be maintained by the Managing Agent, in accordance with recognized accounting practices, books of account of the common and other expenses, in which shall be kept detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board shall also keep or cause to be kept by the Managing Agent monthly statements indicating the total dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing the payments, and statements, shall be kept and maintained at the address of the Condominium, or elsewhere within the State as determined by the Board, and shall be available for examination by Owners at convenient hours of week days. However, each director shall have the absolute right at any reasonable time to inspect all such books and records (and all other records and documents of the Association) and all properties controlled by the Association. This right of each director includes the right to make extracts and copies.

(b) The Board must give each Owner a copy of each budget and supplemental budget (including a schedule of assessments) and an annual financial statement. The budget shall be sent to each Owner as the Board shall direct, and if practical each year's budget shall be sent at least 30 days before the annual meeting of the Association. But the budget for the first fiscal year need not be sent out. The annual financial statement shall also be sent out as the Board shall direct, and if practical at least 30 days before the



annual meeting of the Association. It must include at least a statement, determined on a cash basis, of all receipts and expenditures and a statement of all Association funds and other assets, including without limitation all reserve accounts.

(c) The Association shall also make available records as required by the Condominium Act, including but not limited to Sections 514A-82.2, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, and 514A-85. (See endnote 26)

Section 4.11 Audit. The Association shall require a yearly verification of the Association's cash balance and no less than one yearly unannounced verification of the Association's cash balance by a certified public accountant; provided that the yearly unannounced cash balance verification may be waived by a majority vote of all members taken at an Association meeting. The Association shall provide owners with a copy of the annual audit report as required by Section 514A-96 of the law (See endnote 27)

Section 4.12 Additional Inspection Rights. During normal business hours or under other reasonable circumstances, the Association shall have or make available for inspection by Owners, any prospective purchasers of an apartment, and to any mortgagee of an apartment (or insurer or guarantor of a mortgage) current copies of the Condominium Declaration, By-Laws, the Rules and Regulations for the Condominium, the books and records, and financial statements of the Association, including the most recent annual audited financial statement, if such is prepared.

Section 4.13 Fidelity Bonds; Additional Provisions Regarding Insurance. (a) In accordance with Sections 514A-95 and 514A-95.1 of the law, the Board shall require that all directors, officers, employees and agents of the Association and the managing agent, its directors, officers, employees and agents, and all other persons handling or responsible for funds of or administered on behalf of the Association, shall furnish adequate fidelity bonds. The Association shall be the named insured and the premiums on such bonds, except those maintained by the Managing Agent, shall be paid by the Association. Every bond shall:

(1) 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;

(2) provide that the bond(s) applies to this Condominium alone and not any other project;

(3) contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar terms, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered; and

(4) be for a sum not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Managing Agent, at any given time during the term of the bond(s), provided however, in no event may the aggregate amount of the bond(s) be less than a sum equal to three (3) months' aggregate assessments on all units, plus all reserve funds. (See endnote 28)

(b) Additional Insurance: The Board shall review at least annually the adequacy of the insurance program for the Condominium. The Board may obtain insurance against such additional risks as the Board may deem appropriate for the protection of the Owners. All insurance procured shall be without prejudice to the right of the Owners to insure their respective apartments and the contents thereof for their own benefit at their own expense.

Section 4.14 Association May Incorporate. All of the rights, powers, obligations and duties of the Association imposed under the Condominium Act, the Condominium Declaration and these By-Laws may be exercised and enforced by a non-profit membership corporation formed under the laws of the State of Hawaii for such purposes. Said corporation shall be formed upon the vote or written approval of a majority of Owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth in the Condominium Act, the Condominium Declaration, including the Regulatory Agreement if executed and duly recorded or filed of records and these By-Laws; and the Articles and By-Laws of said corporation shall be subordinated hereto and controlled hereby in the event of any conflict. Any action taken by said corporation which is in violation of any of the terms, covenants or conditions set forth in the Condominium Act, the

Condominium Declaration, including the Regulatory Agreement as aforesaid, and these By-Laws shall be void and of no effect.

## ARTICLE V

### MAINTENANCE, ALTERATION AND USE OF THE CONDOMINIUM

Section 5.01 Maintenance of Apartments and Limited Common Elements. Every Owner shall at his or her own expense at all times well and substantially repair, maintain, amend and keep his or her apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceiling of such apartment and all limited common elements appurtenant thereto, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his or her failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board or the Managing Agent. Every Owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such Owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Condominium when discovered. All costs of maintenance, repair, replacement, additions and improvements to any limited common element shall be charged to the Owner or Owners of the apartments to which such limited common element is appurtenant in accordance with the provisions of the Condominium Declaration and Article VI of these By-Laws.

Section 5.02 Maintenance and Repair of Common elements (Excluding Limited Common Elements). All maintenance, repair, 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 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 Owner shall be charged to such Owner as a special assessment.

Section 5.03 Use of Condominium.

(a) All apartments of the Condominium shall be used only for such purposes as stated in the Condominium Declaration.

