

**STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED**

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/s/ LESLIE T KOBATA  
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AOAO Maui Vista  
2191 South Kihei Rd. Ste. 1119  
Kihei, HI 96753

**FOURTH RESTATEMENT OF BY-LAWS OF  
ASSOCIATION OF APARTMENT OWNER OF MAUI VISTA**

WHEREAS, the Second Restatement of By-laws of Association of Apartment Owners of Maui Vista was recorded in the Bureau of Conveyances of the State of Hawaii on September 14, 2007, as Document No. 2007-163807, (the "Second Restatement"); and

WHEREAS, the Third Restatement of By-laws of Association of Apartment Owners of Maui Vista was recorded in the Bureau of Conveyances of the State of Hawaii on October 31, 2013, as Document No. A-50520728, (the "Third Restatement"); and

WHEREAS, subsequent to the recording of the Third Restatement certain amendments were made and adopted to the Third Restatement by vote of the Association owners and recorded by that certain Certification of Amendments to the Third Restatement of By-laws of Association of Apartment Owners of Maui Vista recorded in said Bureau on May 22, 2018, as Document No. A67160631, and by that certain Certification of Amendment to the Second Restatement of By-laws of Association of Apartment Owners of Maui Vista recorded in said Bureau on April 1, 2022, as Document No. A-81260713; and

WHEREAS, pursuant to Section 514B-109(a) the Board of Directors of the Association of Apartment Owners of Maui Vista has voted to restate the Third Restatement to incorporate the amendments thereto prior to the recording of this Fourth Restatement which amendments are contained in the following By-law provisions: Article I, Section 1; Article III, Sections 1, 2, and 6; the addition of a new Section 11 to Article III; Article IV, Section 14; and Article IX Section 4.

NOW, THEREFORE, pursuant to §514B-109, Hawaii Revised Statutes, BE IT RESOLVED that the Fourth Restatement of By-laws of Association of Apartment Owners of Maui Vista attached hereto, shall be, and hereby is, adopted as the Fourth Restatement of By-laws of Association of Apartment Owners of Maui Vista.

Said Fourth Restatement correctly sets forth without change the corresponding provisions of the Third Restatement, as amended, and said Fourth Restatement supersedes the original By-laws of Association of Apartment Owners of Maui Vista recorded in said Bureau as an attachment to the original Declaration of Horizontal Property Regime of Maui Vista recorded in said Bureau in Liber 13420 at Page 91 and all prior amendments and restatements thereto.

*[Remainder of page intentionally left blank. Signatures to follow.]*

2022.

The Fourth Restatement is hereby adopted this 4<sup>th</sup> day of November,

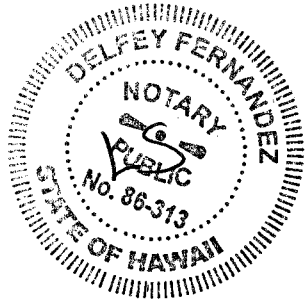
ASSOCIATION OF APARTMENT OWNERS OF  
MAUI VISTA

Margaret Ann Shea  
By: Margaret Ann Shea  
Its: President

Don Smart  
By: Don Smart  
Its: Secretary

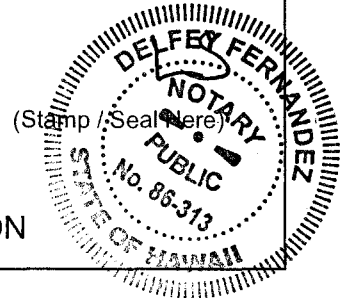
STATE OF HAWAII           )  
  )  
COUNTY OF MAUI         )       SS.

On this 4<sup>th</sup> day of November 2022, before me personally appeared MARGARET ANN SHEA, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the forgoing instrument, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Delfey Fernandez  
Print Name: Delfey Fernandez  
Notary Public, State of Hawaii  
My commission expires: 11/10/25

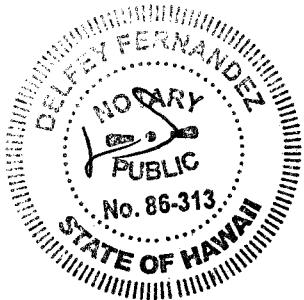
Document Date: <u>November 4, 2022</u> #Pages: <u>40</u>	
Name: <u>Delfey Fernandez</u>	2nd Circuit
Document Description: <u>FOURTH</u> <u>RESTATEMENT OF BYLAWS</u>	
<u>Delfey Fernandez</u> Signature	<u>11/04/22</u> Date
NOTARY CERTIFICATION	



STATE OF HAWAII           )  
  )  
COUNTY OF MAUI        )

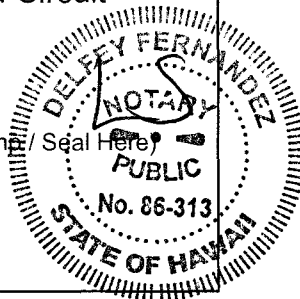
SS.

