

LAND COURT SYSTEM

REGULAR SYSTEM

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TITLE OF DOCUMENT:

**RESTATED
BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS
OF
KONA MAKAI**

CONDOMINIUM MAP NO. 519

WHEREAS, by Declaration of Horizontal Property Regime of Kona Makai dated October 18, 1977, recorded on October 20, 1977 in the Bureau of Conveyances of the State of Hawaii in Liber 12500, Page 486 ("Declaration"), the property described in said Declaration was submitted to the provisions of the Horizontal Property Act, Chapter 514A, Hawaii Revised Statutes, as amended (now known as the Condominium Property Act), under the name of "KONA MAKAI"; and

WHEREAS, the aforesaid Declaration provided for the organization of an Association of Apartment Owners (hereinafter the "Association") and established bylaws therefor, which said bylaws were recorded contemporaneously with said Declaration; and

WHEREAS, the bylaws of the Association were subsequently amended and replaced in their entirety by instrument dated May 3], 1978 recorded in the Bureau of conveyances of the State of Hawaii in Liber 13090 at Page 728, and further amended by instrument dated *July 10, 1979* recorded in said Bureau in Liber 13842, Page 211, by instrument dated October 16, 1984 recorded in said Bureau as Document No. *84-120775*, by instrument dated October 29, 1987 recorded in said Bureau as Document No. 87-169334, and by instrument dated July 19, 1990 recorded in said Bureau as Document No. *90-119734*; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, ("HRS") provides that the Bylaws of the Association may be restated to set forth the amendments thereof and to conform with the provisions of HRS Chapter 514A or of any other statute, ordinance, rule or regulation enacted by any governmental authority; and

WHEREAS, the Board of Directors of the Association has determined that it is in the best interest of the Association to restate the Association's Bylaws to set forth the amendments thereof and to conform with HRS Chapter 514A and other applicable statutes; and

WHEREAS, said Bylaws are hereby restated as the Bylaws adopted by the Board of Directors pursuant to §514A-82.2(a), HRS, to set forth all of the above-cited amendments to: Article I "Membership", Section 3 "Annual Meetings, Section 5 "Notice of Meetings; Proxy", Section 8 "Proxies and Pledges", Section 10 "Order of Business", Section 11 "Conduct of Meetings"; Article II "Board of Directors", Section 1 "Number, Qualifications and Term", Section 3 "Election and Term", Section 4 "Vacancies", Section 5 "Removal of Directors", Section 7 "Regular Meetings", Section 11 "Conduct of Meetings; Minutes", Section 12 "Fidelity Bonds"; Article III "Officers", Section 8 "Auditor"; Article IV "Administration", Section 1(g), Section 2 "Managing Agent"; Article V "Obligations of Apartment Owners", Section "Assessments", Sections 3(1) and (q), 4 and 8; and Article VI, Section I "Amendment".

WHEREAS, said Bylaws are hereby restated as the Bylaws adopted by the Board of Directors pursuant to §514A-82.2(b), HRS, to conform with the provisions of Hawaii Revised Statutes Chapter 514A;

NOW, THEREFORE, pursuant to §514A-82.2(c), Hawaii Revised Statutes, BE IT RESOLVED that the aforesaid restated Bylaws attached hereto as Exhibit 1 shall be, and hereby are, adopted as the Bylaws of the Association of Apartment Owners of Kona Makai.

The portions of said Bylaws so restated solely for purposes of information and convenience pursuant to HRS Section 514A-82.2 are as follows: References to the "Horizontal Property Act" were changed to "Condominium Property Act"; Article I "Membership", Section 5 "Notice of Meetings, Proxy", subsections (a), (b) and (c), Section 7 "Voting"; Article II "Board of Directors", Section 2 "Powers", Section 5 "Removal of Directors", Section 7 "Regular Meetings", Section 12 "Fidelity Bonds"; Article III "Officers", Section 1 "Designation", Section 8 "Auditor"; Article IV "Administration", Section 1 "Management", subsections (e), (t), (g), (h), (m), (n), and (o), Section 2 "Managing Agent"; Article V "Obligations of Apartment Owners", Section 2 "Liens Securing Assessments", Section 9 "Collection from Tenant"; Article VI "Miscellaneous", Section 2 "Documents", and Section 6 "Restatement of Bylaws".

The statute, ordinance, rule or regulation implemented by the amendments made for purposes of conformance are designated in parentheses following the text of such restated provisions. The restated Bylaws correctly set forth without change the corresponding provisions of the Bylaws, as amended, and the restated Bylaws supersede the original Bylaws and all prior amendments thereto.

