

BY-LAWS OF ASSOCIATION OF APARTMENT OWNERS

THE KEALIA CONDOMINIUM

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BY-LAWS OF ASSOCIATION OF APARTMENT OWNERS
THE KEALIA CONDOMINIUM

WHEREAS, SAMUEL WOOLSEY LEE, husband of LUCY SILVA LEE, of Wailuku, County of Maui, State of Hawaii (hereinafter called the "Fee Owner"), is the owner in fee simple of the land situated in Waikapu, Wailuku, Island and County of Maui, State of Hawaii, more particularly described in the Declaration of Horizontal Property Regime to which these By-Laws are annexed (hereinafter called the "Property");

WHEREAS, Fee Owner has leased the Property to THE KIHEI BEACH JOINT VENTURE, a Hawaii registered joint venture (hereinafter called the "Developer"), by Lease Agreement dated May 1, 1974 and recorded on June 25, 1974 with the Bureau of Conveyances of the State of Hawaii at Liber 9988, Page 93 (hereinafter called the "Lease"), which Lease was amended by instrument dated September 27, 1974, recorded in said Bureau in Liber 10166, Page 568;

WHEREAS, Developer intends to develop the Property with the construction of a building with residential apartments, all in accordance with plans recorded in the Bureau of Conveyances, State of Hawaii as Condominium Map No. _____ (hereinafter called the "Condominium Map"), incorporated by reference herein; and

WHEREAS, the Fee Owner and Developer wish to submit the aforesaid land and improvements thereon to a horizontal property regime by filing a Declaration of Horizontal Property Regime and adopting these By-Laws which shall be annexed to the said Declaration all as provided for by Chapter 514, Hawaii Revised Statutes, as amended.

NOW, THEREFORE, the Fee Owner and Developer, by attaching this By-Laws to the Declaration of Horizontal Property Regime hereby adopt this By-Laws and hereby declare that all of the property hereinabove described is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following By-Laws all of which are declared and agreed to be in furtherance of the plan set forth in the Declaration of Horizontal Property Regime to which these By-Laws are annexed and made a part thereof, to constitute said property a Horizontal Property Regime or Condominium under the aforesaid Chapter 514 and are established and agreed upon for said purposes and for the purposes of enhancing and perfecting the value, desirability and attractiveness of said property. These By-Laws shall run with the aforesaid land and apartments and shall be binding upon all parties having or acquiring any right, title or interest therein.

ARTICLE I

INTRODUCTORY PROVISIONS

SECTION 1. Definitions. The terms used herein shall have the meanings given to them in said Chapter 514, except as expressly otherwise provided herein. The term "common elements" means those elements designated in the aforesaid Declaration as common elements and limited common elements. 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 "Rules and Regulations" refers to the Rules and Regulations or House Rules for the conduct of occupants of the buildings adopted by the Board of Directors.

as hereafter provided. "Owner" or "Apartment Owner" means a person owning severally or as a Co-Tenant an Apartment and the common interest appertaining thereto, to the extent of such interest so owned; provided, however, that a lessee of an apartment under an Apartment Lease from Fee Owner shall be deemed to be an Owner to the extent that voting rights and other rights of ownership are assigned to said lessee by said Apartment Lease; and provided further, that a sublessee of an Apartment may be deemed to be an Owner to the extent that a lessee assigns his voting rights and other rights of ownership to said sublessee by lease filed with the Board of Directors. "Apartment" as used herein has the same meaning and definition as contained in said Chapter 514 and is sometimes hereinafter called a condominium unit or units and includes each of the apartments of the Project. The term "Association" means the Association of Apartment Owners.

SECTION 2. Conflicts. These By-Laws are set forth to comply with the requirements of Chapter 514, Hawaii Revised Statutes, as amended. In case any of these By-Laws conflict with the provisions of said Chapter 514 or of the Declaration, the provisions of said Chapter 514 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 Rules and Regulations. The acceptance of an assignment of lease or conveyance or the entering into of a lease or the act of occupancy of an Apartment shall constitute an agreement that these 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 OWNERS

SECTION 1. Voting. Each Apartment Owner shall be entitled to that fraction of the total vote of all of the Apartment Owners which equals the percentage of the common interest appurtenant to such Apartment as set forth in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association, the percentage of vote for any Apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such Apartment in such capacity. The vote for any Apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each Co-Tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such Apartment.

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

SECTION 3. Majority Vote.

The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding

upon all Apartment Owners for all purposes, except where a higher percentage vote is required in the Declaration or these By-Laws or by law.