On this 4<sup>th</sup> day of November, 2022, before me personally appeared DON SMART, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the forgoing, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Delfey Fernandez  
Print Name: Delfey Fernandez  
Notary Public, State of Hawaii  
My commission expires: 11/10/25

Document Date: <u>November 4, 2022</u> # Pages: _____	
Name: <u>Delfey Fernandez</u>	2nd Circuit
Document Description: <u>FOURTH</u>	
<u>RESTATEMENT OF BYLAWS</u>	
<u>Delfey Fernandez</u> Signature	<u>11/04/22</u> Date
(Stamp / Seal Here)	
NOTARY CERTIFICATION	



**FOURTH RESTATEMENT OF BY-LAWS OF  
ASSOCIATION OF APARTMENT OWNERS OF MAUI VISTA**

The following By-Laws shall apply to the above-named condominium project (herein sometimes called the "Project"), as described in and created by the original Declaration, (as the same has been amended and/or restated to the date of the recording of this instrument, hereinafter called the "Declaration") recorded at the Bureau of Conveyances of the State of Hawaii on January 16, 1979, in Liber 13420 at Page 91, and to all present and future owners, tenants and occupants of any apartments of the Project and all other persons who shall at any time use the Project:

**ARTICLE I**

**INTRODUCTORY PROVISIONS**

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Condominium Property Act, Chapter 514B of the Hawaii Revised Statutes (the "Act") except as otherwise expressly provided herein. The term "common elements" means those elements designated in the Declaration as common elements and limited common elements. The term "Project" 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 "House Rules" refers to the rules and regulations for the Project governing the conduct of occupants of the buildings adopted by the Board of Directors of the Association (the "Board"). "Owner" or "apartment owner" means a person or corporate or partnership entity owning severally or as a co-tenant an apartment and the common interest appertaining thereto, to the extent of such interest so owned. Unless otherwise specified, "apartment" as used herein has the same meaning and definition as contained in the Act and includes each of the apartments designated and described in the Declaration. The term "Association" means the Association of Apartment Owners. Unless otherwise provided herein, the term "Mortgagee" means any holder, including an institutional holder, of any recorded first mortgage, or equivalent security interest lien on any apartment in the Project. The term "Insurance Trustee" shall mean a corporate trustee selected by the Board to act as trustee which shall be a bank or trust company doing business in Hawaii and/or the Board itself acting as Insurance Trustee on behalf of the Owners.

Section 2. Conflicts. These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the provisions of said Act or of the Declaration, the provisions of said 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 any part of the Project in any manner are subject to these By-Laws, the Declaration and the House Rules. The acceptance of an apartment deed or conveyance or mortgage or the act of occupancy of an apartment shall constitute an agreement that these By-Laws, the House Rules 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 APARTMENT OWNERS**

Section 1. Membership. The Association shall be comprised of all of the apartment owners acting as a group in accordance with these By-Laws and the Declaration.

Section 2. Qualification. The owner of any apartment, which shall be understood to include a vendee under an agreement of sale for purposes of these by-laws, upon acquiring an interest therein, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3. Powers of Association. The following powers shall be vested in the Association, which shall exercise said powers in accordance with the provisions hereof:

- (A) The election of a Board of Directors.
- (B) The operation of the property, payment of common expenses and determination and collection of common charges.
- (C) The collection from the apartment owners of their shares of the common expenses.
- (D) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (E) The adoption of rules and regulations governing the details of operation and use of the common elements.
- (F) The establishment of such restrictions and requirements not inconsistent with the Declaration or the Act regarding the use and maintenance of the apartments and the use of the common elements.
- (G) The amendment of these By-Laws in accordance with the Declaration, Section 14, Article X, hereof and subject to the Act, as amended.
- (H) The approval of the annual budget prepared and submitted by the Board of Directors.

Nothing in this Section 3 shall prohibit the delegation by the Association of any of its powers in accordance with these By-Laws as they may be amended from time to time.

Section 4. Other Powers. In addition to the powers enumerated in Section 3 above and in addition to the powers granted by any other provisions herein, the Association may exercise any and all powers not inconsistent with any law or the Declaration, which are reasonably

incidental to the fulfillment of the purposes of the Project set forth in the Declaration, or are reasonably incidental to the exercise of its powers as set forth in the Declaration or herein.

### **ARTICLE III**

#### **MEETINGS OF THE ASSOCIATION**

Section 1. Place of Meeting. Except as provided in Section 11, all meetings of the Association shall be held at the Project or such other suitable place convenient to the members of the Association as may be designated by the Board; any in-person meeting of the Association shall be held within the State of Hawaii. Provided, however, in the event of a natural disaster, such as a hurricane, an Association meeting may be held in person outside the State of Hawaii. In addition, the Board may allow for electronic participation at any meeting pursuant to Section 11 below.

Section 2. Annual Meeting. The annual meeting of the Association shall be held not less than once per year at such date, time, location, and manner as the Board shall from time to time designate.

