

DOUBLE SYSTEM

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February 19, 2019 8:01 AM

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/s/ LESLIE T. KOBATA
ASSISTANT REGISTRAR



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BUREAU OF CONVEYANCES
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/s/ LESLIE T. KOBATA
REGISTRAR

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2-2-1-008-060, 2-2-1-008-064, 2-2-1-008-065 Affects TCT Nos. 3698574, 9319190, 3698576

THIRD RESTATED BYLAWS OF THE ASSOCIATION OF
APARTMENT OWNERS OF WAILEA EKAHI
(Condominium Map Nos. 243, 269 and 290)

WHEREAS, by (i) Declaration of Horizontal Property Regime established by Chapter 514 of the Hawaii Revised Statutes, (for Wailea Ekahi I), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 713125; (ii) Declaration of Horizontal Property Regime established by Chapter 514 of the Hawaii Revised Statutes, (for Wailea Ekahi II), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 750105; and (iii) Declaration of Horizontal Property Regime established by Chapter 514 of the Hawaii Revised Statutes, (for Wailea Ekahi III), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 783805, (together the "Original Declarations") together with Condominium Maps 243, 269 and 290 the Horizontal Property Regimes known as Wailea Ekahi I, Wailea Ekahi II and Wailea Ekahi III were created by Wailea Development Company, a Joint Venture duly registered as a general partnership in the State of Hawaii; and

WHEREAS, the Association of Apartment Owners of Wailea Ekahi I, Wailea Ekahi II and Wailea Ekahi III were administratively merged into one Association pursuant to that certain

Declaration as to Merger filed as Land Court Document No. 713124 and Certificate of Compliance filed as Land Court Document No. 785381; and

WHEREAS, attached to each of the Original Declarations and filed therewith were the Bylaws of the Association of Apartment Owners for each of Wailea Ekahi I, Wailea Ekahi II and Wailea Ekahi III, (together the “Original Bylaws”); and

WHEREAS, the Original Bylaws were restated under the applicable provisions of Chapter 514A of the Hawaii Revised Statutes and recorded as Land Court Document No. 2030395, (the “Restated Bylaws”); and

WHEREAS, the Restated Bylaws were restated as the Second Restated Bylaws of the Association of Apartment Owners of Wailea Ekahi (the “Second Restated Bylaws”) attached hereto, by resolution adopted by the Board of Directors pursuant to §§ 514B-109(a) and 109(b), Hawaii Revised Statutes, to set forth all amendments to the Original Bylaws and Restated Bylaws and to conform with the provisions of Hawaii Revised Statutes Chapter 514B, which Second Restated Bylaws were recorded on January 2, 2008, as Land Court Document No. 3698577; and

WHEREAS, the Second Restated Bylaws were amended by that certain Certification of Amendment to the Second Restated Bylaws of the Association of Apartment Owners of Wailea Ekahi, recorded on February 5, 2009, as Land Court Document No. 3825876, and by that certain Certification of Amendment to the Second Restated Bylaws of the Association of Apartment Owners of Wailea Ekahi, recorded on July 13, 2011, as Land Court Document No. 4085349; and

WHEREAS, the Second Restated Bylaws are hereby restated as the Third Restated Bylaws of the Association of Apartment Owners of Wailea Ekahi attached hereto (the “Third Restated Bylaws”), by resolution adopted by the Board of Directors on January 9, 2019 pursuant to § 514B-109(a), Hawaii Revised Statutes, to set forth all amendments to the Second Restated Bylaws in Article VI, Section 4, and Article VII and to conform with the provisions of Hawaii Revised Statutes Chapter 514B as identified in the endnotes hereto;

NOW, THEREFORE, pursuant to § 514B-109, Hawaii Revised Statutes, BE IT RESOLVED that the Third Restated Bylaws as set forth below shall be, and hereby are, adopted as the restated Bylaws for Wailea Ekahi.

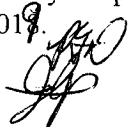
Portions of said Third Restated Bylaws so restated solely for purposes of information and convenience pursuant to § 514B-109(b), Hawaii Revised Statutes, are: Article II, Sections 6,8 and 13; Article III, Sections 1, 2, 4, 6, and 16; Article VI, Sections 4 and 4A; Article VII, Sections 1, 4 and 5; Article VIII, Section 4; and Article X, Sections 2, 6, 17 and 21. Each provision that has been restated has been identified in the endnotes attached hereto.

The Transfer Certificates of Title issued for the respective apartments in the Wailea Ekahi condominium project as of January 10, 2019, are listed on Exhibit A attached hereto and by this reference incorporated herein.

The Third Restated Bylaws attached hereto correctly set forth without change the corresponding provisions of the Original Bylaws, as amended, and the Third Restated Bylaws attached hereto supersede the Original Bylaws and all prior amendments and restatements thereto; provided, however, that in the event of any conflict, the third restated version of the Bylaws shall be subordinate to the Original Bylaws and all prior amendments thereto.

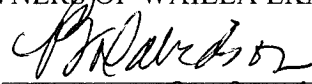
To the extent that there is any conflict between the restated provisions of the Third Restated Bylaws and the statute, ordinance, or rule enacted by any governmental authority being implemented, the provisions of the Third Restated Bylaws shall be subordinate to said statute, ordinance, or rule enacted by any governmental authority.

IN WITNESS WHEREOF, the undersigned, being officers of the Association, hereby adopt and execute this Third Restated Bylaws this 25th day of January, 2019.



ASSOCIATION OF APARTMENT
OWNERS OF WAILEA EKAHI

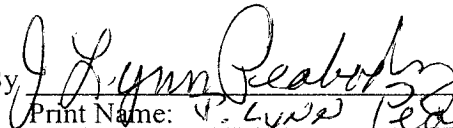
By



Print Name: PATRICIA G DAVIDSON

Its: PRESIDENT

By



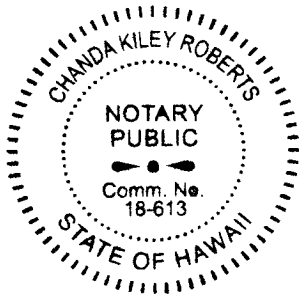
Print Name: J. Lynn Peabody

Its: Treasurer

STATE OF Hawaii
COUNTY OF Maui

)
) ss.
)

On Jan. 25, 2019 before me personally appeared Patricia G. Davidson to me personally known, who, being by me duly sworn, did say that she is the President of Association of Apartment Owners of Wailea Ekahi and the said instrument was signed on behalf of said association by authority of its board of directors, and said officer acknowledged said instrument to be the free act and deed of said association. Said association has no seal.



Chanda Kiley Roberts
Signature:

Chanda Kiley Roberts
Print Name:

Notary Public, State of Hawaii
My commission expires: Nov 4, 2022

Doc. Date: 1/25/19 # Pages: 58

Notary Name: Chanda Kiley Roberts Second Circuit

Doc. Description: Third Restated Bylaws

Chanda Kiley Roberts 1/25/19

Notary Signature

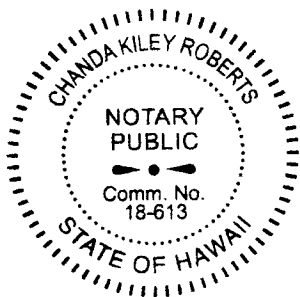
Date

NOTARY CERTIFICATION

(Stamp or Seal)

STATE OF Hawaii)
COUNTY OF Maui) ss.

On Jan. 25, 2019 before me personally appeared J. Lynn Peabody, to me personally known, who, being by me duly sworn, did say that he is the Treasurer of Association of Apartment Owners of Wailea Ekahi and the said instrument was signed on behalf of said association by authority of its board of directors, and said officer acknowledged said instrument to be the free act and deed of said association. Said association has no seal.



Chanda Kiley Roberts
Signature:
Chanda Kiley Roberts
Print Name:
Notary Public, State of Hawaii
My commission expires: Nov. 4, 2022

Doc. Date: 1/25/19 # Pages: 58
Notary Name: Chanda Kiley Roberts Second Circuit
Doc. Description: Third Restated Bylaws
Chanda Kiley Roberts 1/25/19
Notary Signature Date

NOTARY CERTIFICATION

(Stamp or Seal)

INDEX TO
THIRD RESTATED BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF
WAILEA EKAHI

ARTICLE I.....	- 1 -
INTRODUCTORY PROVISIONS	- 1 -
SECTION 1. Definitions.	- 1 -
SECTION 2. Conflicts.....	- 1 -
SECTION 3. Application.	- 1 -
ARTICLE II ASSOCIATION OF OWNERS	- 1 -
SECTION 1. Annual Meetings.....	- 1 -
SECTION 2. Place of Meetings	- 2 -
SECTION 3. Special Meetings.....	- 2 -
SECTION 4. Notice of Meetings and Other Notices	- 2 -
SECTION 5. Adjournment of Meetings.....	- 2 -
SECTION 6. Voting and Proxies.	- 3 -
SECTION 7. Order of Business.	- 5 -
SECTION 8. Cumulative Voting	- 5 -
SECTION 9. Quorum.	- 6 -
SECTION 10. Majority Vote	- 6 -
SECTION 11. Majority of Apartment Owners	- 6 -
SECTION 12. List of Members.....	- 6 -
SECTION 13. Minutes of Meetings.....	- 6 -
ARTICLE III BOARD OF DIRECTORS	- 7 -
SECTION 1. Classes, Number and Qualifications.....	- 7 -
SECTION 2. Powers and Duties	- 7 -
SECTION 3. Managing Agent and Manager	- 10 -
SECTION 4. Election and Term of Office.....	- 11 -
SECTION 5. Removal of Members of the Board of Directors	- 12 -
SECTION 6. Vacancies.....	- 12 -
SECTION 7. Organization Meetings.....	- 12 -
SECTION 8. Regular Meetings.....	- 12 -
SECTION 9. Special Meetings.....	- 12 -
SECTION 9A. Telecommunication Meetings.....	- 13 -

SECTION 10. Waiver of Notice	- 13 -
SECTION 11. Quorum of Board of Directors.....	- 13 -
SECTION 12. Fidelity Bonds.....	- 13 -
SECTION 13. Compensation and Expenses	- 13 -
SECTION 14. Liability and Indemnity of the Board of Directors	- 14 -
SECTION 15. No Proxy Vote and Conflict of Interest.....	- 14 -
SECTION 16. Owner Participation and Executive Session	- 14 -
SECTION 17. Provision of Project Documents	- 15 -
ARTICLE IV OFFICERS	- 15 -
SECTION 1. Designation.....	- 15 -
SECTION 2. Election of Officers	- 15 -
SECTION 3. Removal of Officers	- 15 -
SECTION 4. President	- 15 -
SECTION 5. Vice President.....	- 15 -
SECTION 6. Secretary	- 15 -
SECTION 7. Treasurer.....	- 16 -
SECTION 8. Agreements, Contracts, Deeds, Checks, etc	- 16 -
SECTION 9. Compensation of Officers.....	- 16 -
ARTICLE V USE AND MAINTENANCE OF THE PREMISES	- 16 -
SECTION 1. Use of Premises.	- 16 -
SECTION 2. Use of Common Elements.....	- 18 -
SECTION 3. Certain Work Prohibited.....	- 18 -
ARTICLE VI COMMON EXPENSES, APARTMENT EXPENSES AND TAXES	- 18 -
SECTION 1. Common Expenses	- 18 -
SECTION 2. Payment as Agent	- 19 -
SECTION 3. Taxes and Assessments	- 19 -
SECTION 4. Default in Payment of Assessments; Liens.....	- 20 -
SECTION 4A. Assessment Disputes.	- 21 -
SECTION 5. Waiver	- 23 -
SECTION 6. Collection from Tenant and Rental Agent.....	- 23 -
ARTICLE VII INSURANCE AND RESTORATION	- 26 -
SECTION 1. Fire and Extended Coverage Insurance.....	- 26 -
SECTION 2. Comprehensive Liability Insurance.....	- 27 -
SECTION 3. Insurance Against Additional Risks	- 28 -
SECTION 4. Miscellaneous Insurance Provisions.....	- 28 -