(b) The common elements of the Condominium shall be used only for their respective purposes as designed, subject to the provisions of Section 514A-13(d) of the Condominium Act, as the same may be amended from time to time.

(c) No Owner or occupant shall suffer anything to be done or kept in his or her apartment or elsewhere which will jeopardize the soundness or safety of the buildings of the Condominium, or which will be noxious or offensive or will interfere with or unreasonably disturb the rights of other Owners and occupants, or which will increase the rate or result in the cancellation of fire insurance on the buildings or the contents thereof or which will reduce the value of the buildings.

(d) No fires, including barbecuing, shall be allowed in any part of any apartment or common element, except that barbecuing is permitted on lanais, in private patio or yard areas, and in such portions of the common elements as the Board may designate from time to time by resolution or in the Rules and Regulations. Barbecuing shall include, but shall not be limited to, the broiling of any food items over a charcoal fire, gas grill or on an electrical grill.

(e) Every Owner and occupant shall at all times keep his or her 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 applicable to the use of the Condominium.

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

(g) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Condominium except that dogs, cats and other household pets in reasonable number may be kept by the Owners and occupants in their respective residential apartments, but shall not be kept, bred or used therein for any commercial purpose, nor allowed on any common elements except in transit when carried or on leash; provided, however, that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the Condominium shall be permanently removed therefrom promptly upon notice given by the Board or Managing Agent. Owners shall be responsible for the immediate and proper disposal of all fecal matter of their pets. (See endnote 29)

(h) No Owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his or her apartment, any limited common elements appurtenant thereto or any other part of the Condominium, nor alter or remove any furniture, furnishings or equipment of the common elements.

(i) The Owner or occupant of any apartment will not, without the prior written consent of the Board or in accordance with the Rules and Regulations, if applicable provisions are stated therein, display any sign or place any other thing in or upon any door, window, wall or other portion of the apartment or common elements, so as to be visible from the exterior.

(j) No Owner or occupant shall decorate or landscape any entrance, planting area, lanai, landing or stairway or other limited common element appurtenant to his or her apartment except in accordance with applicable provisions, if any, in the Rules and Regulations, or with specific plans approved first in writing by the Board,

(k) No garments, rugs or other objects shall be hung from the windows or facades of the Condominium. No rugs or other objects shall be dusted or shaken from the windows of the Condominium or cleaned by beating or sweeping onto any exterior part of the Condominium. No refuse, garbage or trash of any kind shall be thrown, placed or kept

on any common elements of the Condominium outside of the disposal facilities provided for such purposes.

(l) No Owner or occupant shall, without the written approval of the board or in accordance with the Rules and Regulations, if applicable provisions are stated therein, install any wiring for electrical installations, television antenna, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of the Condominium or protruding through the walls, windows or roof thereof. (See endnote 30)

(m) No Owner or occupant shall place, store or maintain in the landings, stairways, walkways, sidewalks, parking areas, driveways, roads, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(n) Each Owner and occupant shall be responsible for the care and maintenance of any lanais and limited common elements which are included in his or her apartment. However, no Owner may paint or otherwise decorate his or her lanais or limited common elements without prior approval by the Board or in accordance with the Rules and Regulations, if applicable provisions are stated therein. It is intended that the exterior of the buildings shall present a uniform appearance, and to effect that end, the Owners hereby agree that the Board may require the painting or repair of each lanai, exterior limited common elements, outside doors, windows, trim, fences, stairways, landings, railings and other exterior portions of the buildings and regulate the type and color of paint to be used. The Board is authorized to contract for said painting and repair and to make payment therefor out of a maintenance fund, subject to direct charges for negligence, misuse or neglect as provided hereinabove. No awnings, shades, jalousies or other device shall be erected or placed on the lanais or limited common elements so as to be visible from the exterior without prior written permission from the Board or in accordance with the Rules and Regulations, if applicable provisions are stated therein.

(o) No Owner or occupant shall permit any person who has not obtained the age of majority and who is residing or visiting with him or her to loiter or play in any common areas of the Condominium which the Board may designate as a non-play area.

#### Section 5.04 Alteration of the Condominium.

(a) Additions, alterations, repairs or improvements to the common or limited common elements of the Condominium may be made only by or at the direction of the Board. No Owner of an apartment may make, except with the prior written permission of the Board, or in accordance with the Rules and Regulations, if applicable provisions are stated therein, any alteration, addition, repair or improvement (1) to his or her apartment which may affect the common elements or change the exterior appearance of the buildings, or (2) to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his or her apartment. Nothing herein is intended to or shall be deemed to relieve any Owner of the responsibility for the limited common elements appurtenant to his or her apartment, as elsewhere provided in the By-Laws or in the Condominium Declaration. (See endnote 31)

(b) Whenever in the judgment of the Board, the common or limited common elements shall require additions, alterations, repairs or improvements with a total cost of less than Twenty-Five Thousand Dollars (\$25,000), the Board may proceed with such additions, alteration, repairs or improvements and shall assess the cost thereof as a common expenses, except that the cost of any such work performed on any limited common elements shall be charged to the Owners of apartments to which such limited common elements are appurtenant. Any additions, alterations, repairs or improvements costing in excess of Twenty-Five Thousand Dollars (\$25,000) may be made by the Board only after obtaining approval of the Owners of seventy-five percent (75%) of the interests in the common elements; except that such approval shall not be required for any additions, alterations or improvements required by law or in the event of an emergency threatening immediate and substantial damage to person or property. If such approval shall be obtained, the cost thereof shall constitute part of the common expense. (See endnote 32)

(c) Unless otherwise prohibited or conditioned by the provisions of the Condominium Declaration, or these By-Laws or the Condominium Act, an Apartment Owner may make additions, alterations or improvements solely within his or her apartment or within a limited common element appurtenant to and for the exclusive use of his or her



apartment at his or her sole cost and expense.