Section 3. Special Meetings. Special meetings of the Association shall be held at any time upon the call of the President, a majority of the Board 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. The Secretary shall give written notice of all Association meetings, whether annual or special, 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 (d) 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. If notice is given pursuant to the provisions of this Section, the failure of any member of the Association to receive actual notice of any meeting



shall in no way invalidate such meeting or any proceedings thereat. The presence of any member of the Association in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 5. Quorum. The presence at any meeting in person or by proxy of a majority of the members of the Association shall constitute a quorum, and the acts of a majority of the members of the Association at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of the members of the Association" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration.

Section 6. Voting. Issues to be decided by ownership voting shall be on a percentage basis only when required by the Declaration, Bylaws or applicable law. In such cases, the weighting of the vote shall be on a percentage basis based on the percentage of the common interest assigned to such Apartment in the Declaration. For all other issues to be decided by owner voting, each Apartment shall be allocated one vote regardless of its percentage ownership. For elections for the Board of Directors, each Apartment shall be allocated one vote for each vacancy regardless of its percentage ownership, to be cast by the Apartment's owner(s). Unless otherwise required by the Bylaws, the Declaration, or by law, the vote of a majority of votes cast at a meeting at which a quorum is achieved shall be binding. 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. The resident manager, 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 6. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this Section 6. Voting by any Owner attending any meeting pursuant to Section 11 below must conform to any statutory restriction or provision dictating the method of electronic voting, or said Owner may not vote and shall be present for quorum purposes only. The Association shall make reasonable efforts to ensure that a proper method of remote voting exists, but shall not be obligated to guarantee the same.

#### Section 7. Proxies and Pledges.

(A) 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 posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board of Directors shall mail to all owners either:

(i) 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

(ii) 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.

(B) 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: (i) 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 (ii) 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 has indicated 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; (iii) 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 (iv) to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage. 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.

(C) 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.

(D) 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.

(E) 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 (B), (C) or (D) of this Section 7 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 (I) 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.

(F) 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.

(G) 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 8. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members of the Association present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 9. Order of Business. The order of business at all annual meetings of the Association shall be as follows:

- (a) Roll Call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Report of officers;
- (e) Report of Committees;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business.

Section 10. Procedure. All Association meetings shall be conducted in accordance with the most recent edition of Roberts Rules of Order Newly Revised.

Section 11. Telephonic or Electronic Meetings. At the discretion of the Board of Directors, Association meetings may be conducted by any means of communication that allows participation by all unit owners in any deliberation or discussion, such as telephone conference, video conference, or other similar communication equipment. A unit owner participating in an Association meeting by telephone conference, video conference, or other similar communication equipment is deemed present in person at the meeting for quorum, voting, and all purposes allowed subject to Article III, Section 6 herein and as permitted by the Board of Directors.

## **ARTICLE IV**

### **BOARD OF DIRECTORS**

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of five (5) persons, each of whom shall be owners, co-owners, vendees under an agreement of sale, 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. For the purposes of this Section, the partners of a general partnership and the general partner(s) of a limited partnership shall be deemed to be the owner of an apartment. If a corporation is the owner of an apartment, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation. There shall not be more than one representative of the Board 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. 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 are 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 the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to owner approval. The directors shall serve without compensation. No resident manager of the Project shall be eligible to serve on the Board of Directors.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these By-Laws directed to be exercised or done only by the owners of the apartments. 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.

Section 3. Election and Term. Cumulative voting shall not be used. Each Apartment shall be allocated one vote for each vacant director position to be filled. The owner(s) of each Apartment may cast only one allocated vote for each preferred candidate, and may not cast multiple votes for a single candidate. (Example: If there are six candidates for three open positions, the owner(s) of an Apartment may cast single votes for three of the six candidates). The candidate(s) receiving the greatest number of votes shall be elected to the open position(s). The directors shall hold office for a period of two years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting two of the directors shall be elected for one year and three for two years.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Notwithstanding any provision herein to the contrary, any director elected to fill any vacancy on the Board of Directors shall serve for the remainder of the term of the director whose vacancy he is elected to fill. Death, incapacity or resignation of any director, or his ceasing to be the sole owner or co-owner of an apartment, shall cause his office to become vacant. Three unexcused absences from regular or special, properly noticed, Board meetings between annual meetings shall cause a director's office to become vacant if a majority of the remaining directors so vote.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or managing agent signed by not less than twenty-five percent (25%) of the

apartment owners as shown in the Association's record of ownership; and provided further that if the Secretary or managing agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the Bylaws. If said vacancy is not so filled at the regular or special meeting, the Board of Directors shall fill said vacancy as provided in Section 4 above.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting, the Board of Directors shall elect the officers of the Association for the ensuing year. Notice of the annual Board of Directors meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting.

Section 7. Regular Meeting. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar quarter of each year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or by electronic transmission, at least one day prior to the date of such meeting.