SECTION 4. Majority of Apartment Owners. As used in these By-Laws, the term "majority of Apartment Owners" shall mean those Apartment Owners having more than fifty percent (50%) of the total authorized votes present at any meeting of the Apartment Owners, and any specified percentage of the Owners means Owners having the specified percentage of the total votes.

SECTION 5. Cumulative Voting. If not less than forty-eight (48) hours prior to the time fixed for any meeting of the Association for the election of Directors, not less than ten percent (10%) of the Owners shall deliver to any officer of the Association a request in writing that the election of the Directors to be elected be by cumulative voting, then each Owner shall cumulate his votes, and may cast for any one or more nominees to the Board of Directors a vote equivalent to the votes which such Owner is entitled to multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as he shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected.

SECTION 6. Proxies and Pledges. The authority given by any Apartment Owner to another person to represent

him at meetings of the Association shall be in writing, signed by such Owner and filed with the Secretary, unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such Owner. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

INSTRUMENT ANSWERMENT I

SECTION 7. Place of Meetings. Meetings of the Association shall be held at such suitable place convenient to the Apartment Owners as may be designated by the Board of Directors.

REPLACE ANSWER I

SECTION 8. Annual Meetings. The first annual meeting of the Association shall be held as called by the Developer which shall be as soon as practicable after the expiration of forty-five (45) days from the date of filing of the notice of completion of the project. At such meeting the Apartment Owners shall elect a Board of Directors. Thereafter, the annual meetings of the Association shall be held on the second Tuesday in the third calendar month following the fiscal year as selected by the Board of Directors. At such meetings the Board of Directors shall be elected by ballot of the Apartment Owners in accordance with the requirements of Section 4 of ARTICLE III of these By-Laws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

Replace ANSWER #1

SECTION 9. Regular Meetings. In addition to the annual meetings, the Board of Directors by resolution or a majority of all of the Apartment Owners by petition may establish regular meetings at semiannual, quarterannual, or other regular intervals.

SECTION 10. Special Meeting. Special meetings of the Association may be held at any time upon the call of the President or of any three (3) Directors, or upon the written request of not less than twenty-five percent (25%) of all of the Apartment Owners presented to the Secretary.

SECTION 11. Notice of Meetings and Other Notices. Written notice of all meetings, annual or special, stating the place, day and hour of the meeting and whether it is annual or special and in case of each special meeting stating briefly the business proposed to be transacted thereat, and any other notices permitted or required to be delivered by these By-Laws shall be given by mailing such notice, postage prepaid, at least thirty (30) days before the date assigned for the meeting or by delivery of such notice personally at least ten (10) days before the date assigned for the meeting, to the Owners of the Apartments at their address at the Project or at the address given to the Board for the purpose of service of such notices. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage or deed of trust from any Owner of an Apartment may obtain a copy of any and all notices permitted or required to be given to the Owner of an Apartment, whose interest is subject to said mortgage or deed of

trust. Upon notice being given in accordance with the provisions hereof, the failure of any Owner of an Apartment to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each such Owner shall keep the Board informed of any changes in address.

SECTION 12. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum has not attended, a majority in common interest of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

SECTION 13. Order of Business. The order of business at all 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) Reports of Officers;
- (e) Report of Board of Directors;
- (f) Reports of committees;
- (g) Election of inspectors of election (when so required);
- (h) Election of members of the Board of Directors (when so required);
- (i) Unfinished business; and
- (j) New business.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Project shall be governed by a Board of Directors. The Board of Directors shall be composed of five (5) persons.

each of whom shall be an Owner or a Co-Owner (or in the case of corporate Owners, shall be officers, stockholders or employees of such corporations, or in the case of fiduciary Owners, shall be the fiduciaries or officers or employees of such fiduciaries) and who plans to be physically in the State of Hawaii for at least three consecutive months out of the year for which he will be elected; provided that if a sufficient number of such qualified persons are not available to serve, then the Association shall elect as many Directors as meet these qualifications and shall elect the remaining number notwithstanding that said remaining Directors fail to meet said qualifications of physical presence in the State of Hawaii.