SECTION 5. Damage and Destruction.....	- 29 -
SECTION 6. Disposition of Buildings	- 31 -
ARTICLE VIII MORTGAGES	- 31 -
SECTION 1. Notice of Unpaid Common Expenses.....	- 31 -
SECTION 2. Notice of Default	- 32 -
SECTION 3. Examination of Books	- 32 -
SECTION 4. Mortgage Protection	- 32 -
SECTION 5. Notice to Board of Directors.....	- 32 -
ARTICLE IX CONDEMNATION	- 32 -
ARTICLE X GENERAL PROVISIONS	- 33 -
SECTION 1. Rules and Regulations	- 33 -
SECTION 2. Abatement and Enjoinment of Violations of Apartment Owners.....	- 34 -
SECTION 3. Maintenance and Repair of Apartments	- 35 -
SECTION 4. Maintenance and Repair of Common Elements	- 35 -
SECTION 5. Additions or Improvements by Board of Directors	- 35 -
SECTION 6. Right of Access.....	- 36 -
SECTION 7. Owners May Incorporate	- 36 -
SECTION 8. Notices	- 36 -
SECTION 9. Captions	- 36 -
SECTION 10. Gender	- 37 -
SECTION 11. Waiver	- 37 -
SECTION 12. Audit.	- 37 -
SECTION 13. Interpretation	- 37 -
SECTION 14. Amendment	- 37 -
SECTION 15. Severability.....	- 38 -
SECTION 16. Robert’s Rules of Order.....	- 38 -
SECTION 17. Association Records.	- 38 -
SECTION 18. Prohibited Acts of Association Employees.	- 40 -
SECTION 19. Budgets and Reserves.....	- 40 -
SECTION 20. Restatement	- 43 -
SECTION 21. Alternative Dispute Resolution.....	- 43 -

THIRD RESTATED BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF
WAILEA EKAHI

ARTICLE I
INTRODUCTORY PROVISIONS

SECTION 1. Definitions. The terms used herein shall have the meanings given to them in the Act, except as expressly otherwise provided herein. The term “common elements” means those elements designated in the aforesaid Declaration as common elements and limited common elements, if any. The term “Property” shall include the land, the buildings and all other improvements thereon (including the Apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term “Rules and Regulations” refers to the Rules and Regulations for the conduct of occupants of the buildings adopted by the Board of Directors as hereinafter provided. “Owner” means a person owning severally or as a co-tenant an Apartment and the common interest appertaining thereto, to the extent of such interest so owned. The terms “Apartment Owners, Association of Owners, Association” and similar terms mean and refer to (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners. “Project” means the Property comprising Wailea Ekahi I, Wailea Ekahi II, and Wailea Ekahi III Condominium Projects.

SECTION 2. Conflicts. These Bylaws are set forth to comply with the requirements of the Act, as amended. In case any of these Bylaws conflict with the provisions of Hawaii Revised Statutes Chapter 514B (the “Act”) or of the Declaration, the provisions of the Act or of the Declaration, as the case may be, shall control.

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

ARTICLE II
ASSOCIATION OF OWNERS

SECTION 1. Annual Meetings. The Developer shall call a meeting of the Apartment Owners, and give Apartment Owners thirty (30) days prior written notice of the date thereof, within six (6) months from the “effective date” (as that term is defined by the Act, of the first sale of an Apartment in the Project. At such meeting the Apartment Owners shall elect a Board of Directors. Thereafter, the annual meetings of the Apartment Owners shall be held on the first Monday of March of each year or at such other time as the Board of Directors may designate. At such meetings the Board of Directors shall be elected by ballot of the Apartment Owners in accordance with the

requirements of Section 4 of ARTICLE III of these Bylaws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

SECTION 2. Place of Meetings. Meetings of the Apartment Owners shall be held at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board of Directors. Provided, however, in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.

SECTION 3. Special Meetings. Special meetings of the Owners of the Apartments may be held at any time upon the call of the President or of any three (3) Directors, or by a petition signed by at least twenty-five percent (25%) of the Apartment Owners, as shown in the Association's record of ownership, and presented to the Secretary or Managing Agent. Within fourteen (14) days of receipt of the petition, the Secretary or Managing Agent shall send written notice of the meeting to all Apartment Owners and the meeting shall be held no earlier than fourteen (14) and no later than sixty (60) days from the receipt of the petition, at such time, date, and place as shall be determined by the Board. If the Secretary or Managing Agent fails to 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 in accordance with the requirements of these Bylaws.

SECTION 4. Notice of Meetings and Other Notices. Written notice of all Association meetings, whether annual or special, shall be given to each Apartment Owner, not less than fourteen (14) days prior to the meeting, in any of the following ways: (a) by hand delivering it to the Apartment Owner, or (b) by mailing it, postage prepaid, addressed to the mailing address of the Apartment Owner or to any other mailing address designated in writing by the Apartment Owner or (c) at the option of the Apartment Owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the Apartment Owner. The notice of any meeting shall contain at least: the date, time and place of the meeting, the items on the agenda for the meeting, including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws, and any proposal to remove a member of the Board, (provided, however, nothing in this section shall preclude any Apartment Owner from proposing an amendment to the Declaration or Bylaws or to remove a member of the Board at any annual Association meeting), and a standard proxy form authorized by the Association, if any. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage or deed of trust from any Owner 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 deed of trust. Upon notice being given in accordance with the provisions hereof, the failure of any Owner of an Apartment to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each such Owner shall keep the Board informed of any changes in address.

SECTION 5. Adjournment of Meetings. If any meeting of Apartment Owners cannot be held because a quorum has not attended, a majority in common interest of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

SECTION 6. Voting and Proxies.

(a) 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 Declaration. An Apartment Owner may vote by mail or electronic transmission through a duly executed proxy. If an apartment is owned by more than one person, each owner of the apartment may vote or register protest to the casting of votes by the other owners of the apartment through a duly executed proxy. If only one of several owners of an apartment is present at a meeting of the Association, that owner is entitled to cast all the votes allocated to that apartment. If more than one of the owners is present, the votes allocated to that apartment may be cast in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the Apartment Owners casts the votes allocated to that apartment without protest being made by any of the other owners of the apartment to the person presiding over the meeting before the polls are closed. If majority agreement is not achieved prior to the polls being closed, no votes allocated to the apartment shall be counted. In the absence of protest, any owner may cast the votes allocated to the apartment by proxy. No votes allocated to an apartment owned by the Association may be cast for the election or reelection of directors.

(b) Proxies and Pledges.

(i) No resident manager or managing agent, or their employees, shall solicit, for use by the resident manager or managing agent, any proxies from any Apartment Owner of the Association that retains the managing agent or employs the resident manager, nor shall the resident manager or managing agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. If the Board of Directors intends to use Association funds to distribute proxies, including any standard proxy form described below in subsection (ii), it shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days prior to its distribution of proxies; provided that if the Board of Directors receives within seven (7) days of the posting, a statement, the Board of Directors shall mail to all owners either:

(A) A proxy form containing either the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall be limited to black text on white paper, shall not exceed one single-sided 8 1/2" x 11" page indicating the owner's qualifications to serve on the Board of Directors and reasons for wanting to receive proxies.

(ii) The authority given by the Apartment Owner to another person to represent him at meetings of the Association shall be in writing. To be valid a proxy shall: (A) be delivered to the Secretary or the managing agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and (B) 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, and the date that the proxy is given. A standard proxy form authorized by the Association, to be valid, must contain boxes wherein the Owner may indicate that the proxy is given: (A) for quorum purposes only; (B) to the individual whose name is printed on a line next to this box; (C) 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 present at the meeting; or (D) to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage; provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only.¹ The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act.

(iii) 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 owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the applicable apartment.

(iv) A Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as an apartment owner under subsection (i) above.

(v) Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a copy of which is filed with the Board of Directors, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board of Directors. Nothing in subsections (ii), (iii) or (iv) of this Section 6(b) shall affect the holder of any proxy under a first mortgage of record or under an agreement of sale of any apartment or interest therein. If an apartment is owned by more than one person, each owner of the apartment may vote or register protest to the casting of votes by the other owners of the apartment through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the apartment by proxy. An Apartment Owner may revoke a proxy given pursuant to this Section 6 only by actual notice of revocation to the Association Secretary or the managing agent. A proxy is void if it purports to be revocable without notice.

(vi) The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by Apartment Owners; provided the Board of Directors may adopt rules regulating reasonable time,

place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations.

(vii) 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.

SECTION 7. Order of Business. The order of business at all meetings of the Apartment Owners shall be as follows:

- (a) Roll Call;
- (b) Proof of Notice of Meeting;
- (c) Reading of Minutes of preceding meeting;
- (d) Reports of Officers;
- (e) Report of Board of Directors;
- (f) Report of committees;
- (g) Election of inspectors of election (when so required);
- (h) Election of members of the Board of Directors (when so required);
- (i) Unfinished business; and
- (j) New business.

All meetings of the Association shall be conducted in accordance with the most recent edition of Roberts Rules of Order Newly Revised.

SECTION 8. Cumulative Voting. Election of Directors shall be by cumulative voting. Each Owner present in person or represented by proxy shall have a number of votes equal to the unit owner's voting percentage multiplied by the number of positions to be filled at the election. Each Owner shall be entitled to cumulate the votes of the Owner and give all of the votes to one nominee or distribute the votes among any or all of the nominees. The nominee or nominees receiving the highest number of votes on the foregoing basis, up to the total number of positions to be filled, shall be deemed elected and shall be given the longest term. This Section 8 shall not prevent the filling of vacancies on the Board of Directors in accordance with the Act, as amended from time to time, and these Bylaws.²

SECTION 9. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners having one-half (1/2) of the total authorized votes of all Apartment Owners shall constitute a quorum at all meetings of the Apartment Owners.

SECTION 10. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding upon all Apartment Owners for all purposes except where in the Declaration or these Bylaws or by law, a higher percentage vote is required.