In the event of any conflict, the restated Bylaws shall be subordinate to any cited statute, ordinance, rule or regulation, and the original Bylaws and all amendments thereto.

Upon recordation at the Bureau of Conveyances of the State of Hawaii, this instrument shall be deemed to be an amendment to the Declaration for purposes of Article VI, Section 1 of the Bylaws.

The Restated Bylaws of the Association of Apartment Owners of Kona Makai attached hereto as Exhibit 1 are hereby adopted this 24 day of February, 2004.

THE BOARD OF DIRECTORS OF THE
ASSOCIATION OF APARTMENT OWNERS
OF KONA MAKAI by and through its Authorized
Officers

Robert L. Schratz

By: *Robert L. Schratz*

Its: *Vice President*

Susan Proctor

By: *Susan Proctor*

Its: *Secretary*

4821-2306-6368.3.053174-0001

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this 24 day of February, 2004, before me personally appeared Robert L Schratz, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he/she is the Vice President of the Association of Apartment Owners of Kona Makai and that such person executed the foregoing instrument as the free act and deed of such Association, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Bernadine U. Helora
Name: Bernadine U. Helora
Notary Public
State of Hawaii

My commission expires: 9/06/2006

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this 24 day of February, 2004, before me personally appeared Susan Proctor, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he/she is the Secretary of the Association of Apartment Owners of Kona Makai and that such person executed the foregoing instrument as the free act and deed of such Association, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Bernadine U. Helora
Name: Bernadine U. Helora
Notary Public
State of Hawaii

My commission expires: 9/06/2006

RESTATED BYLAWS OF THE ASSOCIATION OF
APARTMENT OWNERS OF
KONA MAKAI

The following bylaws shall apply to the condominium project known as KONA MAKAI (herein called the "project"), situated at Kahului, Second District of North Kona, Island, County and State of Hawaii, as described in and created by Declaration of Condominium property Regime (herein called the "Declaration"), to be recorded in the Bureau of Conveyances of the State of Hawaii contemporaneously herewith, 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

MEMBERSHIP

Section 1. Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; PROVIDED, HOWEVER, that to such extent and for such purposes including voting, as shall be provided by lease of any apartment filed with the Board of Directors of the Association, the lessee of such apartment shall be deemed to be the owner thereof. The "Grantor" under any Condominium Conveyance Document from the Fee Owner shall be deemed to be an owner of an apartment during the period of his ownership.

Section 2. Place of Meetings. Meetings of the Association shall be held at the project or such other suitable place within the State convenient to the apartment owners as may be designated by the Board.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held as soon as practicable after recording of the Declaration and these bylaws upon the call of at least ten percent (10%) of the apartment owners, and in no event shall it be held later than 180 days after a certificate of occupancy for the project has been issued by the appropriate county agency. Thereafter, the annual meetings of the Association shall be held within six months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary.

EXHIBIT 1

Unofficial OCR Reproduction

Section 5. Notice of Meetings; Proxy. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner, according to the Association's record of ownership, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the items on the agenda for such meeting, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. Each such notice shall also contain a standard proxy form authorized by the Association, if any, which shall be valid only for the meeting to which the notice pertains and its adjournment. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owners 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.

(a) A proxy, to be valid, must be delivered to the secretary of the Association of apartment owners 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 must contain at least: the name of the Association of apartment owners, the date of the meeting of the Association of apartment owners, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. (HRS § 514A-83.2(b))

(c) Proxies may be given to the Board of Directors; provided that the proxy form shall contain boxes wherein the owner may indicate that the proxy is given: (1) for quorum purposes only; (2) to the individual whose name is printed on a line next to this box; (3) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or (4) to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage. (HRS § 514A-83.2(a), (e))

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

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners 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 apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interest as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. A personal representative, guardian or trustee may vote in person or by proxy at the meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, 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 anyone of them present at any meeting in the absence of protest by the other or others, and in case of protest each cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

The Purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances shall have all the rights of an apartment owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the apartment, including but not limited to, the right to vote on:

- (a) Any partition of all or part of the project;
- (b) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof;
- (c) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;
- (d) The payment of any amount in excess of insurance or condemnation proceeds;
- (e) The construction of any additions or Improvements, and any substantial repair or rebuilding of any portion of the project;
- (f) The special assessment of any expenses;
- (g) The acquisition of any apartment in the project;

(h) Any amendment to the Declaration of Condominium Property Regime or By-Laws;

(i) Any removal of the project from the provisions of Chapter 514A; and

(j) Any other matter which would substantially affect the security interest of the seller. (HRS §514A-83)

Section 8. 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, and unless limited by its terms shall only be valid as provided in Section 5 herein. 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.