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

Section 8A. 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 9. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board of Directors, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At

any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds/Registration. The Board of Directors shall secure fidelity bonds as required by the Act. The premiums on such bonds shall be paid by the Association. The Board shall also register the Association annually as required by the Act.

Section 12. 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 13. Procedure. All meetings of the Board of Directors shall be conducted in accordance with Roberts Rules of Order.

Section 14. Powers of the Board.

(A) The Board of Directors shall have the power to do all things set forth in the Act, as amended, and in these By-Laws, except as otherwise expressly prohibited.

(B) The Board of Directors shall be the exclusive agent for the Association in the exercise of the management and control of the common elements.

(C) The Board shall have the exclusive power to contract for all goods and services, payment for which shall constitute common expenses; provided, however, the Association may, by resolution adopted at a meeting duly called for the purpose, prohibit any proposed action by the Board of Directors which has not yet imposed an enforceable obligation on the Board of Directors or the Association.

(D) The Board of Directors may, from time to time, adopt and/or amend House Rules governing the details of the operation and use of the common elements; provided, however, that no such rules shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for the purpose; provided, further, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving House Rules adopted by the Board of Directors.

(E) Within thirty (30) days prior to the beginning of each fiscal year, the Board of Directors shall cause to be prepared 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 determination of the amounts of monthly and special assessments 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. The budget shall itemize the estimated income of the

Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintenance and operating expenses, and all other charges and outgoings of any description to which the Association, or its property may be assessed or become liable, plus the reserves established by these By-Laws and the Act, less any surpluses from the operation of prior years, if any. In addition to the budget, the Board of Directors shall prepare a schedule of monthly assessments against each apartment owner for his proportionate share of such estimated cost of maintaining and operating the property of the Horizontal Property Regime for such ensuing year, in accordance with the provisions of Section 1 of Article IX of these By-Laws.

(F) The Board of Directors shall acquire for the benefit of the apartment owners, and shall pay for, out of the funds collected pursuant to paragraph (E) of this Section, all things necessary or proper for the operation of the Project and, in addition, shall pay for all expenses incurred which are designated common expenses by the Act, the Declaration or these By-Laws, including the following:

(1) Water, sewer, garbage, electricity, telephone and gas and other necessary utility services for the common elements (if not separately metered or charged to the apartment), and maintenance and gardening service for the common elements.

(2) Unless otherwise expressly provided, painting, maintenance and repair of the common elements (but not including the interior surfaces of any apartment which the owner shall paint, maintain and repair) and such furnishings and equipment for the common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive rights and duty to acquire the same for the common elements.

(3) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these By-Laws or which, in its opinion, shall be necessary or proper for the proper operation of the Project, or common elements, or for the enforcement of these By-Laws; provided, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments; is caused by the misconduct of any apartment owner, the Board may assess that expense exclusively against such apartment owner's apartment.

(4) Maintenance and repair of any apartment, if such maintenance and repair is necessary in the discretion of the Board of Directors to protect the common elements or any other portion of the Project, and if the owner or owners of said apartment 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 has been delivered by the Board of Directors to said owner or owners; provided, that the Board of Directors shall levy a special assessment against such apartment for the cost of said maintenance or repair.



(5) Policies of hazard and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required by or authorized by the Declaration, these By-Laws or the Board.

(6) The annual services of a responsible Hawaii corporation to manage and control the Project (hereinafter called the "Managing Agent"), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine to be necessary or proper for the operation of the Project whether such personnel are employed directly by the Board of Directors or are furnished by the Managing Agent. The Managing Agent's annual services contract shall be subject to the prior approval of a majority of the members of the Association.

(7) Legal and accounting services necessary or proper in the operation of the Project or the common elements or the enforcement of these By-Laws.

(8) The Board of Directors shall also pay any amount necessary to discharge any lien or encumbrance which may, in the opinion of the Board of Directors, constitute a lien against the Project or against the common elements rather than merely against the interest therein of a particular owner or 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 the same.

(G) The Board of Directors may enter any apartment when necessary in connection with the maintenance or repair or construction for which the Board of Directors is responsible. Such entry shall be made with as little inconvenience to the owner as is practical, and any damage caused thereby shall be repaired by the Board of Directors at the expense of the Association of Apartment Owners, and such expenses are hereby designated a common expense.

(H) The Board of Directors is authorized from time to time to lease or rent appropriate living quarters for use by the Managing Agent or other employees, with or without charge, and to enforce, modify and make agreements with respect to any lease or tenancy of any portions of the common elements on behalf of the apartment owners.

(I) The Board of Directors is prohibited from making any loans and investments except pursuant to these By-Laws or to authority expressly granted by a resolution of the Association at a meeting duly called for such purpose.

(J) The Board of Directors may purchase apartments of the Project at foreclosure or other judicial sales, on behalf of all apartment owners, and thereafter sell, lease, mortgage, vote the common interest appurtenant to and otherwise deal with such apartments.