(d) No Owner shall do any work to his or her Apartment which could jeopardize the soundness or safety of any part of the Condominium, reduce the value thereof, or impair any easement or hereditament, nor may any Owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of seventy-five percent (75%) of the Owners being first obtained, together with the consent of all Owners whose apartments or limited common elements appurtenant thereto are directly affected. However, the installation of solar energy devices as defined by section 468B-1, Hawaii Revised Statutes, or material additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the Board. The Board shall not unreasonably withhold or delay its approval, and shall have the obligation to answer any written request by an Owner for its consent within thirty (30) days after its receipt of such a request describing the proposed alteration in reasonable detail.

Section 5.04.1. Alterations by Disabled Occupants Regardless of anything to the contrary in this Declaration, the By-Laws, or the House Rules, disabled occupants shall: be permitted to make reasonable modifications to their apartments and/or the common elements, at their expense, if the modifications are necessary to enable them to use and enjoy their apartments and/or the common elements; provided that any disabled occupant wishing to make modifications or to obtain an exemption first submits a written request to the Board, and the Board consents in writing to the request. The request must state in detail the nature of the request and the reason that the disabled occupant needs to make modifications or to be granted an exemption. The Board shall not unreasonably withhold or delay its consent to the request, and any request shall be deemed to be granted if the Board does not respond in writing, within forty-five (45) days of the Board's receipt of the request. The Board may condition its consent upon the disabled occupant complying with the following conditions:

1. The disabled occupant must provide plans and specifications, including detailed plot plans, if requested, at the disabled occupant's expense;



2. The disabled occupant must agree to, if necessary, submit the plans and specifications to an engineer or other expert selected by the board for review and approval, at the disabled occupant's expense;

3. The disabled occupant must agree to, if necessary, an inspection of the proposed additions or alterations during the course of construction and/or following completion of construction, by an engineer or other expert selected by the Board at the disabled occupant's expense;

4. The disabled occupant must strictly comply with all applicable laws, ordinances, and regulations of any governmental entity; and

5. The disabled occupant must obtain any necessary building permits, at the disabled occupant's expense. (See endnote 33)

Section 5.05 Interpretation. The provisions of Article V of these By-Laws and of each section therein are, together with similar provisions in the Condominium Declaration, intended to be cumulative, such that all Owners and occupants are required to comply with each and every such provision. If there is a conflict in this regard between the Condominium Declaration and Article V, the Condominium Declaration shall control.

## ARTICLE VI

### BUDGETING FOR AND COLLECTING COMMON AND OTHER EXPENSES

Section 6.01 Budget for Common Expenses. Before the start of each fiscal year of the Association, the Board shall prepare or cause to be prepared an estimate of common expenses. Upon review and approval by the Board, said estimate, with any changes the Board may make, shall become the budget of common expenses for that year. The Board must budget for a working capital fund and maintenance reserves in accordance with applicable provisions in the Condominium Declaration, including the Regulatory Agreement, if any, executed and duly recorded or filed of record in the State of Hawaii. The common expenses shall also include such amounts as the Board may deem

appropriate to make up any deficiency for any prior year. In the event of a surplus from the prior year, the surplus funds must be budgeted for and used to pay common expenses in the next year. Regular assessments to the Owners shall be based on the budget.

The Board may, but is not required to, adjust the budget during any year in the event of surplus funds or projected surplus funds. But no Owner will have the right, because of any adjustment in the budget, to a refund of any assessment already paid, or not to pay any assessment due but unpaid.

Section 6.02 Resolution Regarding Surplus Funds. At the annual meeting each year, the Association shall adopt a resolution that the surplus funds collected from the Owners for common expenses but left over after the end of the previous year shall be used to pay common expenses, excluding any capital improvements, in the next year. For this purpose, each Owner irrevocably appoints the President his proxy and attorney-in-fact to adopt such a resolution.

Section 6.03 Supplemental Budget. If for any reason, including but not limited to an item of expense not provided for in the budget or in any maintenance reserve fund or the nonpayment of any assessments, the Board does not have or projects that it will not have sufficient funds from the Owners to pay common expenses on a current basis, the Board shall prepare or cause to be prepared a revision of the estimate of common expenses for that year. Upon review and approval by the Board, the increased amounts of such revision shall, be established as a supplemental budget for that year. A supplemental budget may be established as many times each year as needed. Special assessments to the Owners shall be based on the supplemental budget.