SECTION 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Directors by the Apartment Owners. Such powers and duties of the Board of Directors shall be exercised and performed as agent for and on behalf of the Apartment Owners and shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common elements;
- (b) Determination of the common expenses required for the operation and maintenance of the Project;
- (c) Collection of the common expenses from the Apartment Owners;
- (d) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;

(e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the Project;

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

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

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

(i) Selling, subleasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with Apartments acquired by the Board of Directors or its designee, corporate or otherwise, on behalf of all Apartment Owners;

(j) Organizing corporations to act as designees of the Board of Directors in acquiring title to or leasing of Apartments on behalf of all Apartment Owners;

(k) Obtaining of insurance for the Project, including the Apartments, pursuant to the provisions of ARTICLE VII hereof;

(l) Making of repairs, additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(m) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these By-Laws;

(n) Purchasing of any other materials, supplies, furniture, labor and services, the making of repairs and structural alterations, and the payment of all insurance, taxes or assessments and other common expenses which the Board is required to secure, make or pay for pursuant to the terms of these By-Laws or by law or which in its opinion shall be necessary or proper for the operation of the buildings as apartment buildings or for the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, or assessments are required because of the particular actions or negligence of the Owners of particular Apartments, the cost thereof shall be specially assessed to the Owners of such Apartments; and provided further that notwithstanding anything in these By-Laws to the contrary, the Board or the Association will not perform or make any payments towards any capital improvements unless the association in an annual or special meeting has specifically authorized said improvements and has specifically authorized a specific program of assessments to raise funds for said improvements, which program will require that all funds collected in said program shall be held or accumulated for a period not exceeding 10 years and will be returned to the Apartment Owners if and to the extent not expended for said specifically authorized improvements.

(o) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a lien against the Project or against the common

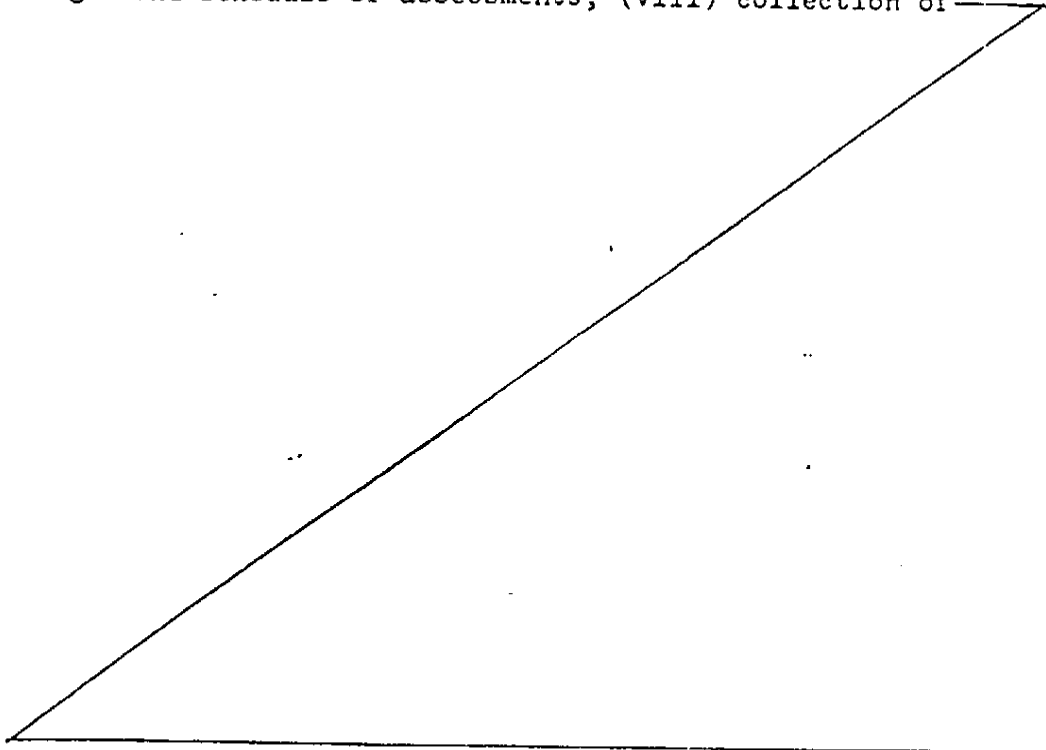
elements or limited common elements rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and costs incurred by the Board by reason of such lien or liens; and

(p) Maintenance and repair of any Apartment if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements and limited common elements or any other portion of the buildings, and the Owner or Owners of said Apartment have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Owner or Owners, provided that the Board shall levy a special assessment against such Apartment for the cost of said maintenance or repair.

SECTION 3. Managing Agent and Manager.