No resident manager, or Managing Agent shall solicit, for use by such manager or Managing Agent, any proxies from any apartment owner of the Association of owners which employs him, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of board members at any Association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board of directors and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the board shall:

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

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

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

Section 9. 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 apartment owners present, whether or not a quorum be 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 10. Order of Business. The order of business at all regular 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 11. Conduct of Meetings. All meetings shall be conducted in accordance with the most current edition of Roberts Rules of Order.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number, Qualifications and Term. The affairs of the Association shall be governed by a Board of Directors composed of not less than nine (9) persons, unless not less than seventy-five per cent (75%) of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors. Each director shall be the sale owner or co-owner of record of an apartment, or a vendee under an agreement of sale of an apartment, or a partner in a general partnership if such partnership is all owner of record or a general partner of a limited partnership if such partnership is an owner of record. If a corporation is an apartment owner, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation. No resident manager of the project shall be eligible to serve as director. The directors shall serve without compensation. There shall not be more than one representative on the board of directors from anyone apartment.

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 bylaws directed to be exercised or done only by the apartment owners. 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. (HRS §514A-82(b)(5))

Directors shall not expend Association funds for their travel, director's fees, and per diem, unless the owners are informed and a majority approve of these expenses. (HRS §514A-82(b)(10))

A current copy of the Association's Declaration, By-Laws, House Rules, and, annually, a copy of Chapter 514A, Hawaii Revised Statutes, with amendments, shall be provided to all Board members at Association expense. (HRS §514A-82(b)(1))

Each Director shall owe the Association a fiduciary duty in the performance of the director's responsibilities. (HRS §514A-82.4)

Section 3. Election and Term. Ejection of directors shall be by a cumulative voting by secret ballot at each annual meeting and any special meeting called for that purpose. Directors shall hold office for a period of three (3) years or until their respective successors have been elected or appointed, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one year, one-third for two years and one-third for three years.

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. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six (6) months, or his failure to attend any scheduled meeting of the Board of Directors for more than six (6) months, or his ceasing to be the sole owner or CO-owner of an apartment, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, anyone or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created. Any director whose removal has been proposed by the 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 per cent of the apartment owners; and provided further that if the secretary or Managing Agent does not send out the notices for the special meeting within fourteen 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 these bylaws. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed and conducted in accordance with these bylaws. (HRS §514A-82(b)(1))

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, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. 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 directors but at least one (1) such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one (1) day prior to the date of such meeting. Whenever practicable, notice of all Board meetings shall be posted by the Resident Manager or a member of the Board in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with notice to the directors. (HRS §514A-82(b)(9))

(a) All meetings of the board of directors shall be open to all members of the Association, provided that Association members who are not on the board of directors may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the board of directors.

(b) 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 personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

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 telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

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 shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, 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 bylaws 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. Conduct of Meetings; Minutes. All meetings shall be conducted in accordance with the most current edition of Roberts Rules of Order. Minutes of the meetings of the Board of Directors and Association of apartment owners shall be available for examination by apartment owners at convenient hours at a place designated by the Board of Directors, shall be mailed to any owner upon the owner's request, and shall include the recorded vote of each board member on all motions except motions voted on in executive session.

Section 12. Fidelity Bonds. The Association shall annually secure, at Association expense, a fidelity bond in an amount of at least that required by statute to cover all officers, directors, employees, and managing agents of the Association who handle the Association's funds. (HRS §514A-95.1(a))

ARTICLE III

OFFICERS

Section 1. Designation. The principal officers of the Association shall be 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. Any owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association. (HRS §514A-82(b)(7))

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 the 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 bylaws 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 bylaws, 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, and in general perform the duties incident to the office of Secretary. If the Secretary is not present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.

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 its funds and securities. Such duties may be delegated to a Managing Agent.

Section 8. Auditor. The Association shall appoint annually, by a vote at the annual meeting, a public accountant, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association.