(K) Replaced with the language of Article X Section 21 pursuant to Sections 514B-122 and 126 of the Act.

(L) The Board of Directors shall have the right to make such elections under the tax laws of the United States or the State of Hawaii as shall be deemed in the best interest of the Association, including, without limitation, any election available under Section 528 of the

Internal Revenue Code of 1954, as amended, or any successor or State tax provision of similar import.

(M) Nothing herein contained shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the owners, or any of them, or the Association.

(N) The Board of Directors shall have the authority to adopt reasonable rules and regulations related to parking on the project including, but not limited to, rules which prohibit the parking of vehicles on the common elements and/or limited common elements which are without current licensing, registration and/or are not operable, rules which prohibit parking in unauthorized stalls and any parking which may impede the flow of traffic. The Board shall have the authority to enforce such rules and regulations by any reasonable means including, but not limited to towing and/or fining.

(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 (I), 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) 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 any rules and regulation adopted pursuant to these By-Laws; 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. The Board shall not deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees, legal fees, fines, and interest, (other than amounts remitted by an apartment in payment of late fees, legal fees, fines and interest) unless the Board adopts and distributes to all apartment owners the policy required by Section 514B-105(c) of the Act. The unpaid amount of any penalty or fine against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent in the same manner as provided in the Act for common expenses;

provided, however, that the said lien for such penalty or fine shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on any mortgage of record recorded prior to the recordation of the notice of lien by the Association. The Board shall have the power to impose monetary fines upon Owners, tenants and any other person using or coming upon the project or any part thereof for any purpose whatsoever, for violations of the Declaration, these By-Laws, the rules and regulations or any statute, ordinance, or applicable requirement of any governmental entity, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Managing agent or resident manager, if any, to impose the aforementioned fines in accordance with such schedule. Written notice of each new schedule of fines, including any amendments thereto, shall be made available to all Owners and the Owners shall be allowed the opportunity to be heard thereon at the next regular meeting of the Board of Directors. Such notice shall be sent by either electronic transmission or regular mail to the Owners at least fourteen (14) days in advance of the meeting.

(Q) 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.

(R) To lease or otherwise use for the benefit of the Association of Apartment Owners those common elements not falling within subparagraph (Q) 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.

(S) Dispose of personalty abandoned in or on the common elements of the Project in any one of the following ways:

- (i) Sell the personalty in a commercially reasonable manner;
- (ii) Store such personalty at the expense of its owner;
- (iii) Donate such personalty to a charitable organization; or
- (iv) Otherwise dispose of such personalty, provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:
  - (A) The Board notifies the owner in writing of:
    - (1) The identity and location of the personalty; and

(2) 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

(B) 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 newspaper of general circulation within the County of Maui.

The proceeds of any sale or disposition of personalty as set forth above shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty (30) days, after which any proceeds not claimed shall become the property of the Association.

(T) Take appropriate action with respect to an elderly apartment owner pursuant to the provisions of Section 514B-142 of the Act.

(U) Act as "Insurance Trustee" on behalf of the Association with those powers set forth in Chapter 514B-143 of the Act.

Section 15. Open Meetings. 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 may participate in any deliberation or discussion of the Board of Directors unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, 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 16. Notices. Whenever practicable, notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within the Project seventy-two hours prior to the meeting or simultaneously with notice to the Board.

Section 17. Documents. The Association at its expense shall provide all Board members with a current copy of the Association's Declaration, Bylaws, house rules, and, annually, the Act with amendments.

## **ARTICLE V**

### **OFFICERS**

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by and, in the case of the President, from the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. An owner shall not simultaneously act as an officer of the Association and an employee of the Managing Agent employed by the Association. All officers must be members of the Association.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board.

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

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board, he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

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

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, prepare, execute, certify and record amendments to the Declaration and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer shall also act as Parliamentarian during the meetings of the Association and of the Board of Directors.

Section 8. Auditor.

(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 III 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 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 9. The Managing Agent. The Managing Agent shall act under the authority of and as agent for the Board of Directors. The Managing Agent shall be appointed by the Board of Directors in accordance with these By-Laws. The Managing Agent is hereby designated the person to accept service of process on behalf of the Association of Apartment Owners, the Board of Directors, or two or more apartment owners or, as the case may be, in any action relating to the common elements or more than one apartment.

The Managing Agent shall perform such duties as the Board of Directors shall direct. Unless otherwise so directed, the Managing Agent shall:

(A) Collect assessments to discharge common expenses and pay said common expenses in accordance with these By-Laws.

(B) Appoint a resident manager, subject to the control of the Managing Agent who shall assume the responsibility of the day-to-day operation and management of the common elements.

(C) Establish and maintain such reserve funds as may be necessary for the proper operation and management of the common elements. Each apartment owner shall have an interest in such reserves equal to his common interests.