(a) The Board of Directors shall at all times employ a responsible Hawaii corporation as Managing Agent to manage and control the Project as agent for and on behalf of the Association and the Board subject at all times to direction by the Association and the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Association or the Board; except, however, the initial Managing Agent shall not be removed prior to December 31, 19__, unless consented to in writing by Developer. The initial Managing Agent may also employ a Manager. The Developer may appoint the initial managing agent.

(b) The Managing Agent shall have, subject to the limitations in these By-Laws, such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Project, (ii) maintenance, repair, replacement and restoration of the common elements and any additions or alteration thereto; (iii) purchase, maintenance and replacement of any equipment, (iv) servicing of all utilities to the buildings and the various apartments, (v) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (vi) contracting with others for the furnishing of such services as it deems proper for the Project, (vii) preparation of a proposed budget and schedule of assessments, (viii) collection of



assessments and payment of bills to third parties, (ix) purchase of such insurance as is contemplated by these By-Laws, and (x) custody and control of all funds and maintenance of books and records and preparation of financial reports.

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

(d) Upon written request of any Apartment Owner or lessee of any Apartment Owner the Managing Agent shall deliver a certified statement of the status of the account of such Apartment Owner or lessee each month to the mortgagee of such Apartment Owner or lessee.

(e) The appointment and terms of compensation of the Managing Agent (after the initial Managing Agent) shall be submitted to the Association for approval by the Association and to the Fee Owner for approval by the Fee Owner. Any contract therefor shall be subject to such approval, and, until first approved by the Association, may be terminated by either the Board of Directors or the Managing Agent upon thirty (30) days' written notice thereof to the other, and any contract failing such approval shall terminate thirty (30) days thereafter, and the Board of Directors shall give prompt written notice thereof to the Managing Agent and appoint a qualified successor subject to such approval by the Association. Without limiting the generality of the foregoing, the contract term shall not exceed one (1) year, unless the Fee Owner otherwise specifically consents in writing in each case.

(f) The Managing Agent, subject to the direction of the Board of Directors, may represent the Apartment Owners or any two or more Apartment Owners similarly situated, as a class, in any action, suit, or proceeding

concerning the Apartment Owners, the common elements, one or more Apartments, or the Association.

SECTION 4. Election and Term of Office. At the first annual meeting of the Association, all five (5) Directors shall be elected for a term of one (1) year. At the expiration of the initial term of office of each Director, his successor shall be elected to serve a term of one (1) year. Each member of the Board of Directors shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Association in case of delay in the election of a successor.

SECTION 5. Removal of Members of the Board of Directors. At any regular or special meeting of the Association, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Apartment Owners, and a successor may then and there or thereafter be elected for the remainder of the term to fill the vacancy thus created; provided that if ten percent (10%) or more of the Owners present at such meeting shall vote against his removal, an individual Director shall not be removed, unless the entire Board is removed. Any member of the Board of Directors whose removal has been proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting.

SECTION 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining members.

at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Directors for the remainder of the term of the member whose vacancy he filled (unless removed) and until a successor shall be elected at the next annual meeting of the Apartment Owners. Death, incapacity, or resignation of any Director, or his ceasing to be an Owner or Co-Owner of an Apartment, shall cause his office to become vacant.

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

SECTION 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be

given to each member of the Board of Directors personally or by mail, telephone, or telegraph at least thirty (30) days prior to the day named for such meeting.

SECTION 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on thirty (30) days' written notice by mail or ten (10) days' notice given personally or by telephone or telegraph to each member of the Board of Directors, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) members of the Board of Directors.

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

SECTION 11. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board

of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

SECTION 12. Fidelity Bonds. The Board of Directors shall obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a common expense.

SECTION 13. Compensation. No member of the Board of Directors shall receive any compensation from the Association for acting as such, except for a reasonable Director's fee for attendance at the meetings of the Board, as set by the Owners at any annual meeting.

SECTION 14. Liability and Indemnity of the Board of Directors and Officers. The members of the Board of Directors and Officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own individual negligence or willful misconduct. The Association of Owners shall indemnify each Director and Officer of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted, or threatened in which he may be involved as a

party or otherwise by reason of his being or having been such Director or Officer, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such Director or Officer, whether or not he continues to be such Director or Officer at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which he is liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer. As to whether or not a Director or Officer was liable by reason of negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each Director and Officer may conclusively rely upon an opinion of legal counsel selected by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such Director or Officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such Director and Officer.

ARTICLE IV

OFFICERS

SECTION 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary,

and such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board of Directors. The Secretary and the Treasurer may be the same person, and also the Assistant Secretary and Assistant Treasurer may be the same person.