SECTION 11. Majority of Apartment Owners. As used in these Bylaws, the term "majority of Apartment Owners" shall mean those Apartment Owners having more than fifty percent (50%) of the total authorized votes present at any meeting of the Apartment Owners, and any specified percentage of the Owners means Owners having the specified percentage of the total votes.

SECTION 12. List of Members. The Resident Manager or Managing Agent or Board of Directors shall keep an accurate and current list of members of the Association and their current addresses, the names and addresses of the vendees of any apartment under an agreement of sale, if any, and the names and addresses of apartment mortgagees, if any. The list shall be maintained at a place designated by the Board of Directors, and a copy shall be available, at cost, to any Apartment Owner, provided the Apartment Owner furnishes to the resident manager or Managing Agent or Board of Directors a duly executed and acknowledged affidavit stating that the list (A) will be used by the Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and (B) shall not be used by such Owner or furnished to anyone else for any other purpose. The Board may prohibit commercial solicitations. The Managing Agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the Board. All membership lists are the property of the Association and any membership lists contained in the Managing Agent's or resident manager's records are subject to the provisions of this Section 12. A Managing Agent, resident manager, or the Board may not use the information contained in the lists to create any separate list for the purpose of evading this Section 12.

SECTION 13. Minutes of Meetings.

(a) Minutes of meetings of the Board of Directors shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the Board of Directors shall be approved no later than the second succeeding regular meeting.

(c) Minutes of all meetings of the Board shall be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within thirty (30)³ 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.

(d) Minutes of Association meetings shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) days after the meeting, if authorized by the Owners at an annual meeting. If Association meeting minutes are approved by the Board, Owners shall be

given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) days after approval. An Owner shall be allowed to offer corrections to the minutes of an Association meeting at an Association meeting. Minutes of all meetings of the Association shall be available within seven (7) calendar days after the meeting at which they are approved and unapproved final drafts of the minutes of an Association meeting shall be available within sixty (60) days after the meeting.

ARTICLE III BOARD OF DIRECTORS

SECTION 1. Classes, Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of two classes: voting and nonvoting. The voting class of the Board of Directors shall be composed of nine persons. All members of the Board of Directors shall be Owners, vendees under an agreement of sale, or a trustee or beneficiary of a trust, which owns an apartment, an officer, of any corporate owner - including a limited liability company - of an apartment, or a representative of any other legal entity which owns an apartment. In the case of partnership Owners, any general partner of such partnership, or in the case of fiduciary Owners, shall be the fiduciaries or officers or employees of such fiduciaries. The nonvoting class of the Board of Directors shall be composed of one person, who shall be a Hawaii resident, and who shall be an owner of an apartment as the status of ownership is described above in this Section 1. 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. No tenant, resident manager or employee of the Project shall serve on the Board of Directors. For the purposes of this subsection, "tenant" means any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium.⁴ There shall be no more than one representative on the Board of Directors from any one apartment. Any owner who is a Board member and an employee of the Association's managing agent shall not participate in any discussion regarding a management contract at a Board meeting and shall be excluded from any executive session of the Board where the management contract or the property manager will be discussed.

SECTION 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Apartment Owners. In the performance of their duties, officers and members of the Board shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D of the Hawaii Revised Statutes. Any contract for goods or services having a term of more than one (1) year shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than ninety (90) days written notice. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

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

maintenance of the property, and within thirty (30) days after adopting the budget make a copy of the budget available to all the Apartment Owners and notify all the Apartment Owners that the Apartment Owner may request a copy of the budget;

- (c) Collection of the common expenses from the Apartment Owners;
- (d) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;
- (e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the property;
- (f) Opening of bank accounts on behalf of the Association of Apartment Owners and designating the signatories required therefor;
- (g) Obtaining of insurance for the property, including the Apartments, pursuant to the provisions of ARTICLE VII hereof;
- (h) Making of repairs, additions and improvements to or alterations of the property and repairs and restoration of the property in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- (i) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these Bylaws;
- (j) Purchasing of any other materials, supplies, furniture, labor and services, the making of repairs and structural alterations, and the payment of all insurance, taxes or assessments and other common expenses which the Board is required to secure, make or pay for pursuant to the terms of these Bylaws or by law or which in its opinion shall be necessary or proper for the operation of the buildings as apartment buildings for the enforcement of these Bylaws provided that if any common expense is caused by the misconduct of any Apartment Owner, the Association may assess that expense exclusively against such Apartment Owner's apartment;
- (k) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a lien against the property or against the common elements or limited common elements rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and costs incurred by the Board by reason of such lien or liens; and
- (l) Maintenance and repair of any Apartment if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements and limited common elements or any other portion of the buildings, and 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 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 said maintenance or repair and attorney's fees and other expenses incurred in collecting this special assessment. The Association shall have the irrevocable right, to be exercised by the Board of Directors, to have access to each Apartment at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another Apartment.⁵

(m) Purchasing or leasing or otherwise acquiring in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all Apartment Owners, Apartments offered for sale or lease;

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

(o) Subject to any approval requirements and spending limitations contained herein or in the Declaration, the Apartment Owners may authorize the Board to borrow money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all Apartment Owners and Apartment Owners representing at least fifty percent (50%) of the Common interest vote or give written consent to such borrowing. In connection with the borrowing, the Board may grant to the lender the right to assess and collect monthly or special assessments from the Apartment Owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing, shall be a common expense of the Project. For purposes of this subsection (o), the financing of insurance premiums by the Association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the Association may purchase the leased equipment for its fair market value.

(p) When personalty in or on the common elements of the project has been abandoned, the Board may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(1) The Board notifies the owner in writing of

(A) The identity and location of the personalty, and

(B) The Board's intent to so sell, store, donate, or dispose of the personalty

Notification shall be by certified mail, return receipt requested to the owner's address as shown by the records of the Association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or

(2) If the identity or address of the owner is unknown, the Board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personally is located.

The proceeds of any sale or disposition of personalty shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association;

(q) Notwithstanding any other language contained in the Declaration, these Bylaws, or the House Rules, the Board shall make reasonable accommodations to the provisions of these Bylaws, the Declaration, the House Rules, or any other regulations or restrictions of the project, if those accommodations become necessary to afford a handicapped person equal opportunity to use and enjoy the project premises.

(r) To lease or otherwise use for the benefit of the Association of Apartment Owners those common elements which are not actually used by any of the Apartment Owners for an originally intended special purpose, as determined by the Board of Directors; provided that unless the approval of the Owners of sixty-seven percent (67%) of the common interest appurtenant to the Apartments is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice.

(s) To lease or otherwise use for the benefit of the Association of Apartment Owners those common elements not falling within subparagraph (r) above, upon obtaining: (A) the approval of the Owners of sixty-seven percent (67%) of the common interests appurtenant to the Apartments, including all directly affected Owners and all Owners of Apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on Apartments with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees.

(t) Conducting (or directing another responsible party to conduct) a background check pursuant to and in compliance with Section 514B-133 of the Act on applicants applying for employment as a security guard or resident manager or for a position which would allow such employees access to the keys of or entry into the apartments or access to Association funds;

(u) Take appropriate action with respect to an elderly or disabled⁶ Apartment Owners pursuant to the provisions of Section 514B-142 of the Act.

(v) Establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with Section 634-21.5, Hawaii Revised Statutes, as amended.⁷

SECTION 3. Managing Agent and Manager. Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible individual or corporation as Managing Agent to manage and control the property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified from time to time by the Board.

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

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

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

Developer or such Managing Agent as it may designate shall act as the initial Managing Agent for all Apartments in the Project. If this contract is for a period of more than one (1) year it shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice.

SECTION 4. Election and Term of Office.

(a) Election of members of the voting class of the Board of Directors shall be by secret ballot at each annual meeting and any special meeting called for the purpose. Members of the voting class of the Board of Directors shall hold office for a period of three years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one year, one-third for two years and one-third for three years. A director shall not be elected to serve consecutive three-year terms.

(b) If at any time no member of the voting class of the Board of Directors shall be a resident of the State of Hawaii, then a majority of the members of the voting class of the Board of Directors immediately shall appoint an Owner to the nonvoting class of the Board of Directors. Such member of the nonvoting class of the Board of Directors shall hold office until an Owner, who is a Hawaii resident, shall be elected or appointed as a member of the voting class of the Board of Directors.

(c) The Board of Directors may not act on behalf of the Association to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Directors; provided that nothing in this subsection (c) shall be construed to prohibit Directors from voting proxies to elect members of the Board; provided further that, notwithstanding anything to the contrary in the Declaration or Bylaws, the Board of Directors may only fill vacancies in its

membership to serve until the next annual or duly noticed special meeting of the Association in accordance with Article III, Section 6.⁸

SECTION 5. Removal of Members of the Board of Directors. At any regular or special meeting of the Association, any member of the Board of Directors may be removed, and successors shall be elected for the remainder of the term to fill the vacancy thus created (or in the case of a member of the non-voting class of the Board appointed as provided in Section 4 of Article III. The removal and replacement shall be by a vote of a majority of the Apartment Owners and otherwise in accordance with all applicable requirements and procedures in these Bylaws for the removal, and replacement of directors, and, if removal and replacement is to occur at a special meeting, Article II, Section 3. In addition, if any Director shall fail to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a majority vote of the other members may remove the Director and select a replacement to serve the Director's unexpired term. Cumulative voting may be used in any vote to remove a Director.⁹

SECTION 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors and shall serve until the next annual or duly noticed special meeting of the Association. Notice of a special association meeting to fill vacancies shall include notice of the election. Any special association meeting to fill vacancies shall be held on a date that allows sufficient time for owners to declare their intention to run for election and to solicit proxies for that purpose.¹⁰

SECTION 7. Organization Meetings. The first meeting of the Board of Directors following the annual meeting of the Apartment Owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the Apartment Owners at the meeting at which such Board of Directors shall have been elected, and no notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present thereat.

SECTION 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors by mail at least three (3) business days prior to the day named for such meeting. Whenever practicable, notice of all Board meetings shall be posted by the managing agent or a member of the Board in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors.

SECTION 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) business days' notice to each member of the Board of Directors, given by mail, which notice shall state the time, place and purpose of the meeting. Special meetings of

the Board of Directors shall be called by the President or Secretary, in like manner and on like notice by the written request of at least three (3) members of the Board of Directors.

SECTION 9A. Telecommunication Meetings. Regular, special and organizational Board meetings may be conducted by means of communication through which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. Furthermore, if permitted by the Board, any Apartment Owner may participate in a Board meeting conducted by means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require the owner pay for the costs associated with the participation.

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

SECTION 11. Quorum of Board of Directors. At all meetings of the Board, a majority of the total number of members of the voting class of the Board of Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the voting class of the Board of Directors present at a meeting at which a quorum is present shall constitute a decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business, which might have been transacted at the meeting originally called, may be transacted without further notice.

SECTION 12. Fidelity Bonds. The Board of Directors shall obtain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the Association in the amounts required by Section 514B-143(a)(3) of the Act.