(D) 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, as required by Section 514A-85, Hawaii Revised Statutes, or any other successor law. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board of Directors, and shall be available for examination by the apartment owners at convenient hours of weekdays.

(E) Bring and prosecute an action, without prejudice to the rights of any apartment owner to act for himself, on behalf of two or more apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one apartment.

## **ARTICLE VI**

### **EXECUTION OF INSTRUMENTS**

Section 1. Proper Officers. All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments shall be signed, executed and delivered by the President; provided, however, that the Board of Directors may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by such officer, agents, or employees of the Association, as shall be provided by general or special resolution.

Section 2. Facsimile Signatures. The Board of Directors may from time to time by resolution provide for the execution of any instrument or document of the Association or the Board of Directors by a mechanical device or machine, or by the use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board of Directors.

## **ARTICLE VII**

### **INDEMNIFICATION**

No director or officer of the Association shall be liable for acts, defaults or neglect of any other director or officer or member or for any loss sustained by the Association or any member thereof, unless the same shall have resulted from his own willful misconduct or gross negligence. Every director, officer and agent of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with or resulting from any claim, action, suit, procedure, investigation, or inquiry as to whatever nature in which he may be involved as a party or otherwise by reason of his being or having been a director, officer or agent of the Association, whether or not he continues to be such director, officer or agent at the time of

incurring or the imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties. In the absence of such final adjudication of the existence of such liability, the Association and each member thereof and officer or agent thereunder may conclusively rely on an opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representative of such person.

## **ARTICLE VIII**

### **REPAIR, MAINTENANCE AND USE**

#### **Section 1. Repair and Maintenance.**

(A) Every owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his apartment, the omission of which would adversely affect any common element or any other apartment, and shall be responsible for all loss and damage caused by his failure to do so.

(B) All repairs of internal installations within each apartment, such as water, light, gas, power, sewage, telephone, air conditioning, sanitation, doors, windows, lanai awning, lamps and all other fixtures and accessories belonging to such apartment, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors and ceilings of such apartment, shall be at the owner's expenses; except that any repairs of common elements located within any apartment shall be a common expense.

(C) Every owner shall reimburse the Association for any expenditure incurred in repairing or replacing any common elements, furniture, furnishings and equipment thereof damaged or lost through the fault of such owner or any person using the Project under him, and shall give prompt notice to the Managing Agent of any such damage, loss or other defect when discovered.

(D) No owner shall use or keep anything on the grounds or any other common elements which would in any way hinder the full use and enjoyment thereof by any other owner or occupant. Every owner shall be responsible for the care and maintenance, including any costs of such care and maintenance, of any lanai adjacent to and for the use of their respective apartments, as well as the care and maintenance of any railing which adjoins a lanai. It is intended that the building shall present a uniform appearance, and to effect that end, the Board may require the painting or repair of each lanai, patio, outside doors, windows, trim, fences, railings and other exposed portions of the building and regulate the type and color of paint to be used. The Board is authorized to contract for said painting and repair and to assess each owner for his proportionate share of such painting and repair.



Section 2. Use.

(A) No owner or occupant of an apartment shall post any advertisement, bill, poster or other sign on or about the Project.

(B) All owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants.

(C) No recreational activity shall be permitted in the stairways, corridors, elevators or parking areas of the Project.

(D) No garments, rugs, or other objects shall be hung from the lanais, patios, windows or facades of the Project; nor shall they be dusted or shaken from the lanais, patios or windows or cleaned by beating or sweeping on the grounds of the Project.

(E) No garbage, refuse or trash of any kind shall be thrown, placed or kept on any common element other than the disposal facilities provided for such purposes.

(F) No owner or occupant of an apartment, except as otherwise permitted by the Declaration, shall install any wiring or other device for electrical or telephone installations, television, antenna, machines or other equipment or appurtenances on the exterior of the Project or protruding through the walls, windows or roof thereof.

(G) Nothing shall be allowed, done or kept in any apartment or common element which will overload or impair the floors, walls or roofs of the Project or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

(H) 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 (H). 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.

The imposition of requirements by the Board under this subsection (H) 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.

If an apartment owner fails to follow requirements imposed by the Board pursuant to this subsection (H), 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 below. Nothing in this subsection (H) shall be deemed to limit the remedies of the Association for damages, or injunctive relief, or both.

(I) Smoking is prohibited anywhere within, on or about the Project, that is, the project apartments, lanais, common elements or limited common elements, except in those area(s) of the common elements, specifically designated by the Board of Directors in its sole discretion, where smoking shall be allowed. For purposes of this subsection (I), the term “smoking” shall mean the lighting and/or burning of any tobacco or plant material; inhaling or exhaling the smoke/fumes of tobacco or any other plant material; lighting, burning or carrying any lighted smoking equipment for tobacco or any other plant material; and/or inhaling or exhaling from any lighted smoking equipment for tobacco or any other plant material.