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

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

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

SECTION 5. Vice President. The Vice President shall take the place of the President and perform his duties

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

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the laws of the State of Hawaii.

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

SECTION 8. Auditor. The Association shall elect annually a certified public accountant or accounting firm as auditor, who shall not be an officer or own any interest in any Apartment, to audit the books and financial records of the Apartment Owners as required by law or as directed additionally by the Board of Directors.

SECTION 9. Execution of Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board of Directors.

SECTION 10. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

ARTICLE V

REPAIR AND 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.

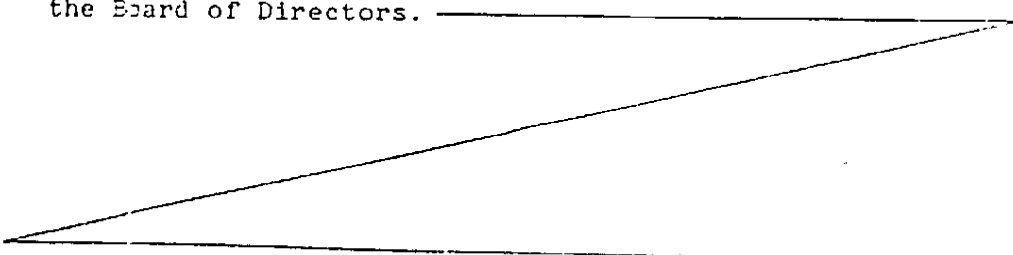
(b) All repairs of internal installations within each Apartment such as water, light, gas, power, sewage, telephone, air conditioning, sanitation, doors, windows, lamps, and all other fixtures and accessories belonging to such Apartment, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Apartment, shall be at the Owner's expense.

(c) Every Owner shall reimburse the Managing Agent for any expenditures incurred in repairing or replacing any common elements or 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 or Manager 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 element 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 fence or railing which adjoins a lanai. It is intended that the building shall present a uniform appearance, and to effect that end the Owners of residential apartments herety agree that 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, except as authorized by the Board of Directors.



(b) All Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants, including, without prejudice to the generality of the foregoing, noises caused by any child residing or visiting in Apartments.

(c) No Owner or occupant shall permit any child residing or visiting with him to loiter or play in the stairways, 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, 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 of Directors with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

ARTICLE VI

COMMON EXPENSES, APARTMENT EXPENSES AND TAXES

SECTION 1. Common Expenses. The Owner of each Apartment shall be liable for and pay a share of the common expenses in proportion to his interest in the common elements appurtenant to his Apartment. Common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including without limitation all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any fire, accident or nuisance thereon, cost of repair, reinstatement, rebuilding and replacement of the premises, yard, janitorial, and other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, including limited common elements, and including any adjacent land, although not subject to the Horizontal Property Regime, that shall be added to the Project as provided for in the Declaration, and the cost of all utility services, including water, electricity, gas, garbage disposal and any other similar services, unless separately metered or otherwise separately attributable to an Apartment or group of Apartments, in

which case the amounts charged or attributable to each Apartment or group of Apartments, as determined by the Board of Directors with the advice of a Certified Public Accountant, shall be payable by the Owner of such Apartment or Owners of Apartments as the case may be. The common expenses may also include such amounts as the Board of Directors may deem proper to make up any deficit in the common expenses for any prior year. Payments of common expenses shall be made to the Board, as agent of the Owners of the Apartments, and the Board shall transmit said payments on behalf of each such Owner to the third person entitled to said payments from each Owner. If there should be any excess assessments on hand at the end of any year, they shall be used to pay common expenses in the following year.

The Board of Directors shall establish and maintain a General Operating Reserve by monthly assessment against and payment by all Owners in proportion to their respective common interests, of such additional amount not exceeding that portion of the total monthly assessment for current common expenses, as the Board of Directors determines to be adequate to provide financial stability in the administration of the Project, which additional amount shall be deemed conclusively to be savings of the Owners held for their benefit for common expenses not payable from regular assessments; provided, however, that whenever said Reserve equals twenty percent (20%) of the total annual assessments for current common expenses, the assessments for said Reserve shall be discontinued until the depletion of said Reserve below said twenty percent (20%) level, whereupon such assessment shall be resumed until the restoration of said Reserve to said twenty percent (20%) level. The size of said reserve