Section 6.04 Notice of Increase in Maintenance Fees. The Board shall send, or have the Managing Agent send, to all Owners thereby affected written notice of any increase in the common expenses or of any special assessment for common expenses at least thirty (30) days before the effective date of such increase or assessment.

Section 6.05 An Owner's Obligations. The Owner of each apartment shall be liable for and shall pay a share of the common expenses in proportion to his or her interest in the common elements appurtenant to his or her apartment, or in the case of limited common

elements in the proportion otherwise provided in these By-Laws and the Condominium Declaration, and regular assessments and special assessments arising from any supplemental budget shall be charged to each Owner accordingly. Each Owner, including the Declarant as and to the extent provided for in Section 514A-15(b), Hawaii Revised Statutes, shall be liable for common expenses as of the time the certificate of occupancy relating to his or her apartment is issued by the appropriate county agency. Each Owner shall also be liable for and shall pay all other amounts chargeable to him or her in accordance with the Condominium Act, the Condominium Declaration and these By-Laws, and all of such amounts shall be charged to such Owner as a special assessment.

**Section 6.05.1. Owners May Not Withhold Assessments.**

(a) No Owner shall withhold any assessment claimed by the Association. An Owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, an Owner has no right to withhold assessments for any reason;
- (5) That an Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the Owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the Owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an Owner to the protection of all fair debt collection procedures mandated under federal and State law.

(b) An Owner who pays an Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of the Condominium Act; provided that an Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Owner pays all Association assessments within thirty days of the date of suspension, the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed. (See endnote 34)

Section 6.06 Land Trust. (a) In the event title to any apartment and its appurtenant common interest 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 trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay, all common expenses and all other charges, costs and expenses assessed against such apartment or the owner thereof pursuant to the Declaration, these By-Laws, the Rules and Regulations (House Rules) or the Condominium Property Act.

(b) No claim for payment of common expenses or other charges, costs or expenses shall be made against any such trustee personally and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the apartment as provided in the Declaration, these By-Laws and the Horizontal Property Act,

notwithstanding any transfer of beneficial interest under such trust.

Section 6.07 Due Date of Assessments. Regular and a special assessments of common expenses shall be payable in monthly installments, unless otherwise determined by the Board, on the first day of each month, commencing with respect to each apartment on the first day of the first month following the issuance by the appropriate county agency of a certificate of occupancy for such apartment. The first regular installment of common expenses shall be prorated for each apartment from the date of issuance of such certificate of occupancy. Special assessments for common expenses may be made payable in a lump sum or in installments, as the Board shall determine. Special assessments for other charges to an Owner shall be due on the date the next regular assessment is due or on demand or such other date as the Board shall determine.

Section 6.08 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.

However, each Owner shall be obligated to pay, as a common expense, his or her share of any portion of taxes or assessments which are assessed against the entire Condominium or any part of the common elements as a whole and not separately or which, in the opinion of the Board, may be a lien on the entire Condominium or any part of the common elements.

Section 6.09 Default In Payment of Assessments. Each regular 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 is assessed and, in

the case of an apartment owned by more than one person, shall be the joint and general obligation of such Co-Owners. Any assessment not paid within fifteen (15) days after the due date thereof shall be subject to a late charge as may from time to time be established in the Rules and Regulations, but not in excess of \$30.00, to defray the additional costs to the Association, and shall accrue interest at the rate of twelve percent (12%) per annum from such due date until paid.

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 may have, the Board 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 a quorum of the Board at a regular or special meeting hereof, and any such suit may be instituted by any one member of the Board or by the Manager if the latter is so authorized in writing. Each such action shall be brought in the name of the Board, and the Board shall be deemed to be acting on behalf of all the Owners. 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 hereof, 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 such mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may file a claim of lien against the apartment of such delinquent Owner. 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 By-Laws and the Condominium 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 collection, 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, or by the Managing Agent and shall be dated as of the date of such execution. Upon recordation or filing of record in the State of Hawaii of a duly executed original or copy of such claim of lien, the Board shall have all the remedies as provided in Section 514A-90, Hawaii Revised Statutes, as amended, and otherwise by law. Said remedies include, but are not limited to, foreclosure of said lien in a like manner as to the foreclosure of a mortgage of real property, including foreclosure under power of sale, as provided for in Chapter 667, Hawaii Revised Statutes, and otherwise by law. 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. (See endnote 35)

(c) If the Owner at any time rents or leases his or her apartment and defaults for a period of thirty (30) days or more in the payment of any assessment, the Board may, so long as such default continues, demand and receive from any renter or lessee (hereinafter in this subparagraph referred to as "lessee") of the Owner occupying the apartment the rent due or becoming due from such lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, including interests and cost of enforcement if any. Any such payment of such rent to the Board by the lessee shall be a full and sufficient discharge of such lessee as between such lessee and the Owner to the extent of the amount so paid, but no such demand or acceptance of rent from any lessee 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. The lessee 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. However, 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. (See endnote 36)

Section 6.10 Certificate of Unpaid Assessments. A certificate regarding unpaid assessments executed and acknowledged or made under penalty of perjury by any two members of the Board or the Managing Agent shall be conclusive upon the Board and the Association in favor of any and all persons, as stated therein, who rely thereon in good faith as to the matters therein contained, except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the 30 day period immediately preceding the date of such statement. Any Owner (and his or her mortgagee or any purchaser of an interest in his or her apartment) shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his or her 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 as stated from time to time in the Rules and Regulations, but not to exceed thirty dollars (\$30.00). If any claim of lien is recorded 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 said a reasonable fee as stated from time to time in the Rules and Regulations, but not to exceed thirty dollars (\$30.00), the Board, acting by any two members, 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 book and page where such lien is recorded and that the lien is fully satisfied, released and discharged.