SECTION 13. Compensation and Expenses. No member of the Board of Directors shall receive any compensation from the Association for acting as such. Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless the Owners are informed and a majority of the Apartment Owners approve of these expenses; provided that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the Board meeting where reimbursement of such actual expenditures is approved shall reflect in detail the items and amounts of such reimbursements. The directors may expend association funds, which shall not be deemed to be compensation to directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget 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 subsection shall be subject to the requirements of this Section 13.

SECTION 14. Liability and Indemnity of the Board of Directors. The members of the Board of Directors shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association of Owners shall indemnify each Director of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on the Director in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which the Director may be involved as a party or otherwise by reason of his or her being or having been a Director, or by reason of any past or fixture action taken or authorized or approved by the Director 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, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which the Director 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. As to whether or not a Director was liable by reason of gross negligence or willful misconduct toward the Association in the performance of his or her duties as such Director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each Director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such Director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such Director.¹¹

SECTION 15. No Proxy Vote and Conflict of Interest. A Director shall not vote by proxy at Board Meetings. A Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest. For purposes of these Bylaws, the phrase, "conflict of interest," shall mean an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

SECTION 16. Owner Participation and Executive Session. All meetings of the Board of Directors, other than executive sessions, shall be open to all Apartment Owners, and Apartment Owners who are not on the Board of Directors shall be permitted to participate in any deliberation or discussion of the Board of Directors, other than executive sessions, pursuant to owner participation rules adopted by the Board of Directors.¹² Following any election of Board members by the Association, the Board may, at the Board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at meets of the Board of Director's, other than executive sessions. In the event that the Board of Directors establishes such rules pursuant to this Section 16, the Board of Directors shall (1) notify all owners of these rules; and (2) may amend the rules at any regular or duly noticed special meeting of the Board of Directors; provided that all owners shall be notified of any adopted amendments.¹³ The Board of Directors, by majority vote¹⁴, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters: (i) concerning personnel, (ii) concerning litigation in which the Association is or may become involved, (iii) necessary to protect the attorney-client privilege of

the Association or (iv) necessary to protect the interests of the Association while negotiating contracts, leases and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session.

SECTION 17. Provision of Project Documents. At the expense of the Association, all Board members shall be provided with a current copy of the Declaration, these Bylaws, Rules and Regulations and, annually, a copy of the Act.

ARTICLE IV OFFICERS

SECTION 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board of Directors.

SECTION 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors. An owner shall not act as an officer of the Association and an employee of the Association managing agent.

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

SECTION 4. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Apartment Owners and of the Board of Directors. The President shall have all of the general powers and duties which are incident to the office of President of a stock corporation organized under the laws of the State of Hawaii, including but not limited to the power to appoint committees from among the Apartment Owners from time to time as the President may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.¹⁵

SECTION 5. Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon the Vice President by the Board of Directors or by the President.¹⁶

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the Apartment Owners and of the Board of Directors; shall have charge of such books and papers as the Board of Directors may direct; shall prepare, execute, certify and record amendments to the

Declaration; and shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the laws of the State of Hawaii.¹⁷

SECTION 7. Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the Board of Directors, and shall, in general, perform all the duties incident to the office of Treasurer of a stock corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent.¹⁸

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

SECTION 9. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

ARTICLE V USE AND MAINTENANCE OF THE PREMISES

SECTION 1. Use of Premises.

(a) The Apartments shall at all times be used as permanent or temporary residences, or as hotel rooms and for no other purposes. The Owner of each such Apartment may utilize the Apartment solely in accordance with the foregoing provisions of this paragraph, utilizing the established ways and means provided for ingress and egress thereto, and for such other purposes and in such manner as shall be permitted in these Bylaws and the Rules and Regulations.

(b) The Owner of an Apartment shall not use the same for any purpose which will injure the reputation of the property. Such Owner shall not suffer anything to be done or kept in the Apartment or elsewhere on the premises, beyond those customarily done or kept for uses set forth in Section 1 of this ARTICLE V or which will jeopardize the soundness of the buildings or premises, or which will interfere with or unreasonably disturb the rights of other Owners, or which will obstruct the public halls or stairways of the building, or which will increase the rate of fire insurance on the buildings or the contents thereof or which will reduce the value of the premises.

(c) The Owner of an Apartment shall not, without the prior written consent of the Board, make any structural alterations in or additions to the Apartment or make any alterations in (including paint) or additions to the exterior of the Apartment or to the common elements, except as may be otherwise provided in these Bylaws.

(d) The Owner of an Apartment shall not, without the prior written consent of the Board or the Managing Agent, display any sign or other device in or upon any door, window, wall or other portion of the premises, or otherwise so as to be visible from the exterior; provided, however,

that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of the Apartments in the Project.

(e) The Owners shall be responsible for the care and maintenance of any lanais which are included in their respective Apartments. The Owners may not, however, paint or otherwise decorate their respective lanais without the prior approval of the same by the Board of Directors. It is intended that the exterior of the building shall present a uniform appearance, and to effect that end the Owners hereby agree that the Board may require the painting of each lanai and regulate the type and color of paint to be used. The Board is authorized to contract for the painting of all of the lanais and to make payment therefore out of the maintenance fund. No awnings, shades, jalousies or other device shall be erected or placed on the lanais so as to be visible from the exterior unless written permission shall have been obtained from the Board of Directors, provided, however, that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of the Apartments in the Project.

(f) The Board, after notice to all Apartment Owners and an opportunity for Owner comment, may determine that certain portions of the apartments, or certain objects or appliances within the apartments such as washing machine hoses and water heaters, pose a particular risk of damage to other apartments or the common elements if they are not properly inspected, maintained, repaired or replaced by Owners. Those items determined by the Board to pose a particular risk are "high-risk components" for the purposes of this subsection (f). With regard to items designated as high-risk components, the Board may require any or all of the following:

(i) Inspection: at specified intervals or by the Association, or inspectors designated by the Association, upon replacement or repair of the components by the Owner; and/or

(ii) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and/or

(iii) Replacement or repair: meeting particular standards or specifications established by the Board, including additional components or installations specified by the Board, or using contractors with specific licensing, training or certification approved by the Board.

(g) The imposition of requirements by the Board under subsection (f) shall not relieve Apartment Owners of obligations regarding high-risk components as set forth in this Declaration or the Bylaws including, without limitation, the obligation to maintain, repair and replace the components.

(h) If an Apartment Owner fails to follow requirements imposed by the Board pursuant to this Section 1, the Association, after reasonable notice, shall enter the apartment to perform the requirements with regard to such high-risk components at the sole cost and expense of the Apartment Owner, which costs and expenses shall be a lien on the apartment as provided in Article VI Section 4 of these Bylaws. Nothing in this Section (h) shall be deemed to limit the remedies of the Association for damages, or injunctive relief; or both.

SECTION 2. Use of Common Elements. All common elements of the Project shall be used only for their respective purposes as designed and as set forth in the Declaration, subject to:

- (a) The rights of other Apartment Owners to use the common elements;
- (b) Any owner's exclusive right to use the limited common elements as provided in the Declaration;
- (c) The right of owners to amend the Declaration to change the permitted uses of the common elements, provided that subject to Section 514B-140(c) of the Act (i) Changing the common element open spaces or landscaped spaces to other uses shall not require an amendment to the Declaration, and (ii) Minor additions to or alterations of the common elements for the benefit of individual apartments are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the Board.

SECTION 3. Certain Work Prohibited. Anything herein to the contrary notwithstanding, no Apartment Owner shall do any work which could jeopardize the soundness or safety of the Project, reduce the value thereof; impair any easement or hereditament, nor may any Apartment Owner add any material structure or excavate any basement or cellar without in every such case the consent of sixty-seven percent (67%) of the Apartment Owners being first obtained; the consent of all Apartment Owners whose apartments or appurtenant limited common elements are directly affected; and the approval of the Board, which shall not unreasonably withhold such approval; provided the Board shall always have the right to disapprove a proposed addition or alteration that the Board reasonably determines could jeopardize the soundness or safety of the Project, impair any easement, or interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Project; provided further that nonmaterial additions or alterations to the common elements (as defined in Section 514B-140 of the Act), or 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 of Directors, which approval shall not be unreasonably withheld, and such percentage, number, or group of Apartment Owners as may be required by the Declaration or these By-Laws.

ARTICLE VI COMMON EXPENSES, APARTMENT EXPENSES AND TAXES

SECTION 1. Common Expenses. The Owner of each Apartment shall be liable for and pay a share of the common expenses in proportion to said Owner's interest in the common elements appurtenant to his, her¹⁹ or its Apartment. Common expenses shall include all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, cost of repair, reinstatement, rebuilding and replacement of

the premises, yard, janitorial and other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, including limited common elements, and the cost of all utility services, including water, electricity and gas, garbage disposal and any other similar services, unless separately metered in which case the amounts charged to each Apartment shall be payable by the Owner of the Apartment. The common expenses may also include such amounts as the Board of Directors may deem proper to make up any deficit in the common expenses for any prior year and a reserve fund for the operation and maintenance of the property, including, without limitation, anticipated needs for working capital of the Project, and for replacements, repairs and contingencies. Any portion of an Owner's assessments used or to be used by the Association for capital improvements or any other capital expenditure, shall not be treated as income to the Association, but shall be treated as capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid-in-surplus. Payments of common expenses shall be made to the Board, as agent of the Owners of the Apartments, and the Board shall transmit said payments on behalf of each such Owner to the third person entitled to said payments from each Owner.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses. The Board, on behalf of all Owners, will maintain or cause to be maintained books of account of common expenses in accordance with recognized accounting practices, and will have such books of account available for inspection by each Owner or the Owner's authorized representative at reasonable business hours. Within ninety (90) days of the end of the fiscal year of the Association of Owners, the Board will render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year, which statement shall be certified by an independent certified public accountant. Each Owner, as principal, shall be liable for and pay his, her or its share, determined as aforesaid, of all common expenses and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be made by the Owner. The Board collecting the common expenses shall not be liable for payment of said common expenses as a principal but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owner.²⁰

SECTION 3. Taxes and Assessments. Each Owner of an Apartment shall be obligated to have the real property taxes for his, her or its²¹ own Apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes, which now are or may hereafter be assessed separately by law on each Apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his, her or its proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of

the Board, any taxes for assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 4 of this ARTICLE VI.

SECTION 4. Default in Payment of Assessments; Liens. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies hereby or by law provided, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the 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 reasonable attorney's fees in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time within ninety (90) days 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, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after the delivery of such notice, the Board may elect to file a claim of lien against the Apartment of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Apartment against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these Bylaws and of the Act, as amended, and (5) that a lien is claimed against said described Apartment in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Any lien recorded by the Association for unpaid assessments shall expire six (6) years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided that the expiration of a recorded lien shall in no way affect the Association's automatic lien that arises pursuant to this subsection, the Declaration or the Act. Any proceedings to enforce the Association's lien for any assessment shall be instituted within six (6) years after the assessment became due; provided that, if the Owner of an Apartment subject to a lien of the Association files a petition for relief under United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), the period of time for instituting proceedings to enforce the

Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the United States Bankruptcy Code (11 U.S.C. § 362) is lifted. The lien of the Association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667, Hawaii Revised Statutes, by the Managing Agent or Board of Directors, acting on behalf of the Association and in the name of the Association; provided that the Association may not exercise the nonjudicial or power of sale remedies provided in chapter 667, Hawaii Revised Statutes, to foreclose a lien against any Apartment that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to Part IA of Chapter 667, Hawaii Revised Statutes.²²

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his, her or its Apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefore and upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00). In the event any claims of liens have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or the Owner's successor, and payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Board, acting by any two members, shall execute and acknowledge (in the manner provided above), a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Land Court document number of the claim of lien or the book and page where such lien is recorded in the Bureau of Conveyances, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the Owner or the Owner's successor upon payment of the fee.