shall be reviewed at each annual meeting of the Association and shall continue to be maintained at a level no greater than said twenty percent (20%) unless the Association votes to reduce it. Said Reserve shall be deposited in a special account with a safe and responsible depository and may be in the form of a cash deposit or may be invested in obligations of, or fully guaranteed as to principal by, an agency of the United States of America. Said Reserve at the discretion of the Board of Directors or the Association may be used to meet any deficiencies in operating funds from time to time resulting from higher than normal operating expenses and maintenance costs or any delinquency by Owners in the payment of assessments for common expenses. Said Reserve shall not operate to exempt any Owner from liability to contribute his proportionate share of such expenses or to pay any such assessments therefor, and any funds withdrawn from said Reserve for the purpose of making up any delinquency shall be reimbursed upon the payment of such delinquent assessments. The proportionate interest of each Owner in said Reserve shall not be withdrawn or assigned separately but shall be deemed to be transferred with each Apartment even though not mentioned or described expressly in the instrument of transfer. If the Horizontal Property Regime established hereby is terminated or waived, or if for any reason the Reserve is terminated or reduced, said Reserve remaining after payment of all outstanding common expenses shall be distributed to all Owners, except for the Owners of Apartments reconstituted as a new Horizontal Property Regime, in proportion to their respective common interests.

From time to time, as specifically directed by the Association at any annual or special meeting, the Board of Directors shall establish and maintain one or more Capital Improvement Reserve Funds by the monthly assessment against and payment by

the Owners in proportion to their respective common interests. Each such Fund shall be earmarked for a specific capital improvement which shall have been specifically authorized by the Association at any annual or special meeting and the amount of such Fund shall be such annual amount as the Association determines to be adequate (but no more) to provide for the particular capital improvement, whether it be the repair, restoration, and replacement of the common elements and the furniture, fixtures, and mechanical equipment thereof, and for such other improvement as may be specifically authorized by the Association. The assessments for said Funds shall be deemed conclusively to be savings of the Owners held for their benefit for common expenses of a capital nature. Each such Fund shall be deposited in a separate account with a safe and responsible depository and may be in the form of a cash deposit or may be invested in obligations of or fully guaranteed as to principal by, an agency of the United States of America. Disbursements from said Fund shall be made only upon authorization by the Board of Directors. The proportionate interests of each Owner in said Fund shall not be withdrawn or assigned separately but shall be deemed to be transferred with each Apartment even though not mentioned or described expressly in the instrument of transfer. If the Horizontal Property Regime established hereby is terminated or waived, or if the Fund exceeds the cost of the particular improvement, or if the planned improvement is for any reason not implemented within a reasonable time (in any event not more than 10 years) after creation of said Fund, said Fund remaining shall be distributed to all Owners, except for the Owners of Apartments reconstituted as a new Horizontal Property Regime, in proportion to their respective common interests. The common expenses also include such amounts as may be required, by special assessment, for the purchase or lease of any Apartment by the Board of Directors or its designee, corporate or otherwise, on behalf of

the Association, as permitted under Hawaii law or these By-Laws; provided, however, that the Board of Directors may not purchase an Apartment and hold the same, or lease an Apartment for a period in excess of one (1) year, without obtaining the approval of the Owners of at least seventy-five percent (75%) of the Apartments.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, as agent for and on behalf of the Owners, all common expenses. The Board, on behalf of all Owners, will maintain or cause to be maintained separate books of account of common expenses in accordance with generally 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 Owner of an Apartment shall be obligated to have the 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 Section 5 of this ARTICLE VI.

SECTION 4. Ground Rent and All Other Amounts

Payable Under Apartment Leases. Unless the Fee Owner shall otherwise direct the Owners in writing, all rental and all other amounts payable under the terms of the Apartment Leases shall be paid by the Owners to the Managing Agent for transmittal (at the Association's expense) to the Fee Owner as and when due.

SECTION 5. 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 ten dollars (\$10.00) 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 Manager if the latter is so authorized in writing. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorneys' fees in such amount as the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time within ninety (90) days after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner, with a copy to the Mortgagee of such Owner, if such Mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the Apartment of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Apartment against which claim of lien is made, (3)

the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and of Chapter 514, Hawaii Revised Statutes, as amended, and (5) that a lien is claimed against said described Apartment in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Upon recordation of a duly executed original or copy of such claim of lien in the Bureau of Conveyances of the State of Hawaii, the Board shall have all remedies provided in Section 514-24, Hawaii Revised Statutes, as amended. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the person conducting the sale.