## **ARTICLE IX**

### **ALLOCATION AND COLLECTION OF COMMON EXPENSES**

Section 1. Allocation of Common Expenses. For the purpose of fixing and determining the payments of the common expenses to be made as provided in the Declaration, the Board shall, on behalf of all owners, determine in advance for each calendar year the estimated aggregate amount of the common expenses for such year, except that the first year shall begin on the designated date of completion of construction of the Project and end on the 31st day of December of said year. The Board shall allocate the common expenses amongst the owners in accordance with the terms and conditions of the Declaration. The Board, on behalf of the owners, may from time to time during each year make reasonable adjustments in said estimated aggregate amount of common expenses on the basis of actual cost incurred in prior months or periods. Each owner's share of said allocated amounts of the estimated common expenses, as determined from time to time by the Board, shall be payable by the owner in monthly installments in advance on or before the 15th day of each month. Any omission or delay in determining and allocating the common expenses for any period shall not relieve the owner therefrom. In such event, the owner, pending the determination and allocation thereof, shall continue to pay the same common expenses that the owner had been paying during the last preceding period and shall pay the deficiency, if any, upon the determination and allocation of the proper common expenses within ten (10) days after notice thereof. Said installments

transmitted to the Board, as agent of all owners, shall then be transmitted by the Board to the third person entitled to payment of same 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, and will maintain or cause to be maintained separate 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 his authorized representative at reasonable business hours. The Board will annually 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 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 or Managing Agent 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.

Section 3. Taxes and Assessments. Each apartment owner shall be obligated to have real property taxes for his 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, other taxes and assessments. Each owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments 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 paragraph 13 of the Declaration.

Section 4. Default in Payment of Assessments. 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. If the owner shall fail to pay his assessment when due, then he shall pay an additional assessment of \$50.00 for each such failure and all delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies herein 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 Managing Agent 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 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 delivery of such notice, the Board may elect to file and record 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 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 By-Laws 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 and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Each default shall constitute a separate basis for a claim of lien or a lien. Such lien shall have priority and may be enforced as set forth in said paragraph 13 of the Declaration and Section 514B-146 of the Act.

(C) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board shall be conclusive upon the Board and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee established by the Board. In the event any claims of lien 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 his successor, and payment of a reasonable fee established by the Board, 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 Bureau of Conveyances recording data of the claim of lien, 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 his successor upon payment of the fee.

#### Section 5. Collection from Tenant or Rental Agent.

(A) If an Owner at any time rents or leases his apartment and defaults for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, so long as such default continues, demand and receive from any renter or lessee 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 6. Termination of Access to Common Elements. In conjunction with or as an alternative to foreclosure proceedings, the Association may authorize the managing agent or Board 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 a 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 delinquent assessments. Before the Board or managing agent can take the actions permitted in this subsection (c), 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. Assessment Disputes.

(A) No apartment owner shall withhold any assessment claimed by the Association. Any apartment owner who 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 fine, late fee, lien filing fee, and any other charge included in the assessment;

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

(iv) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;

(v) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the apartment owner immediately pays the assessment in full before filing for such mediation or arbitration and thereafter keeps assessments current; and

(vi) That payment in full of the assessment does not prevent the apartment owner from contesting the assessment or receiving a refund of amounts owed.

Nothing in these Bylaws shall limit the rights of an apartment owner to the protection of all fair debt collection procedures mandated under federal and state law.

(B) An apartment owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the 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 are paid in full on or before the date of filing. If the apartment owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all Association 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 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 to the Association which are not owed.

Section 8. 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 resolution of the Board of Directors.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 1. Mortgages. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any apartment unit or interest therein shall report to such person the amount of any assessments against such apartment unit then due and unpaid.

Section 2. Rules and Regulations. Each owner recognizes the right of the Board, from time to time, to establish and amend such House Rules as the Board may deem necessary for the management and control of the apartments and 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 House Rules which shall be taken to be a part hereof; and the owner agrees to obey all such rules 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 House Rules shall uniformly apply to and be binding upon all occupants of the apartments.

Section 3. Abatement and Enjoinment of Violations by Apartment Owners and Tenants. The violation of any House Rule adopted by the Board, or the breach of any By-Law contained herein, or the breach of any provision of the Declaration, shall give rise to a cause of action in the Association, the Board, or any aggrieved apartment owner for:

(A) Recovery of damages, or

(B) Injunctive relief to abate the continuance of any such breach, or both.

(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,

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.

All costs for or arising from utilization of the remedies provided for in this Section, including attorney's fees, shall be borne by the defaulting party.

Section 4. Maintenance and Repair of Apartments. All maintenance of and repairs to any apartment (other than maintenance of and repairs to any common elements contained therein, and not necessitated by the negligence, misuse or neglect of the owner of such apartment) shall be made by the owner of such apartment.

Section 5. 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 and be charged to all the owners as a common expense, unless necessitated by the negligence, nuisance or neglect of an apartment owner, in which case such expense shall be charged to such apartment owner.