(d) In conjunction with or as an alternative to foreclosure proceedings, where an Apartment is owner-occupied, the Association may authorize the Managing Agent or Board of Directors to, after sixty (60) days' written notice to the Apartment Owner and to the Apartment's first mortgagee of the nonpayment of the Apartment's share of the common expenses, terminate the delinquent Apartment's access to the common elements and cease supplying the delinquent Apartment with any and all services, (including but not limited to utility services), normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all amounts owing to render the delinquent owner's account current, including any costs and attorney's fees incurred by the Association in pursuing collection of the delinquent owner's account. Before the Board or managing agent can take the actions permitted in this subsection (d), the Board must adopt a written policy providing for the actions and have the policy approved by a majority vote of the Apartment Owners at an annual or special meeting of the Association or by written consent of a majority of the Apartment Owners.²³

SECTION 4A. Assessment Disputes.

(a) No unit owner shall withhold any common expense assessment claimed by the Association.²⁴ Any Apartment Owner who receives a demand for payment from the Association and disputes the amount of an assessment may request a written statement clearly indicating:

(i) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(ii) The amount of any penalty or fine, late fee, lien filing fee, and any other charge included in the assessment that is not imposed on all unit owners as a common expense; and

(iii) The amount of attorneys' fees and costs, if any, included in the assessment.²⁵

(b) Any Apartment Owner who disputes the information in the written statement received from the Association pursuant to subsection (a) may request a subsequent written statement that additionally informs the Apartment Owner that:

(i) Under Hawaii law, the Apartment Owner has no right to withhold common expense assessments for any reason;

(ii) The Apartment Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's common expense assessment; provided that the Apartment Owner immediately pays the common expense assessment in full and keeps common expense assessments current;

(iii) Payment in full of the common expense assessment shall not prevent the Owner from contesting the common expense assessment or receiving a refund of amounts not owed; and

(iv) If the Apartment Owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the Apartment Owner may demand mediation as provided in subsection (d) prior to paying those charges.²⁶

Nothing in these By-Laws shall limit the rights of an Apartment Owner to the protection of all fair debt collection procedures mandated under federal and state law.

(c) An Apartment Owner who pays the Association the full amount of the common expenses 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 common expense claim. If the Apartment Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 514B-162 of the Act, provided that an Apartment Owner may only file for arbitration if all amounts claimed by the Association as common expenses are paid in full on or before the date of filing. If the Apartment Owner fails to keep all Association common expense assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Apartment Owner pays all Association common expense assessments within thirty (30) days of

the date of suspension, the Apartment Owner may ask the arbitrator to recommence the arbitration proceedings. If the Apartment Owner fails to pay all Association common expense assessments by the end of the 30-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 as common expenses to the Association that are not owed.²⁷

(d) An Apartment Owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation on the validity of those charges. The Apartment Owner has thirty (30) days from the date of the written statement requested pursuant to subsection (b) to file demand for mediation on the disputed charges, other than common expense assessments. If the Apartment Owner fails to file for mediation within thirty (30) days of the date of the written statement requested pursuant to subsection (b), the Association may proceed with collection of the charges. If the Apartment Owner makes a request for mediation within thirty (30) days, the Association shall be prohibited from attempting to collect any of the disputed charges until the Association has participated in the mediation. The mediation shall be completed within sixty (60) days of the Apartment Owner's request for mediation; provided that if the mediation is not completed within sixty (60) days or the parties are unable to resolve the dispute by mediation, the Association may proceed with collection of all amounts due from the Apartment Owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all Apartment Owners as a common expense.²⁸

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

SECTION 6. Collection from Tenant and Rental Agent.

(a) If an Owner at any time rents or leases his, her or its²⁹ apartment and defaults for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, so long as such default continues, demand and receive from any renter or lessee occupying the apartment or rental agent renting the apartment (hereinafter collectively in this paragraph referred to as "lessee") an amount sufficient to pay all sums due from the Owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this subsection (a) shall discharge that amount of payment from the tenant's rent obligation and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under subsection (a) the Board shall give to the delinquent Apartment Owner written notice of its intent to collect the rent owed. The notice shall:

(i) Be sent both first-class mail and certified mail;

(ii) Set forth the exact amount the Association claims is due and owing by the Apartment Owner; and

(iii) Indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The Apartment Owner shall not take any retaliatory action against the tenant for payments made under subsection (a).

(d) Provided:

(i) The Board may not demand payment from a tenant pursuant to subsection (a) if a commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure, if a mortgagee is in possession pending a mortgage foreclosure or the tenant is served with a court order directing payment to a third party; and

(ii) Before the Board or managing agent can take the Actions permitted in subsection (a), the Board must adopt a written policy providing for the Actions and have the policy approved by a majority vote of the Apartment Owners at an annual or special meeting of the Association or by written consent of a majority of the Apartment Owners.

SECTION 7. Mortgage Foreclosures.

(a) Except as provided in subsection (b), when the mortgagee of a mortgage of record or other purchaser of an Apartment obtains title to the Apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to the unit that became due prior to the acquisition of title to the Apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Apartment Owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the Apartment shall be deemed to acquire title and shall be required to pay the Apartment's share of common expenses and assessments beginning:

(i) Thirty-six (36) days after the order confirming the sale to the purchaser has been filed with the court;

(ii) Sixty days (60) after the hearing at which the court grants the motion to confirm the sale to the purchaser;

(iii) Thirty days (30) after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to Chapter 667; or

(iv) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the Apartment shall not be deemed to acquire title under paragraph (i), (ii), or (iii), if transfer of title is delayed past the thirty-six (36) days specified in paragraph (i), the sixty (60) days specified in paragraph (ii), or the thirty (30) days specified in paragraph (iii), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the Apartment shall be deemed to acquire title upon recordation of the instrument of conveyance.

(b) Subject to this subsection, and subsections (c) and (d), the Board of Directors may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent Apartment; provided that the mortgagee or other purchaser may require the Association to provide at no charge a notice of the Association's intent to claim lien against the delinquent Apartment for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent Apartment. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(c) The amount of the special assessment assessed under subsection (b) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six (6) months immediately preceding the completion of the judicial or non-judicial power of sale foreclosure.

(d) For purposes of subsections (b) and (c), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

(i) In a non-judicial power of sale foreclosure, when the affidavit after public sale is recorded pursuant to section 667-33; and

(ii) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular monthly common assessments" does not include:

(i) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

(ii) Late charges, fines, or penalties;

- (iii) Interest assessed by the Association;
- (iv) Any lien arising out of the assessment; or
- (v) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.³⁰

ARTICLE VII INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsement or such broader forms of protection as the Board shall determine, for an amount as nearly as practicable equal to the replacement cost without deduction for depreciation, covering the Apartments and fixtures therein and the buildings, fixtures and building service equipment, but excluding any improvements made by an Owner which the Owner himself may insure and excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Board as insured as trustee for each of the Owners of the Apartments in proportion to their respective common interests in the common elements. Such Policy:

(a) Shall contain no provision limiting or prohibiting other insurance by the Owner of any Apartment, such right being provided by statute, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any such other insurance;

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

(c) Shall provide that the policy may not be cancelled by the insurer except by giving to the Board and to the Owner and/or mortgagee of each Apartment who shall have requested such notice of the insurer in writing addressed to him at the premises, thirty (30) days' written notice of such cancellation;

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

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

(f) Shall contain a standard mortgage clause which:

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

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

(iii) Shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy by reason of the nonpayment of the premium), any contribution clause, and any right to be subrogated to the right of any mortgagee against the Owner or lessee or any Apartment or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or Owner, but without impairing mortgagee's right to sue;

(iv) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees on any Apartment, in order of preference; and³¹

(g) Shall provide for payment of the proceeds to the Board.;³²

(h) Such policies shall, notwithstanding any other provisions of this Article, cover the common elements of the Project and, whether or not part of the common elements, all exterior and interior walls, exterior glass, floors and ceilings;

(i) Such policies shall require the insurer at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms of the policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premiums and renewal dates. The Board shall provide this information to each Apartment Owner.

SECTION 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Board, the Developer, each Apartment Owner, and the Managing Agent and other employees of the Association of Apartment Owners against claims for personal injury, death and property damage arising out of the condition of the property or activities thereon

or construction work under a Comprehensive General Liability form. Said insurance shall be for such limits as the Board may decide. Such policy:

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

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

SECTION 3. Insurance Against Additional Risks. The Board may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Apartment Owners of a character normally carried with respect to properties of comparable character and use.

SECTION 4. Miscellaneous Insurance Provisions.

(a) The Board shall review at appropriate intervals in time the adequacy of its insurance program. At the request of any mortgagee of any Apartment, the Board shall furnish to such mortgagee a copy of the Policy described in Section 1 of this Article and of any other Policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Board shall be available for inspection by an Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Owners of Apartments to insure such Apartments and the contents thereof for their own benefit at their own expense.

(b) The Board in the case of a claim for damage to an apartment or the common elements, may:

(i) Pay the deductible amount as a common expense;

(ii) After notice and an opportunity for a hearing; assess the deductible amount against the Owners who caused the damage or from whose apartments the damage or cause of loss originated; or

(iii) Require the Apartment Owners of the apartments affected to pay the deductible amount.