## ARTICLE VII

### MORTGAGES AND MORTGAGEES

Section 7.01 Notice to Board of Directors. Any Apartment Owner who mortgages his or her interest in an apartment shall notify the Association of the name and address of his or her mortgagee and shall file a conformed copy of the mortgage with the Association within ten (10) days after the execution of the same. The Association shall maintain such

information in a book entitled "Mortgages of Apartments".

Section 7.02 Notice of Unpaid Common Expenses. The Association, whenever so requested in writing by an Owner or mortgagee of an apartment, shall promptly report any then unpaid assessments or common expenses due from the Apartment Owner involved, and if no request is made then notice shall be given as provided in Section 7.05(e)(vii).

Section 7.03 Notice of Default. The Board, when giving notice to an Apartment Owner of a default in paying common expenses or any other default in performance of any obligation under the Condominium Declaration, By-Laws, Rules and Regulations or other document of the Association, shall send a copy of such notice to each mortgagee of such apartment whose name and address has theretofore been furnished to the Association.

Section 7.04 Examination of Books. Each mortgagee of an apartment shall be permitted to examine the books of account and records 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.

Section 7.05 Mortgage Protection. Notwithstanding any other provision contained in these By-Laws or the Condominium Declaration:

(a) The liens in favor of the Association on any apartment and its appurtenant interest in the common elements created by the Condominium Declaration, these By-Laws or the Condominium Act, as amended, shall be subject and subordinate to the rights of the holder of any indebtedness secured by any recorded mortgage under such interest, made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed to such apartment if falling due after the date of such foreclosure sale.

(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 apartment units and not to the Condominium as a whole.

(c) The Condominium Declaration and By-Laws shall not give an Apartment Owner priority over any rights of first mortgagees 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 and/or common elements.

(d) No amendment to this Article VII shall affect the rights of the holder of any first mortgage filed in the Bureau of Conveyances, State of Hawaii, or the Office of the Assistant Registrar of the Land Court, State of Hawaii, who does not join in the execution thereof if such mortgage was filed prior to the filing of such amendment.

(e) Any holder, insurer or guarantor of a first mortgage of an apartment or of an apartment lease or condominium conveyance document covering the same whose interest appears in the record of ownership or who has otherwise delivered a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the apartment number) shall be entitled to:

(i) Prior written notice of any proposed amendment to the Condominium Declaration or these By-Laws affecting a change in (1) the boundaries of an apartment, (2) the common interest pertaining to the apartment, or (3) the purposes to which the apartment, the limited common elements appurtenant thereto or the common elements are restricted;

(ii) Prior written notice of any proposed termination of the Condominium.

(iii) Timely written notice of any actual or threatened condemnation or eminent domain proceeding affecting the Condominium or any portion thereof;

(iv) Timely written notice of any significant damage or destruction to the common elements;

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

(vi) 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;

(vii) Notice of any default of the apartment owner which is not cured within sixty (60) days;

(viii) Upon request therefor, a statement of any then unpaid assessments for common expenses due from the Owner of the apartment involved;

(ix) A copy of all pleadings filed in any lawsuit, administrative proceedings, or other action affecting the project or any portion thereof, at such person's expense and specific written request; and

(x) 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 purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer with the meaning of this clause).

Provided, however, this subsection (e) shall not apply to any actions to be taken pursuant to paragraph 19 of the Condominium Declaration regarding merger of phases.

(f) Unless at least seventy-five percent (75%) of the Apartment Owners have given their prior written approval, or such higher percentage as otherwise provided by these By-Laws, the Condominium Declaration or the Condominium Act, and the approval by the eligible holders of first mortgages on apartments to which at least fifty-one percent (51%) of the votes of apartments subject to mortgages held by such eligible holders are allocated is obtained, the Association shall not be entitled to:

- (i) by act or omission, seek to abandon or terminate the project;
- (ii) change the common interest appurtenant to any individual apartment;
- (iii) partition or subdivide any apartment;

(iv) 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):

(v) use condemnation proceeds or 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 same.