Section 6. Additions or Alterations by Board of Directors. Whenever in the judgment of the Board the common or limited common elements shall require additions or alterations with a total cost equal to or less than TWENTY THOUSAND DOLLARS (\$20,000.00), the Board may proceed with such additions or alterations and shall assess the cost thereof as a common expense. Any such additions or alterations costing in excess of TWENTY THOUSAND DOLLARS (\$20,000.00) may be made by the Board only after obtaining the approval of a majority of the Apartment Owners; except that such approval shall not be required for any additions or alterations required by law or in the event of an emergency threatening immediate and substantial damage to person or property. If such approval shall be obtained, the cost thereof shall be assessed as a common expense.

Section 7. Additions or Alterations by Apartment Owners. No owner shall make any addition or alteration in or to his apartment which may affect the common elements or change the exterior appearance of the Project, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by an apartment owner for approval of a proposed addition or alteration in his apartment within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition or alteration.

Section 8. Right of Access. Subject to the provisions of Section 7c of the Declaration, an apartment owner shall grant a right of access of his apartment to the Managing Agent and/or any other person authorized by the Board, or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his apartment and threatening another apartment or a common element, or for the purpose of making inspections or alterations or repairs to the mechanical or electrical services or other common elements in his



apartment or elsewhere in the Project, provided that requests for entry are made in advance and that any such entry is a time reasonably convenient to the owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the owner is present at the time or not.

Section 9. Notices. All notices hereunder shall be sent by registered or certified mail to the Board of Directors, c/o the Managing Agent or, if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time, by notice in writing to all owners and to all mortgagees of apartments. All notices to any owner shall be hand delivered or sent by registered or certified mail to the apartment owner's address at the Project or to such other address as may have been designated by him from time to time, in writing, to the Board. All notices to Mortgagees shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been effectively given when mailed or delivered, except notices of change of address which shall be deemed to have been given when received. A copy of all notices sent to apartment owners shall be sent to each apartment owner's Mortgagee known to the Board.

Section 10. 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 By-Laws, or the intent of any provisions thereof.

Section 11. Gender and Number. The use of any gender in these By-laws 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 12. Waiver. No restriction, condition, obligation or provision contained in these By-Laws 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 13. Interpretation. The provisions of these By-Laws 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 Bylaws 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 Bylaws 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 days after the original petition was submitted to the Board. This Section 12 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. Alterations. None of the provisions of the Project documents are intended to be in contravention of the State or Federal Fair Housing Act. The Board will at all times comply with the provisions of the Fair Housing Acts when acting upon requests by handicapped persons to make reasonable modifications, at their cost, to apartments and/or to the common elements of the Project if the proposed modifications are necessary for their full enjoyment of the Project. The Board will also comply with the provisions of the Fair Housing Act when acting upon requests by handicapped persons for exemptions from any of the provisions of the Project documents which would interfere with said handicapped persons' equal opportunity to use and/or enjoyment of their apartments and/or the common elements of the Project.

Section 17. Pets. Notwithstanding any other provision herein, visually impaired persons, hearing impaired persons and physically impaired persons shall be allowed to keep certified seeing-eye dogs, certified signal dogs, and certified service dogs, respectively, in their apartments. Further, nothing herein shall hinder full access to the apartments and the common elements by handicapped persons.

Section 18. Association Records.

(A) The Board shall keep financial 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 reasonably available 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.

(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 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 disposed.

(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, 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. (Section 514-154(f) of the Act)

(I) The Association may comply with this Section 18 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 18 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 19. 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 20. 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 IV Section 14(E) 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 percent 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 18 shall override any requirements in the Declaration, these Bylaws, 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 Bylaws, 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 Section 22 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 18 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 18, the Board shall have the burden of proving it has complied with this Section 18 in any proceeding to enforce such compliance.

(H) As used in this Section 20:

"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 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 21. Meeting Minutes.

(A) Minutes of meetings of the Board of Director 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 sixty (60) 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.

#### Section 22. Expenses of Enforcement.

(A) 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 against an apartment owner, such apartment owner's employees, tenants, guests, or invitees, shall be promptly paid on demand by such apartment owner to the Association; provided that if the claims upon which the Association takes any

action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by such apartment owner as a result of the action of the Association, shall be paid promptly on demand to such apartment owner by the Association.

(B) 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 Bylaws, 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 made to the Board of Directors would have been fruitless.

(C) 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 23. Restatement. These By-laws may be restated at any time in the manner prescribed by Section 514B-109 of the Act.

Section 24. Alternative Dispute Resolution.

(A) Except as provided in Section 514B-161 of the Act, at the request of any party to a 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 the parties to the dispute shall be required to participate in mediation. If a dispute is not resolved by mediation as provided in subsection (a), in addition to any other legal remedies that may be available, (including the arbitration procedures described in subsection (b), any party that participated in the mediation may file a request for a hearing with the office of administrative hearings under the applicable provisions of the Act.

(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.