(c) Any loss covered by the property insurance described under Section 1 of this Article VII shall be adjusted by and with the Board. In addition, if at the time of any loss under such

policy, there is other insurance in the name of the Apartment Owner covering the same property covered by the Association's policy, the Association's policy shall be the primary insurance.³³

(d) The Board, with the vote or written consent of a majority of the Apartment Owners, may require Apartment Owners to obtain reasonable levels of insurance. The liability of an Apartment Owner shall include but not be limited to the deductible of the owner whose apartment was damaged, any damage not covered by insurance required by Section 1 of this Article VII as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment and other furnishings. If the Apartment Owner does not purchase or produce evidence of insurance requested by the Board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the Apartment Owner. In no event is the Association or Board liable to any person either with regard to the failure of an Apartment Owner to purchase insurance or a decision by the Board not to purchase the insurance for the Owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverage obtained.³⁴

SECTION 5. Damage and Destruction. If a building is damaged by fire or other casualty which is insured against and said damage is limited to a single Apartment, the insurance proceeds shall be used by the Board for payment of the contractor retained by the Board to rebuild or repair such Apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefore. If the insurance proceeds are insufficient to pay all costs of repair, the remaining deficiency shall be paid from the maintenance fund. If the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on all the Owners of Apartments in proportion to their respective common interests. If such damage extends to two or more Apartments, or extends to any part of the limited common elements, if any, or to the common elements:³⁵

(a) If the Owners of the Apartments do not within sixty (60) days after such casualty or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days thereafter, agree in writing in accordance with the provisions of the Declaration and this Section 5 that the building or any portion thereof need not be rebuilt or repaired, or if the Owners at an earlier date agree to rebuild immediately, THEN:

(i) The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Apartments so damaged, as well as common elements, in accordance with plans and specifications therefore, or³⁶

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

Contractor employed for such work in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance proceeds are insufficient to pay all the costs of repairing and rebuilding all damaged Apartments as well as the common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of Apartments in proportion to their respective common interests. The special assessment shall be secured by the lien created under Section 4 of Article VI hereof.³⁷

If a decision is made in accordance with the Declaration, this section and the Act, not to repair or rebuild all or any lesser number of damaged or destroyed Apartments, insurance proceeds allocable to any Apartment which is not to be rebuilt (hereinafter “eliminated Apartments”) (less cost of debris removal) shall be paid to the Owner of the eliminated Apartment. Remaining insurance proceeds shall be paid to the Board who shall apply such moneys to repair and rebuild any portion of the building that is to be reconstructed in accordance with this section. If a decision is made to eliminate an Apartment, the common interests and other rights of remaining Apartment Owners in the Project shall be adjusted by amendment of the Declaration pursuant to HRS Section 514-37 and Section 15 of the Declaration; provided, however, that the common interest of any Owner shall not be altered without the Owner’s consent. The owner of any such eliminated Apartment shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, in the event the Declaration is not amended so as to discharge the Owners of eliminated Apartments of all obligations to the Project and so as to equitably adjust the common interests appurtenant to those Apartments not eliminated, pursuant to HRS Section 514B-144(g), the Owner of any eliminated Apartment may convey his, her or its interest to the Board of Directors on behalf of all other Apartment Owners and thereby be discharged of all obligations to the Project. The Owner of any eliminated Apartment may, in addition to the Owner’s allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate.³⁸

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

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

(ii) Each request for payment shall be made on seven (7) days’ prior notice to the Board and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, material-men, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out

by the Board the sum requested does not exceed the value of the work done to the date of such certificate:³⁹

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Board, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Board, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record;⁴⁰

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

(v) Such other conditions not inconsistent with the foregoing as the Board may reasonably request. ⁴¹

(c) Upon the completion of the work and payment in full therefore, any remaining proceeds of insurance then or thereafter in the hands of the Board shall be paid or credited to the Owners of the Apartments (or to the mortgagee or lessor of an Apartment if there be a mortgage or if the lessor is entitled by the lease to share in the proceeds) in proportion to their respective common interests.⁴²

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

SECTION 6. Disposition of Buildings. In the event the common elements of the Project suffer substantial damage and if Apartment Owners holding eighty percent (80%) of the common interests of the Project shall agree in writing that the Project need not be rebuilt, then the provisions of Section 514B-47 of the Act shall control the disposition of the Project and all insurance proceeds.

ARTICLE VIII MORTGAGES

SECTION 1. Notice of Unpaid Common Expenses. The Board of Directors, whenever so requested in writing by a purchaser or mortgagee of any interest in an apartment, shall promptly

report any then unpaid assessments for common expenses due from the Owner of the Apartment involved.

SECTION 2. Notice of Default. The Board of Directors, when giving notice to an Apartment Owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such Apartment or interest therein whose name and address has theretofore been furnished to the Board of Directors.

SECTION 3. Examination of Books. Each Owner and each mortgagee of an Apartment shall be permitted to examine the books of account of the Condominium at reasonable times, on business days, but not more often than once a month.

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

(e) The liens created hereunder upon any Apartment and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage under such interests made for value except as otherwise provided in these Bylaws.

(f) No amendment to this Section 4 shall affect the rights of the holder of any such mortgage filed in the Office of the Assistant Registrar of the Land Court or the Bureau of Conveyances prior to the filing of such amendment who does not join in the execution thereof.

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

ARTICLE IX CONDEMNATION

In the event of a taking in condemnation or by eminent domain of part or all of the Project, the proceeds of any award of compensation shall be payable to a condemnation trustee ("Trustee") which shall be a bank, trust company or real estate management company designated by the Board doing business in Hawaii and having net assets of not less than Five Million Dollars (\$5,000,000.00).

In the event all or any of the Apartments are taken and there is not a final judicial determination of the amount of condemnation proceeds allocable to each Apartment so taken, the amount of the condemnation proceeds allocable to each Apartment (including the Apartment's appurtenant interest in the common elements and any limited common elements) shall be determined by a real estate appraiser ("Appraiser") who is a member of the American Institute of Real Estate Appraisers, or any successor organization, and who shall have acted on behalf of the Apartment Owners in the condemnation proceedings, or if no such Appraiser acted on behalf of

the Apartment Owners or if more than one Appraiser acted on behalf of the Apartment Owners, then an Appraiser with such qualifications shall be selected by the Board of Directors to determine the amount of condemnation proceeds allocable to each Apartment.

In the event that the entire Project is taken, the Trustee shall pay to each Apartment Owner the portion of the condemnation proceeds determined by the Appraiser to be allocable to the Owner's Apartment.

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

In the event of any partial taking of the Project the Board shall, subject to the provisions of the preceding sentence concerning removal of an Apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of each Apartment in the Project remaining after such taking. Such work shall be undertaken, and the disbursements thereof shall be made, in the manner prescribed in ARTICLE VII, Section 5(b). In the event the sums held by the Trustee are insufficient to pay the cost for such repair and restoration, the Board is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of the remaining apartments in proportion to their common interests. The special assessment shall be secured by the lien created under Section 4 of ARTICLE VI hereof. In the event sums received as a result of a partial condemnation exceed the total of any amount payable to the Owner of a removed Apartment and the amount of costs for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Apartment Owners in accordance with their interest in the common elements.

ARTICLE X GENERAL PROVISIONS

SECTION 1. Rules and Regulations. The Owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations (herein called "Rules and Regulations") as the Board may deem necessary for the operation and use of the common elements and limited common elements, including without limitation such aspects of the operation and use of the Apartments as may affect the operation and use of the common elements and limited common elements, and the Owner agrees that the Owner's rights under this instrument shall be in all respects subject to the appropriate Rules and Regulations which shall be taken to be a part hereof, and the Owner agrees to obey all such Rules and Regulations as the same now are or may

from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees, and under-tenants of the Owner; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the Apartments.

SECTION 2. Abatement and Enjoinment of Violations of Apartment Owners. The violation of any rule or regulation adopted by the Board of Directors, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws:

(a) To enter the Apartment during reasonable hours in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or

(b) To impose charges and penalties, including late fees and interest, for late payment of assessments; levy reasonable fines for violations of the Declaration, these Bylaws and/or the Rules and Regulations; and establish a fining procedure stating the basis for the imposition of any fine; allowing an appeal to the Board of a fine with notice and opportunity to be heard; and if the fine is paid, the Apartment Owner or other person or entity against whom the fine is imposed, shall have the right to initiate a dispute resolution process as provided by Sections 514B-161, 514B-162 of the Act or by filing a request for an administrative hearing under a pilot program administered by the State of Hawaii Department of Commerce and Consumer Affairs.

(c) The violation of any of the condominium documents or the violation of the Act by a tenant or occupant other than an Owner, shall give the Board the right, (in addition to pursuing any other rights or remedies against the Owner of the apartment involved or as otherwise provided by law, the Declaration or these Bylaws), after giving notice to the tenant and the Owner and an opportunity to be heard to impose a fine or fines against the tenant or occupant under the provisions of subsection (b), provided that the Owner shall be responsible for the conduct of the Owner's tenant or occupant and for any fines levied against the tenant or occupant or any legal fees incurred in enforcing the Declaration, these Bylaws or the Rules and Regulations against the tenant or occupant. The Board also may enforce any other rights against the tenant for the violation which the Owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the Owner or both.

(d) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorney's fees, shall be borne by the defaulting Apartment Owner.

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

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

(ii) Foreclosing any lien thereon;

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

against an Apartment Owner, occupant, tenant, employee of an Owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which to the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by 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.⁴³

(f) If any claim by an Owner is substantiated in any action against the Association, any of its officers or the Board of Directors to enforce any provision of the Declaration, these By-Laws, the Rules and Regulations or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless:

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

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

(g) If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or the Board to enforce any provision of the Declaration, these Bylaws, Rules and Regulations or the Act, then all reasonable and necessary expenses, costs and attorney's fees necessarily incurred by the Association shall be awarded to the Association, unless before filing the Action in the court the Owner has first submitted the claim to mediation, or to arbitration pursuant to Sections 514B-161 and 514B-162 of the Act.

SECTION 3. Maintenance and Repair of Apartments. All maintenance of and repairs to any Apartment shall be made by the Owner of the Apartment, except as otherwise provided herein.

SECTION 4. Maintenance and Repair of Common Elements. All maintenance, repairs and replacements to the common elements, whether located inside or outside of the Apartments, shall be made by the Board of Directors and be charged to all the Owners as a common expense, unless necessitated by the negligence, misuse or neglect of an Apartment Owner, in which case such expense shall be charged to such Apartment Owner.

SECTION 5. Additions or Improvements by Board of Directors. During any fiscal year of the Association, if the Board of Directors shall determine in its judgment that the common elements shall require additions, alterations or improvements, the Board of Directors may proceed with such additions, alterations or improvements provided the aggregate cost for same during such fiscal year shall not exceed three percent (3%) of the budgeted amount for operation expenses approved by the Board of Directors and the Board shall assess all owners for the cost thereof as a common

expense. Any additions, alterations or improvements costing in excess of three percent (3%) of the budgeted amount for operating expenses for such fiscal year may be made by the Board of Directors only after obtaining approval of the owners of at least fifty percent (50%) of the apartments. If such approval shall be obtained, the cost thereof shall constitute part of the common expenses.

SECTION 6. Right of Access. Subject to the provisions set forth in the Declaration at Section 8(c), an Apartment Owner shall grant a right of access to the Owner's Apartment to the Manager and/or the Managing Agent and/or any other person authorized by the Board of Directors, the Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition existing in the Owner's Apartment and threatening another Apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his Apartment or elsewhere in the buildings, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, the Association shall, pursuant to Article III, Section 2(l) of these Bylaws, have the irrevocable right to access each unit at any time, whether the Owner is present at the time or not.⁴⁴

SECTION 7. Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a nonprofit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Owners. Said corporation shall be formed upon the written approval of a majority of the voting Owners. The formation of said corporation shall in no way alter the terms, covenants, and conditions set forth herein and the Articles and Bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation, which said action is in violation of any or all of the terms, covenants or conditions contained herein, shall be void and of no effect.

SECTION 8. Notices. All notices hereunder shall be mailed or delivered to the Board of Directors, c/o the Managing Agent, or if there be no Managing Agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all Owners and to all mortgagees of Apartments. All notices to any Owner shall be mailed or delivered to the building or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. Any notices to mortgagees of Apartments shall be sent by mail to their respective addresses, as designated by them from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received.