(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 all official proxy forms a box wherein the apartment owner may indicate that the apartment owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the apartment owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

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

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

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the

period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. (HRS §514A-96)

ARTICLE IV

ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the project and have such powers and duties as may be necessary or proper there for including, without limitation, the following:

- (a) Supervision of its immediate management and operation;
- (b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;
- (c) Purchase, maintenance and replacement of any equipment and provisions of all water, sewer and other Utility services required for the common elements;
- (d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;
- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the project; provided, however, the Association's employees shall not engage in selling or renting apartments in the project except Association-owned apartments, unless such activity is approved by an affirmative vote of sixty-five (65%) percent of the owners; (HRS §514A-82(b)(8))
- (f) Preparation at least sixty (60) days before each fiscal year of a proposed annual operating budget which shall be distributed to the apartment owners. At a minimum, the budget shall include the following:
 - (1) The estimated revenues and operating expenses of the Association;
 - (2) Information as to whether the budget has been prepared on a cash or accrual basis;
 - (3) The total replacement reserves of the Association as of the date of the budget;

(4) The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association;

(5) A general explanation of how the estimated replacement reserves

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

(7) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subparagraph (4). (HRS § 514A-83.6(a)»

(g) Assessment of the owners to fund a minimum of fifty percent (50%) of the estimated replacement reserves. For each fiscal year the Association shall collect a minimum of fifty percent (50%) of the full amount required to fund the estimated replacement reserves for that fiscal year except as may otherwise be provided by rules adopted by the Real Estate Commission. 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:

(1) 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

(2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve. (HRS § 514A-83 .6(b), (c)

(No apartment owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves shall be liable if the estimate subsequently proves incorrect.);

(h) The Board may not exceed its total adopted annual operating budget by more than twenty per cent (20%) during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this section, the Board 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 owners with the notice of assessment. As used in this section:

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

(2) "Emergency situation" means any extraordinary expenses:

(A) Required by an order of a court;

(B) 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;

(C) 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;

(D) 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

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

(3) "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.

(4) "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. [HRS § 514A-83.6(f), (j)]

(i) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

(j) Purchase and maintenance in effect of all policies of hazard and liability insurance for the project required by the Declaration and such other insurance and bonds as maybe required or authorized by the Declaration or the Board;

(k) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

(l) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such apartment; and

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

- (1) The Board notifies the owner in writing of:
 - (A) The identity and location of the personalty, and
 - (B) The Board's intent to so sell, store, donate, or dispose of the personalty.

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

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

The proceeds of any sale or disposition of personalty shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association. (HRS §514A-93.5)

(n) Notwithstanding any other language contained in the Declaration, these bylaws, or the house rules, the Board shall make reasonable accommodations to the provisions of these bylaws, the Declaration, the house rules, or any other regulations or restrictions of the project, if those accommodations become necessary to afford a handicapped person equal opportunity to use and enjoy the project premises. (42 U.S.C. §3604(f)(3)(B))

(o) The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall any Association funds be commingled with the Managing Agent's own funds. Lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association or the collection of ground lease rents from individual apartment owners and the payment of such ground lease rents to the ground lessor; provided that:

(1) The collection is allowed by the provisions of the Declaration, bylaws, master deed, master lease, or individual apartment leases of the project;

(2) The Managing Agent's contract requires the Managing Agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor;

(3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the Association; and

(4) The Managing Agent or Association shall not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

All funds collected by the Association, or by the Managing Agent for the Association, shall be (i) deposited in a financial institution located in the State whose deposits are insured by an agency of the United States Government; (ii) held by a corporation authorized to do business under Chapter 406, Hawaii Revised Statutes, as amended; or (iii) invested in the obligations of the United States Government. Records of the deposits and disbursements shall be disclosed to the Real Estate Commission upon request. All funds collected by the Association shall be disbursed only by employees of the Association under the supervision of the Board of Directors. All funds collected by the Managing Agent from the Association shall be held in a client trust fund account and shall be disbursed only by the Managing Agent under the supervision of the Association's Board of Directors and subject to any rules adopted by the Real Estate Commission with respect thereto. The Managing Agent or Board of Directors shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account. (HRS §514A-97)

Section 2. Managing Agent. The Board of Directors shall annually employ a responsible corporation authorized under article 8 of Chapter 412, Hawaii Revised Statutes, to do business in Hawaii as Managing Agent to manage and control the project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish, subject to prior approval of every such employment contract by a majority of apartment owners. The Managing Agent employed shall be in compliance with Section 514A-95, Hawaii Revised Statutes. (HRS § 514A-95)

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owners individually to appear, sue or be sued.

Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent. Every Managing Agent shall also be the agent of the respective lessees under any apartment leases filed with the Board for the collection, custody and payment of all rent, taxes, assessments and other charges thereunder payable to their lessor.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board Of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

ARTICLE V

OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. All apartment owners shall pay to the Managing Agent advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the project in accordance with the Declaration, and also, with respect to any lease of any apartment filed with the Board of Directors, a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all rent, taxes, assessments and other charges thereunder payable by the lessee of such apartment. In the event all said monthly charges are not received by the Managing Agent on or before the 15th day after said charges are due, the Managing Agent may assess a late payment charge in an amount not in excess of Fifteen Dollars (\$15.00) to the appropriate apartment owner; and if said charges, including said late payment charge, are not received within thirty (30) days after said monthly charges are due, an additional late charge in an amount not in excess of Fifteen Dollars (\$15.00) and interest at the rate of one percent (1%) per month calculated from such due date may be assessed.