(vi) materially amend any provision of the Condominium Declaration or By-Laws or to add material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the common elements;
- (4) Insurance or Fidelity Bonds;
- (5) Right to use of the common elements;
- (6) Responsibility for maintenance and repair of the several portions of the Condominium;
- (7) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (8) Boundaries of any unit;
- (9) The interests in the general or limited common elements;
- (10) Convertibility of units into common elements or of common elements into units;
- (11) Leasing of units;
- (12) Imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her unit



in the Condominium;

(13) Establishment of self-management by the Association;

Provided, however, this subsection (f) shall not apply to any actions taken pursuant to paragraph 19 of the Condominium Declaration regarding merger of phases.

Section 7.06 Right of First Refusal Not Applicable. In the event that there shall be any right of first refusal to purchase any apartment by the Association, any first mortgagee who obtains title to an apartment pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage or assignment of apartment lease or deed in lieu of foreclosure, shall be exempt from such "right of first refusal".

Section 7.07 Unpaid Common Expenses or Assessments. Any first mortgagee who obtains title to the apartment pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for such apartment's unpaid common expenses and assessments which accrue prior to the acquisition of title to such unit by the mortgagee. The unpaid share of common expenses or assessments shall be deemed to be collectible from all of the apartment owners, including the acquirer of such apartment, his or her successors and assigns.

Section 7.08 Release of Information. The Board may provide any information available to it pertaining to an apartment or the Condominium to the first mortgagee of such apartment and such mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

Section 7.09 Eligible Holders, Etc. As used in these By-Laws, an "eligible holder, insurer or guarantor" shall mean a holder, insurer or governmental guarantor of a first mortgage on an apartment which has requested notice in accordance with Article VII, Section 7.05(e) of these By-Laws.

## ARTICLE VIII

### GENERAL AND MISCELLANEOUS PROVISION

Section 8.01 Amendment. Except as otherwise provided in the Condominium Declaration or elsewhere herein, these By-Laws may be modified or amended in any

respect not inconsistent with provisions of law or the Condominium Declaration by vote or written consent of not less than sixty-five percent (65%) of the Owners at any meeting of the Association duly called for such purpose. Such modification or amendment shall be effective only when set forth in an amendment to the By-Laws duly recorded. Provided, however, that: any proposed bylaws with the rationale for the proposal may be submitted by the Board or by a volunteer Apartment Owner's committee. If submitted by that committee, the proposed bylaw shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on the proposed bylaws shall be mailed by the Board to the Owners at the expense of the Association for vote or written consent without charge within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed By-Law shall not be less than sixty-five percent (65%) of all Apartment Owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the By-Law is duly adopted, then the Board shall cause the By-Law amendment to be recorded in the Bureau of Conveyances or filed in the Land Court, as the case may be. The volunteer Apartment Owners' committee shall be precluded from submitting a petition for a proposed By-Law which is substantially similar to that which has been previously mailed to the Owners within one year after the original petition was submitted to the Board. This subsection shall not preclude any Apartment Owner or voluntary Apartment Owners' committee from proposing any By-Law amendment at any annual Association meeting. (See endnote 37)

Section 8.02 Subordination and Conflicts. These By-Laws are subordinate and subject to all the provisions of the Condominium Declaration and any amendments thereto. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Condominium Declaration. These By-Laws are set forth to comply with the requirements of the Condominium Act. In case any of these By-Laws conflict with the provisions of the Condominium Act or of the Condominium Declaration, the Condominium Act or the Condominium Declaration, as the case may be, shall control.

Section 8.03 Interpretation. The provisions of these By-Laws shall be liberally construed to effectuate the purpose of creating a uniform condominium residential complex whereby the Association shall carry out and pay for the operation and maintenance of the Condominium as a mutually beneficial and efficient establishment; provided, nothing in these By-Laws shall be deemed or construed to authorize the Association or Board to conduct or engage in any active business for profit on behalf of any or all of the Owners.

Section 8.04 Severability. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

Section 8.05 Notices. Except as may otherwise be required by any other provision of these By-Laws or by the Condominium Act or Condominium Declaration: All notices hereunder to the Association or the Board shall be sent by registered or certified mail to the Board, c/o the Managing Agent, or if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time, by notice in writing to all Owners and to all mortgagees of apartments whose names and addresses are listed with the Association. All notices to any Owner shall be in writing and may be personally delivered to such Owner, or sent to the building in which his apartment is located or to such other address as may have been designated by him from time to time, in writing, to the Board. All notices to mortgagees of apartments shall be sent to their respective addresses, as designated by them from time to time in writing to the Board. All notices shall be deemed to have been given when personally delivered or four (4) days after they are mailed, except notices of change of address which shall be deemed to have been given when received.

Section 8.06 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, modify, enlarge, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 8.07 Gender and Number. The use of any gender in these By-Laws shall be deemed to include either or all of the other genders, and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 8.08 Application. All present and future Owners, mortgagees, tenants and occupants of apartments and their employees, and any other persons who may have any interest in or use of any portion of the Condominium in any manner are subject to these By-Laws, the Condominium Declaration, the Regulatory Agreement, Rules and Regulations and the Condominium Act. The acceptance of any such interest or any occupancy or use of an apartment or any other part of the Condominium shall constitute the agreement of each such person that these By-Laws, the Condominium Declaration, the Regulatory Agreement, Rules and Regulations and the Condominium Act are accepted, ratified, and will be complied with.