(c) For the purposes of this Section 5, 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 not to exceed ten dollars (\$10.00). In the event any claims of liens have been recorded, and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment of a reasonable fee not to exceed ten dollars (\$10.00), the Board, acting by any two members, shall execute and acknowledge (in the manner provided above) a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Land Court document number (if any) or 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 Owner or his successor upon payment of the fee.

SECTION 6. Collection from Subtenant. If the Owner shall at any time rent or lease his Apartment and shall default for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Apartment, the rent due or becoming due from such lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, if any, and any such payment of such rent to the Board by the lessee shall be sufficient discharge of such lessee, as between

such lessee and the Owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender of any rights or duties hereunder. In the event that the Board makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid, provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a Mortgagee is in possession pending a mortgage foreclosure.

SECTION 7. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision hereof, shall be deemed

to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

ARTICLE VII

INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance.

The Board shall procure and maintain from a reputable and substantial company or companies a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsement and war risk coverage (if reasonably obtainable), all policies for as nearly as practicable to one hundred percent (100%) of the insurance replacement cost without deduction for depreciation, covering the Apartments and fixtures therein and the buildings and their fixtures and building service equipment in the name of the Board, as insured, as trustee for each of the Owners of the Apartments in proportion to their respective common interests in the common elements. The policy:

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

(b) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board or, if obtainable,

shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the Owner or tenant of any Apartment, or by reason of any act or neglect of the Board or the Owner or tenant of any Apartment;

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

(d) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the Owner or lessee of any Apartment;

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

(f) shall provide that any loss shall be adjusted with the Board and the Mortgagee of any Apartment directly affected by the loss;

(g) shall contain a standard mortgage clause which:

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

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

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

(iv) shall provide that without affecting the protection afforded to the Mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate trustee selected by the Board who shall be a substantial bank or trust company doing business in Hawaii, herein referred to as the "Insurance Trustee" or "Trustee"; and

(v) shall provide that any reference to a Mortgagee in the Policy shall include all Mortgagees on any Apartment, in order of preference; and

(h) shall provide for payment of the proceeds to the Insurance Trustee.

SECTION 2. Comprehensive Liability Insurance.

The Board shall procure and maintain from a reputable company

or companies a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Board, each Apartment Owner, and the Managing Agent and other employees of the Association of Apartment Owners against claims for personal injury, death and property damage arising out of the condition of the Project or activities thereon or on sidewalks or contractors of construction work under a Comprehensive General Liability form to include but not to be limited to (1) Water Damage Legal Liability and (2) Fire Damage Legal Liability. The Policy:

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

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

(c) shall contain minimum limits of not less than \$1,000,000 for injury to one or more persons in any one accident or occurrence and \$100,000 for property damage.

SECTION 3. Insurance Against Additional Risks.

The Board may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Apartment Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

SECTION 4. Miscellaneous Insurance Provisions.

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

SECTION 5. Damage and Destruction. If the buildings are damaged by fire or other casualty which is insured against and said damage is limited to a single Apartment, the insurance proceeds shall be used by the Trustee for payment of the contractor employed by the Board to rebuild or repair such Apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If such damage extends to two or more Apartments or extends to any part of limited common elements or to the common elements:

(a) The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings,

including all Apartments so damaged, as well as the common elements, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved in accordance with the apartment leases and also by the Board and the Mortgagee of record of any interest in an Apartment directly affected thereby; provided that in the event said modified plan eliminates any Apartment and such Apartment is not reconstructed the Insurance Trustee shall pay to the owner of said Apartment the portion of said insurance proceeds allocable to said Apartment (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund and, if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of Apartments in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Apartment shall be specially assessed against such Apartment and said

special assessment shall be secured by the lien created under Section 5 of ARTICLE VI hereof.

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

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

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

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

retention of title in respect of any part of the work not discharged of record.

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

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

(vi) Such other conditions not inconsistent with the foregoing and with the apartment leases as the Trustee may reasonably request.

(c) Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners of the Apartments (or to the holder of any mortgage on an Apartment if there be a mortgage) in proportion to their respective common interests.

(d) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Apartment Owner or lessee. To the extent that any loss, damage or destruction to the property of any Apartment Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other

Apartment Owner, or the Association. All policies of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation.

ARTICLE VIII

MORTGAGES

SECTION 1. Notice to Board of Directors. An Apartment Owner who mortgages his interest in an Apartment shall notify the Board of Directors of the name and address of his Mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the note and mortgage with the Board of Directors; the Board of Directors shall maintain such information in a book entitled "Mortgages of Apartments."