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

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

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

SECTION 12. Audit.

(a) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant.

(b) The Board of Directors shall make available a copy of the annual audit to each Apartment Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon the standard proxy form, (described at Article II Section 4), issued for an annual meeting a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report. The Board shall not be required to submit a copy of the annual audit report to the Owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

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

(ii) The annual audit to all Owners at the annual meeting, or as soon as the audit is completed, but not later than six (6) months after the annual meeting.

(c) If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

SECTION 13. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of Apartments shall carry out and pay for the operation and maintenance of the project as a mutually beneficial and efficient establishment.

SECTION 14. Amendment. These By-Laws may be amended at any time by the vote or written consent of at least sixty-seven percent (67%) of all Apartment Owners. No amendment to the Bylaws is valid unless the amendment is duly recorded in the Bureau of Conveyances. Any proposed amendment to these By-Laws together with the detailed rationale for the proposal may be submitted by the Board or by a volunteer Apartment Owners' group. If submitted by that group, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%)

of the Apartment Owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five (365) days after mailing for a proposed bylaw submitted by either the Board or a volunteer Apartment Owners group. If the bylaw is duly adopted, the Board shall cause the bylaw amendment to be recorded in the Bureau of Conveyances. The volunteer Apartment Owners' group shall be precluded from submitting a petition for a proposed bylaw that is similar to that which has been previously mailed to the Owners within three hundred sixty-five (365) days after the original petition was submitted to the Board. This Section 14 shall not preclude any Apartment Owner or volunteer Apartment Owners' group from proposing any bylaw amendment at any annual meeting of the Association.

SECTION 15. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

SECTION 16. Robert's Rules of Order. All meetings of the Association and the Board of Directors shall be conducted in accordance with the most recent edition of Roberts Rules of Order Newly Revised.

SECTION 17. Association Records.

(a) The Association shall keep financial and other records sufficiently detailed to enable the Association to comply with requests for information and disclosures related to the resale of Apartments. Except as otherwise provided by law, all financial and other records shall be made available pursuant to § 514B-154.5 of the Act, as amended from time to time, for examination by any Apartment Owner and the Owner's authorized agents. Association records shall be stored on Maui; provided that if original records, including but not limited to invoices, are required to be sent off island, copies of the records shall be maintained on Maui.⁴⁵

(b) The managing agent or Board of Directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or Board of Directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(c) Subject to the provisions of subsection (a), all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project or elsewhere within the State of Hawaii as determined by the Board.

(d) Any managing agent employed or retained by the Association may dispose of the records of the Association which are more than five (5) years old, except for tax records, which shall be kept for seven (7) years,⁴⁶ without liability if the managing agent first provides the Board of Directors with written notice of the managing agent's intent to dispose of the records if not retrieved by the Board within sixty (60) days, which notice shall include an itemized list of the records which the managing agent intends to dispose.

(e) The Association's most current financial statement shall be available to any Owner at no cost on twenty-four (24) hour loan, at a convenient location designated by the Board of Directors.

(f) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by the Apartment Owners at convenient times at a place designated by the Board; provided that:

(i) The Board may require the Apartment Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

(ii) The Apartment Owners pay for administrative costs in excess of eight (8) hours per year.

Copies of these items shall be provided to any Apartment Owner upon such Owner's request, provided that such Owner pays a reasonable fee for duplicating, postage and stationery and other administrative costs associated with the handling of the request.

(g) The Apartment Owners shall also be permitted to view proxies, tally sheets, ballots, Apartment Owners' check-in lists and the certificates of election for a period of thirty (30) days following any meeting of the Association; provided that:

(i) Owners shall make a request to examine the documents within thirty (30) days after the Association meeting;

(ii) The Board may require the Apartment Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

(iii) The Apartment Owners pay for administrative costs in excess of eight (8) hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty (30) days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty (60) days, after which they may be destroyed. Copies of tally sheets, Apartment Owners' check-in lists and the certificates of election from the

most recent Association meeting shall be provided to any Apartment Owner upon the Apartment Owner's request, provided that the Apartment Owner pays a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request.

(h) Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

(i) The Association may comply with this Section 17 by making information available to Apartment Owners, at the option of each Apartment Owner, and at no cost, for downloading the information through an Internet site.

(j) The imposition of any costs associated with any request by an Apartment Owner for legal or other information from the Association, the Board or the managing agent, or their employees or agents, shall be governed by the provisions of Section 514B-105(d) of the Act; provided, however, any fee charged to an Apartment Owner to obtain copies of Association records under this Section 17 shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof except the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.

SECTION 18. Prohibited Acts of Association Employees.

No employee of the Association shall engage in selling or renting Apartments in the Project except Association owned apartments, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the Owners.

SECTION 19. Budgets and Reserves.

Subject to the Act and any regulations adopted by the Real Estate Commission of the State of Hawaii:

(a) The budget required under Article III Section 2(b) shall include at least the following:

- (i) The estimated revenues and operating expenses of the Association;
- (ii) Information as to whether the budget has been prepared on a cash or accrual basis;
- (iii) The total replacement reserves of the Association as of the date of the budget;
- (iv) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association;

(v) A general explanation of how the estimated replacement reserves are computed;

(vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and

(vii) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves were calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subsection (iv).

(b) The Association shall assess the Apartment Owners to either fund a minimum of fifty percent (50%) of the estimated replacement reserves or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan for each fiscal year the Association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year reserves, as determined by the Association's plan.

(c) The Association shall compute the estimated replacement reserves by a formula, which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the Project. The estimated replacement reserves shall include:

(i) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(ii) Separate designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000.00. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000.00 may be aggregated in a single designated reserve.

(d) Neither the Association nor any Apartment Owner, director, officer, managing agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(e) The Board of Directors may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations or with the approval of a majority of the Apartment Owners. Prior to the imposition or collection of an assessment under this paragraph which has not been approved by a majority of the Apartment Owners, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(f) The requirements of this Section 19 shall override any requirements in the Declaration, these By-Laws, or any of the Association's other documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of

(i) Any requirements in the Declaration, these By-Laws, or any of the Association's other documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

(ii) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(g) Subject to the procedures of Article X Section 3 and any rules adopted by the Real Estate Commission of the State of Hawaii, any Apartment Owner may enforce the Board's compliance with this Section 19 in the event the Board fails to so comply. In the event the Board has not prepared an annual operating budget and reserve study as required in this Section 19, the Board shall have the burden of proving it has complied with this Section 19 in any proceeding to enforce such compliance.

(h) As used in this Section 19:

"Capital expenditure" means an expense, which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of the Association's future income and expense requirements to fund fully its replacement reserves provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

"Emergency situation" means any extraordinary expenses:

(i) Required by an order of a court;

(ii) Necessary to repair or maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered.

(iii) Necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;

(iv) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

(v) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.

"Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

“Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the Project including, but not limited to roofs, walls, decks, paving, and equipment that the Association is obligated to maintain.

SECTION 20. Restatement. These Bylaws may be restated at any time in the manner prescribed by Section 514B-109 of the Act.

SECTION 21. Alternative Dispute Resolution.

(a) If an Apartment Owner or the Board of Directors requests mediation of a dispute involving the interpretation or enforcement of the Declaration, these Bylaws or the Rules and Regulations, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay for all or a specified portion of the mediation costs. Nothing in this subsection shall be interpreted to mandate the mediation of any dispute involving (1) actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person; (2) actions to collect assessments; (3) personal injury claims; or (4) actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued. If any mediation under this section is not completed within two (2) months from commencement, no further mediation shall be required unless agreed to by the parties.⁴⁷

(b) Except as provided in Section 514B-162 of the Act, at the request of any party any dispute concerning or involving one or more Apartment Owners and the Association, the Board, or the managing agent or one or more Apartment Owners relating to the interpretation, application, or enforcement of the Act, the Declaration, these Bylaws or the Rules and Regulations shall be submitted to arbitration pursuant to the provisions of said Section 514B-162.

Exhibit "A"

Wailea Ekahi I, II & III Land Court Condominium Map No.'s 243, 269 & 290

List of Current Transfer Certificate of Title Numbers

Condo Map No.	Phase	Unit No.	TCT No.
243	I	1A	750,403
243	I	1B	525,372
243	I	1C	1,070,761
243	I	1D	1,157,936
243	I	1E	947,343
243	I	1F	1,145,505
243	I	2A	534,811
243	I	2B	1,039,220
243	I	2C	363,890
243	I	2D	1,091,554
243	I	2E	762,117
243	I	2F	860,143
243	I	3A	981,461
243	I	3B	Deregistered A56760785
243	I	3C	1,058,390
243	I	3D	1,118,160
243	I	3E	1,086,077
243	I	4A	1,130,536
243	I	4B	1,130,535
243	I	4C	525,230
243	I	4D	692,065
243	I	4E	1,170,679
243	I	5A	1,000,194
243	I	5B	1,050,623
243	I	5C	1,171,163
243	I	5D	1,108,220
243	I	5E	1,167,833
243	I	5F	1,160,642
243	I	6A	806,262
243	I	6B	1,169,321
243	I	6C	1,111,345
243	I	6D	255,764

Condo Map No.	Phase	Unit No.	TCT No.
243	I	6E	1,169,322
243	I	6F	483,600
243	I	7A	294,244
243	I	7B	500,490
243	I	7C	955,387
243	I	7D	955,385
243	I	7E	1,094,367
243	I	7F	628,878
243	I	7G	1,087,150
243	I	7H	955,384
243	I	7I	955,386
243	I	7J	895,089
243	I	8A	1,087,832
243	I	8B	524,051
243	I	8C	1,132,891
243	I	8D	1,163,585
243	I	8E	809,149
243	I	8F	1,145,807
243	I	9A	1,149,158
243	I	9B	828,473
243	I	9C	1,170,510
243	I	9D	1,163,421
243	I	9E	975,585
243	I	10A	1,104,519
243	I	10B	324,695
243	I	10C	1,152,763
243	I	10D	298,479 & 298,480
243	I	10E	996,254
243	I	10F	429,734
243	I	11A	1,149,159
243	I	11B	1,046,908

EXHIBIT A

Exhibit "A"

Wailea Ekahi I, II & III Land Court Condominium Map No.'s 243, 269 & 290

List of Current Transfer Certificate of Title Numbers

Condo Map No.	Phase	Unit No.	TCT No.
243	I	11C	1,051,034
243	I	11D	1,157,577
243	I	11E	962,635
243	I	11F	1,148,894
243	I	12A	438,260
243	I	12B	600,012
243	I	12C	1,036,126
243	I	12D	448,242
243	I	12E	1,156,751
243	I	13A	1,102,302
243	I	13B	857,417
243	I	13C	887,081
243	I	13D	1,093,413
243	I	13E	1,098,419
243	I	13F	1,061,340
243	I	14A	321,000
243	I	14B	926,830
243	I	14C	1,135,821
243	I	14D	1,136,998
243	I	14E	647,855
243	I	14F	488,725
243	I	15A	486,460
243	I	15B	647,284
243	I	15C	647,284
243	I	15D	465,056
243	I	15E	1,152,080
243	I	16A	1,111,505
243	I	16B	1,091,718
243	I	16C	1,158,099
243	I	16D	1,059,567
243	I	16E	1,004,657
243	I	17A	987,154