Section 8.09. Discrimination Prohibited. The Association shall not engage in any prohibited discrimination. The apartment owners adopt the following provisions to implement that policy, which shall apply regardless of any contrary requirement in the Association documents:

(a) In granting or withholding any approval or consent required under the Association documents, the Board of Directors shall avoid any prohibited discrimination.

(b) In enforcing any requirement of the Association documents, the Board shall avoid any prohibited discrimination against children, particularly in evaluating any request relating to occupancy restrictions or leasing or renting any apartment located in the Project.

(c) The Board may suspend any requirement of the Association documents which, if enforced, would result in prohibited discrimination. If the Board suspends any requirement which can be amended only with apartment owner approval, the Board shall amend only with apartment owner approval, the Board shall propose the amendment or deletion of the requirement at the next meeting of the apartment owners, whether annual or special. The Board or the apartment owners may call a special meeting of the apartment owners for that purpose, in compliance with the By-Laws.

(d) A disabled occupant of the Project may keep a certified guide dog, signal dog, or other animal required because of the occupant's disability. If such an animal causes a nuisance, the occupant will be given a reasonable opportunity to resolve the problem by measures which fall short of removing the animal from the Project. If the Board determines those measures have been unsuccessful, it may require removal of the animal. If the Board requires removal, the occupant will be allowed reasonable time to obtain a suitable substitute animal. During that time, the animal creating the nuisance will be allowed to remain on the Project, provided its continued presence does not create an unreasonable imposition on any other occupant. In addition, a disabled guest of an apartment owner or occupant may bring a certified guide dog, signal dog, or other animal required for assistance onto the Project, provided the animal does not cause a nuisance or unreasonable disturbance.

(e) At their own expense, disabled occupants may: (i) make reasonable modifications to an apartment or the common areas; and (ii) have reasonable exemptions from requirements of the Association documents, to enable the occupants to have full use and enjoyment of the Project. A disabled occupant requiring a modification or exemption shall submit a written request to the Board specifying the nature of the request and why it is necessary. The Board shall not unreasonably withhold or delay its consent to the request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days after the Board receives it.

As used in this section: "Prohibited discrimination" means any discrimination prohibited by any Federal or State law or any ordinance of the City and County of Honolulu. "Association documents" means the Declaration, By-Laws, House Rules, or any other documents of the Association. (See Endnote 38)

IN WITNESS WHEREOF, the undersigned have executed this instrument  
on this 28<sup>th</sup> day of September, 2000.

ASSOCIATION OF APARTMENT OWNERS  
OF THE CLIFFSIDE VILLAGES AT WAIPIO,  
INC.

By

Its

By

Its

VICE PRESIDENT



STATE OF HAWAII

COUNTY AND COUNTY OF HONOLULU

)  
) ss.  
)

On this 28<sup>th</sup> day of September, 2000, before me appeared Bryan Clyme, to me personally known, who being by me duly sworn, did say that he/she is the President of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC., an incorporated association, that said Association has no seal, and that said instrument was executed on behalf of said Association by authority of its Board of Directors and said officer acknowledged that he/she executed said instrument as his/her free act and deed of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC.

Notary Public, State of Hawaii

Print Name: Doni A. Floerke-Politsch

My commission expires: 7/19/01

STATE OF HAWAII

COUNTY AND COUNTY OF HONOLULU

)  
) ss.  
)

On this 28<sup>th</sup> day of September, 2000, before me appeared David S. Midence, to me personally known, who being by me duly sworn, did say that he/she is the Vice President of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC., an incorporated association, that said Association has no seal, and that said instrument was executed on behalf of said Association by authority of its Board of Directors and said officer acknowledged that he/she executed said instrument as his/her free act and deed of the ASSOCIATION OF APARTMENT OWNERS OF THE CLIFFSIDE VILLAGES AT WAIPIO, INC.

Notary Public, State of Hawaii

Print Name: Doni A. Floerke-Politsch

My commission expires: 7/19/01

## ENDNOTES

The following endnotes correspond to provisions in the By-Laws which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the By-Laws. These Restated By-Laws correctly state without change the corresponding provisions of the original By-Laws, as amended, and supersede the original By-Laws and all prior amendments thereto. This Restatement was made solely for the purpose of information and convenience. In the event of a conflict, the Restated By-Laws shall be subordinate to the cited statute.

1. Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes ("HRS"). Therefore, throughout this restatement, references to the previous usage have been amended to reflect present terminology.
2. Section 1.08 (c) has been amended to conform to Section 514A-83.2, HRS, which states: (i) formal requirements for options on proxies; and (ii) limits on the use of faxed proxies.
3. Section 1.08(f) has been added to incorporate the requirements of Section 514A-82(b)(4) and 514A-83.3, HRS, relating to the distribution and solicitation of proxies by owners and Board members.
4. Section 1.12 has been amended to incorporate the requirements of Section 514A-83.4, HRS, relating to approval of minutes.
5. Section 1.14 was amended to reference the requirements for owner access to records under the condominium law, Section 514A-83.5.
6. Section 2.01 was amended by the amendment dated 11 April 2000, and recorded as Land Court Document No. 2623719, to fix the number of directors at seven. The original Phase I By-Laws provided for five board members, which was later increased to nine board members following the merger of the three phases of the project.
7. Section 2.03 is apparently missing the word "to" shown in brackets in the section.
8. Section 2.04 should apparently have the "d" on "determined" deleted.
9. Section 2.10 has been amended to incorporate the requirements of Section 514A-82(b)(9), HRS, relating to posting of notice of Board meetings.