SECTION 2. Notice of Unpaid Common Expenses. The Board of Directors, whenever so requested in writing by a purchaser or Mortgagee of an interest in an Apartment, shall promptly report any then unpaid assessments for common expenses due from the Owner of the Apartment involved.

SECTION 3. Notice of Default. The Board of Directors, when giving notice to an Apartment Owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such Apartment or interest therein whose name and address has theretofore been furnished to the Board of Directors.

SECTION 4. Examination of Books. Each Owner and each Mortgagee of an Apartment shall be permitted to examine the books of account of the Association at reasonable times, on business days, but not more often than once a month.

SECTION 5. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Apartment and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of, the holder of any indebtedness secured by any recorded mortgage under such interests made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Apartment if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Section 5 of ARTICLE VI hereof;

(b) No amendment to this Section 5 shall affect the rights of the holder of any such mortgage recorded in the Bureau of Conveyances of the State of Hawaii prior to the filing of such amendment who does not join in the execution thereof.

ARTICLE IX

CONDEMNATION

SECTION 1. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the common elements, all compensation payable for or on account of the taking of any building or improvements on the land, or for the severance thereof, shall be payable to a condemnation trustee, who shall be designated by the Board and who shall be a substantial bank or trust company doing business in Hawaii. The Board of Directors shall arrange

for the repair and restoration of the buildings and improvements in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved in accordance with the apartment leases and by the Board and the mortgagee of record of any interest in an Apartment directly affected thereby. In the event of a partial taking in which any Apartment is eliminated or not restored, the condemnation trustee shall disburse the portion of the proceeds of such award allocable to said Apartment (exclusive of such portion thereof as shall be allocable to the interest of said Apartment in the land), less the proportionate share of said Apartment in the cost of debris removal, to the Owner of said Apartment in satisfaction of his interest in said Apartment. The condemnation trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs thereof the Board is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of the Apartments in proportion to their common interest. In the event sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, or in the event all the buildings and improvements are so taken or condemned, such excess proceeds or said proceeds, as the case may be, shall be divided among the Owners of the Apartments in accordance with their interests in the common elements.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. Rules and Regulations. Each Owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations (herein called "Rules and Regulations") as the Board may deem necessary for the 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 Rules and Regulations which shall be taken to be a part hereof; and the Owner agrees to obey all such Rules and Regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees and under-tenants of the Owner; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the Apartments.

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

(a) to enter the Apartment in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions

hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or

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

SECTION 3. 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 4. Maintenance and Repair of Common

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

SECTION 5. Additions or Alterations by Board of

Directors. Whenever in the judgment of the Board of Directors the common elements shall require additions or alterations costing less than three thousand dollars (\$3,000.00), the Board of Directors may proceed with such additions or alterations and shall assess all Owners for the cost thereof as a common expense. Any additions or alterations costing in excess of three thousand dollars (\$3,000.00) may be made by

the Board of Directors only after obtaining approval of the Owners of seventy-five percent (75%) of the interests in the common elements. If such approval shall be obtained, the cost thereof shall constitute part of the common expense.

SECTION 6. 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 buildings, without the prior written consent thereto of the Board of Directors. The Board of Directors shall have the obligation to answer any written request by an Apartment Owner for approval of a proposed addition or alteration in such Apartment within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed addition or alteration.

SECTION 7. Right of Access. An Apartment Owner shall grant a right of access to his Apartment to the Manager and/or the Managing Agent and/or any other person authorized by the Board of Directors, the Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Apartment and threatening another Apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his Apartment or elsewhere in the buildings, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the Owner is present at the time or not.

SECTION 8. Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a non-profit, membership corporation, formed under applicable laws for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the voting Owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and By-Laws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

SECTION 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 of Directors or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all Owners and to all Mortgagees of Apartments. All notices to any Owner shall be sent by registered or certified mail to the Owner's apartment in the building or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. All notices to Mortgagees of Apartments 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 of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

SECTION 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. 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. The provisions of these By-Laws, other than this paragraph, may be amended by the Owners of Apartments to which are appurtenant not less than seventy-five percent (75%) of the common interests, which amendment shall be effective upon filing in the Bureau of Conveyances of the State of Hawaii of an instrument in writing, signed and acknowledged by such Owners or by the proper officers of the Association; provided, however, that each one of the particulars set forth in Section 514-20, Hawaii Revised Statutes, shall always be embodied in these By-Laws.

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.

END OF BY-LAWS