Condo Map No.	Phase	Unit No.	TCT No.
243	I	17B	519,853
243	I	17C	1,135,038
243	I	17D	1,159,870
243	I	17E	1,073,529
243	I	17F	1,053,660
243	I	Building A	197,741
269	II	18A	249,761
269	II	18B	197,756
269	II	18C	197,756
269	II	18D	1,069,081
269	II	18E	1,159,612
269	II	18F	1,165,730
269	II	19A	1,053,154
269	II	19B	1,152,220
269	II	19C	978,525
269	II	19D	810,845
269	II	20A	965,029
269	II	20B	1,103,247
269	II	20C	599,413
269	II	20D	190,119
269	II	20E	1,024,735
269	II	20F	1,170,903
269	II	20G	489,785
269	II	20H	907,709
269	II	20I	1,162,814
269	II	20J	537,213
269	II	21A	339,481
269	II	21B	1,110,500
269	II	21C	1,099,781
269	II	21D	484,020
269	II	21E	1,129,517
269	II	21F	1,163,287

Exhibit "A"

Wailea Ekahi I, II & III Land Court Condominium Map No.'s 243, 269 & 290

List of Current Transfer Certificate of Title Numbers

Condo Map No.	Phase	Unit No.	TCT No.
269	II	22A	1,098,561
269	II	22B	1,118,086
269	II	22C	1,144,424
269	II	22D	509,668
269	II	22E	1,058,078
269	II	22F	1,119,500
269	II	23A	1,152,081
269	II	23B	1,004,986
269	II	23C	1,045,784
269	II	23D	484,043
269	II	24A	573,877
269	II	24B	1,144,948
269	II	24C	1,084,393
269	II	24D	1,104,139
269	II	25A	905,993
269	II	25B	1,060,574
269	II	25C	1,159,024
269	II	25D	1,149,532
269	II	26A	259,227
269	II	26B	912,556
269	II	26C	1,067,642
269	II	26D	715,468
269	II	27A	1,059,557
269	II	27B	1,142,649
269	II	27C	977,775
269	II	27D	1,040,881
269	II	28A	1,111,344
269	II	28B	1,051,035
269	II	28C	1,146,014
269	II	28D	517,250
269	II	28E	1,050,384
269	II	28F	1,098,699

Condo Map No.	Phase	Unit No.	TCT No.
269	II	29A	582,762
269	II	29B	582,762
269	II	29C	1,088,146
269	II	29D	668,505
269	II	29E	1,089,078
269	II	29F	1,017,273
269	II	30A	1,132,180
269	II	30B	447,783
269	II	30C	980,894
269	II	30D	1,039,122
269	II	31A	183,002
269	II	31B	1,125,483
269	II	31C	589,430
269	II	31D	671,571
269	II	32A	191,831
269	II	32B	1,072,870
269	II	32C	1,061,251
269	II	32D	878,118
269	II	33A	858,038
269	II	33B	1,118,365
269	II	33C	682,649
269	II	33D	1,072,679
269	II	33E	741,330
269	II	33F	550,968
269	II	34A	1,051,033
269	II	34B	865,654
269	II	34C	487,858
269	II	34D	806,678
269	II	34E	505,014
269	II	34F	1,058,491
269	II	35A	1,078,749
269	II	35B	1,156,984

Exhibit "A"

Wailea Ekahi I, II & III Land Court Condominium Map No.'s 243, 269 & 290

List of Current Transfer Certificate of Title Numbers

Condo Map No.	Phase	Unit No.	TCT No.
269	II	35C	272,977
269	II	35D	1,037,885
290	III	36A	976,758
290	III	36B	841,343
290	III	36C	1,130,321
290	III	36D	325,508
290	III	36E	542,220
290	III	36F	1,051,492
290	III	37A	1,044,278
290	III	37B	869,782
290	III	37C	1,092,715
290	III	37D	1,152,470
290	III	37E	614,537
290	III	38A	1,097,863
290	III	38B	631,851
290	III	38C	1,117,396
290	III	38D	1,058,769
290	III	38E	513,839
290	III	38F	981,460
290	III	39A	1,048,196
290	III	39B	1,125,785
290	III	39C	950,527
290	III	39D	1,109,384
290	III	39E	1,130,181
290	III	39F	1,135,543
290	III	40A	1,086,373
290	III	40B	638,644
290	III	40C	1,107,358
290	III	40D	303,833
290	III	40E	436,786
290	III	40F	188,517
290	III	41A	1,098,694

Condo Map No.	Phase	Unit No.	TCT No.
290	III	41B	1,103,224
290	III	41C	1,058,766
290	III	41D	1,037,011
290	III	42A	281,275
290	III	42B	1,152,480
290	III	42C	802,371
290	III	42D	1,130,089
290	III	42E	761,110
290	III	43A	891,357
290	III	43B	946,848
290	III	43C	1,005,181
290	III	43D	1,015,240
290	III	43E	400,422
290	III	43F	1,060,837
290	III	44A	1,131,996
290	III	44B	1,128,483
290	III	44C	1,110,561
290	III	44D	956,612
290	III	44E	1,058,684
290	III	45A	879,779
290	III	45B	1,162,733
290	III	45C	1,107,892
290	III	45D	902,433
290	III	45E	1,153,201
290	III	45F	1,115,399
290	III	46A	316,179
290	III	46B	1,094,717
290	III	46C	1,134,344
290	III	46D	1,170,987
290	III	46E	1,118,919
290	III	46F	567,626
290	III	47A	1,075,955

Exhibit "A"

**Wailea Ekahi I, II & III
Land Court Condominium Map No.'s 243, 269 & 290**

List of Current Transfer Certificate of Title Numbers

Condo Map No.	Phase	Unit No.	TCT No.
290	III	47B	277,798
290	III	47C	1,136,552
290	III	47D	690,092
290	III	47E	1,154,785
290	III	47F	1,130,277
290	III	48A	552,884
290	III	48B	1,167,355
290	III	48C	1,073,370
290	III	48D	1,145,622
290	III	48E	1,052,554
290	III	49A	1,166,699
290	III	49B	1,145,623
290	III	49C	807,866
290	III	49D	1,165,728
290	III	49E	603,286
290	III	49F	395,352
290	III	50A	1,034,006
290	III	50B	1,169,696
290	III	50C	1,166,700
290	III	50D	1,118,775
290	III	50E	505,147

Condo Map No.	Phase	Unit No.	TCT No.
290	III	50F	1,050,385
290	III	51A	737,534
290	III	51B	1,037,401
290	III	51C	635,047
290	III	51D	779,559
290	III	51E	988,326
290	III	51F	1,028,795
290	III	52A	1,095,134
290	III	52B	435,156
290	III	52C	669,947
290	III	52D	1,009,005
290	III	52E	470,718
290	III	53A	197,862
290	III	53B	1,108,022
290	III	53C	1,161,938
290	III	53D	999,140
290	III	53E	1,098,623
290	III	54A	858,568
290	III	54B	511,665
290	III	54C	864,620
290	III	54D	326,352

ENDNOTES

¹ Article II, Section 6(b)(ii) is restated to implement § 514B-123(e) of Hawaii Revised Statutes Chapter (“HRS”) 514B (the “Act”).

² Article II, Section 8 is restated to implement § 514B-124.5 of the Act.

³ Article II, Section 13 is restated to implement § 514B-126(c) of the Act.

⁴ Article III, Section 1 is restated to implement § 514B-107(b) of the Act.

⁵ Article III, Section 2(l) is restated to implement § 514B-137(b) of the Act.

⁶ Article III, Section 2(u) (formerly Article III, Section 2(v)) is restated to implement § 514B-142 of the Act.

⁷ Article III, Section 2(v) is added to implement § 514B-106.5 of the Act.

⁸ Article III, Section 4(c) is added to implement § 514B-106(b) of the Act.

⁹ Article III, Section 5 is restated to implement HRS § 1-17.

¹⁰ Article III, Section 6 is restated to implement § 514B-106(b) of the Act.

¹¹ is restated to implement HRS § 1-17.

¹² Article III, Section 16 is restated to implement § 514B-125(a) of the Act.

¹³ Article III, Section 16 is restated to implement § 514B-125(b) of the Act.

¹⁴ Article III, Section 16 is restated to implement § 514B-125(c) of the Act.

¹⁵ Article IV, Section 4 is restated to implement HRS § 1-17.

¹⁶ Article IV, Section 5 is restated to implement HRS § 1-17.

¹⁷ Article IV, Section 6 is restated to implement HRS § 1-17.

¹⁸ Article IV, Section 7 is restated to implement HRS § 1-17.

¹⁹ Article VI, Section 1 is restated to implement HRS § 1-17.

²⁰ Article VI, Section 2 is restated to implement HRS § 1-17.

²¹ Article VI, Section 3 is restated to implement HRS § 1-17.

²² Article VI, Section 4(b) is restated to implement § 514B-146(a) of the Act.

²³ Article VI, Section 4(d) was amended by that certain instrument recorded on February 5, 2009 as Document No. 3825876.

²⁴ Article VI, Section 4A is restated to implement § 514B-146(e) of the Act.

²⁵ Article VI, Section 4A is restated to implement § 514B-146(c) of the Act.

²⁶ Article VI, Section 4A is restated to implement § 514B-146(d) of the Act.

²⁷ Article VI, Section 4A is restated to implement § 514B-146(f) of the Act.

²⁸ Article VI, Section 4A is added to implement § 514B-146(g) of the Act.

²⁹ Article VI, Section 6 is restated to implement HRS § 1-17.

³⁰ Article VIII, Section 4 is restated to implement § 514B-146(b), (j)-(l) of the Act.

³¹ Article VII, Section 1(f)(iv) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349. Article VII, Section 1(f)(v) was deleted by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³² Article VII, Section 1(g) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³³ Article VII, Section 4(c) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³⁴ Article VII, Section 4(d) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³⁵ Article VII, Section 5 was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³⁶ Article VII, Section 5(a)(i) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³⁷ Article VII, Section 5(a)(ii) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³⁸ Article VII, Section 5(a)(ii) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

³⁹ Article VII, Section 5(b)(ii) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

⁴⁰ Article VII, Section 5(b)(iii) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

⁴¹ Article VII, Section 5(b)(vi) was deleted by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

⁴² Article VII, Section 5(c) was amended by that certain instrument recorded on July 13, 2011 as Document No. 4085349.

⁴³ Article X, Section 2(d) is restated to implement § 514B-157(a) of the Act.

⁴⁴ Article X, Section 6 is restated to implement § 514B-137(b) of the Act.

⁴⁵ Article X, Section 17(a) is restated to implement § 514B-152 of the Act.

⁴⁶ Article X, Section 17(d) is restated to implement § 514B-154(h) of the Act.

⁴⁷ Article X, Section 21(a) is restated to implement § 514B-161.