10. Section 2.12(a) has been amended to incorporate the requirements of Section 514A-83.1, which allows owners to participate in board discussions unless a majority of a quorum of the board votes otherwise.
11. Section 2.12(b) has also been amended to correct an apparent misstatement in the original bylaws. Section 514A-83.1 allows the board to go into executive session for "personnel" matters. The original bylaws state executive sessions are permitted for "personal" matters.
12. Section 2.17 has been amended to incorporate the requirements of Section 514A-83.4, HRS, relating to approval of minutes.
13. Section 2.19 has been added to incorporate the requirements of Section 514A-82(b)(11), HRS, relating to the documents which must be provided to members of the board.
14. Section 2.20 has been added to incorporate the requirement of Section 514A-82.4, HRS, imposing a fiduciary duty on all directors to the Association.
15. Section 3.01 was amended to incorporate the requirements of Section 514A-82(b)(7), HRS, restricting an owner from acting as an officer of the Association and an employee of the Association's managing agent.
18. Section 4.01(b) has been amended to incorporate the restrictions of Section 514A-82(b)(8), HRS, on the right of Association employees to sell or rent apartments in the condominium in which they are employed, without owner approval.
19. Section 4.01(l) was amended to incorporate a reference to the insurance requirements stated in the condominium law.
20. Section 4.02 was amended to incorporate a reference to the specific requirements of Section 514A-95, HRS, for managing agents of condominium projects in Hawaii.
21. Section 4.05 was amended to add the restrictions of Section 514A-82(b)(10), HRS, on the rights of board members to spend Association funds for their travel, fees, and per diem unless the owners approve. The section was also amended to incorporate the requirements of Section 514A-82(b)(12) relating to educational expenses for directors.
22. Section 4.08(b) should apparently have the word "of" deleted.

23. Section 4.08(c) has been amended to incorporate the requirements of Section 514A-94, HRS, relating to the rights of apartment owners and the Association to collect attorney's fees for the cost to enforce the requirements of the law and the project documents.
24. Section 4.08(e) should apparently use the word "with" not the word "without" in the last sentence.
25. Section 4.09 essentially states the rights given to the Association by Section 514A-82(b)(6), HRS, to enter the apartments of owners in the project when necessary for the operation of the property or in the case of emergencies.
26. Section 4.10(c) was added to reference the requirements for owner access to records under the condominium law.
27. Section 4.11 has been amended to reference the requirements of Section 514A-96, HRS, relating to distribution of audit information to owners.
28. Section 4.13 (a) has been amended to incorporated a reference to the fidelity bond and requirements of Sections 514A-95 and 514A-95.1, HRS.
29. Section 5.03(g) must be read subject to the special rights which the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et seq.), provides to disabled residents or guests of the project who need pets because of their disabilities.
30. The Telecommunications Act of 1996 and the rules adopted by the Federal Communication Commission Implementing section 207 of that act, greatly restrict an association's authority to limit an owner or resident from installing antennas and small satellite dishes designed to receive video programming on areas owned by or for the exclusive use of the owner or resident.
31. Section 5.04(a) must be read subject to the special rights which the Federal Fair Housing Act, provides to disabled residents of the project who need to make alterations to the project and apartments because of their disabilities.
32. Section 5.04(b) must be read subject to the requirements of Section 514A-83.6, HRS, relating to Association reserves. The provisions of that section require that necessary repairs and maintenance to be made, regardless of owner approval requirements.
33. Section 5.04.1 outlines the special rights which the Federal Fair Housing Act, provides to disabled residents of the project who need to make alterations to the project and their apartments because of their disabilities.

34. Section 6.05.1 was added to incorporate the provisions of Section 514A-90(c) and (d) restricting an owner's right to withhold assessments from the Association, providing owners with a right to receive a full statement of all amounts owed, and permitting an owner who pays amounts claimed by the Association to request arbitration, small claims court, or mediation to resolve any disputes about the amounts owed.
35. Section 514A-82(b)(13) specifically permits nonjudicial foreclosures.
36. Section 6.09(c) must be read subject to Section 514A-90.5, which imposes additional restrictions on demanding rent from a tenant of an owner.
37. Section 8.01 was amended to incorporate the requirements of Section 514A-82(b)(2), HRS. That section allows the owner approval required to amend the Association By-Laws to be obtained by written consent. In addition, under Section 514A-81, amendments to the By-Laws do not require an amendment to the Declaration as well.
38. Section 8.09 has been added to outline the rights provided to families with children and disabled occupants and guests of the project by the Federal Fair Housing Act and Chapter 515, HRS.

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