The manager or board of directors shall notify the apartment owners in writing of maintenance fee increases at least thirty days prior to such an increase.

Section 2. Liens Securing Assessments.

(a) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except: (1) Liens for taxes and assessments lawfully imposed by governmental authority against the apartment; and (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the Association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in Hawaii Revised Statutes, Chapter 667, by the managing agent or Board of Directors, acting on behalf of the Association, in like manner as a

mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or Board of Directors, acting on behalf of the Association, unless prohibited by the Declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed. (HRS § 5I4A-90(a))

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

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

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

(3) Upon the recording of the deed, whichever occurs first. (HRS §5I4A-90(b))

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

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

(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

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

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

(5) 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 and keeps assessments current; and

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

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law. (HRS § 514A-90(c)»

(d) An apartment owner who pays an Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under HRS Chapter 514A, part VU; 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 days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the thirty-day period} the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed. (HRS § 514A-90(d))

(e) As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the Association may authorize its managing agent or Board of Directors to, after sixty 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 normally supplied or paid for by the association of apartment owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments. (HRS § 514A-90(e))

(f) Before the Board of Directors or managing agent may take the actions permitted under subsection (e), the board must adopt a written policy providing for such 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 the written consent of a majority of the apartment owners. (HRS § 514A-90(f))

(g) Subject to this subsection, and subsections (h) and (i), the Board may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent apartment; provided that:

(1) A purchaser who holds a mortgage on a delinquent apartment that was recorded prior to the filing of a notice of lien by the Association and who acquires the delinquent apartment through a judicial or non-judicial foreclosure proceeding, including purchasing the delinquent apartment at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and

(2) A person who subsequently purchases the delinquent apartment from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the Association has filed a notice of lien against the delinquent apartment for the unpaid assessments for common area expenses which form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent apartment. (HRS § 514A-90(g))

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or non-judicial power of sale foreclosure, and for which the Association had filed a notice of lien against the delinquent apartment pursuant to subsection (g)(2). In no event shall the amount of the special assessment exceed the sum of \$1,800. (HRS § 514A-90(h))

(i) For purposes of subsections (g) and (h), the following definitions shall apply:

(1) "Completion" means:

(A) In a non-judicial power of sale foreclosure, when the affidavit required under FIRS § 667-5 is filed; and

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

(2) "Regular monthly common assessments" shall not include:

(A) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to HRS § 514A-83.6;

- (B) Late charges, fines, or penalties;
- (C) Interest assessed by the association of apartment owners;
- (D) Any lien arising out of the assessment; or
- (E) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs. (HRS § 514A-90(i))

Section 3. Maintenance of Apartments. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including, without limitation, all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the project when discovered.

Section 4. Use of Project.

(a) The residential apartments of the project shall be used only for residential purposes, including hotel purposes if so approved, by the Association, by the respective owners thereof, their tenants, licensees, families, domestic servants and social guests, and for no other purpose;

(b) All common elements of the project shall be used only for their respective purposes as designed;

(c) No apartment owner or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements;

(d) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the project;

(e) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the project nor alter or remove any furniture, furnishings or equipment of the common elements;

(f) No apartment owner or occupant shall erect or place in the project any building or structure including fences and walls, nor make any additions or alterations to any common elements of the project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including a detailed plot plan prepared by a licensed architect if so required by the Fee Owners, as defined in the Declaration, first approved in writing by the Fee Owners and also approved by a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected, as determined by the Board;

(g) No apartment owner shall decorate or landscape any entrance, hallways, planting area or lanai appurtenant to his apartment except in accordance with standards therefore established by the Board of Directors or specific plans approved in writing by the Board;

(h) All occupants shall avoid making noises and using musical instruments, radios, televisions and amplifiers in such manner as may disturb other occupants;

(i) No garments, rugs or other objects shall be hung from the windows or facades of the project or otherwise displayed in public view;

(j) CD No rugs or other objects shall be dusted or shaken from the windows or doors of any apartment or cleaned by beating or sweeping on any walkways, patios, entries or other exterior part of the project;

(k) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the project outside of the disposal facilities provided for such purpose;

(l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project except that dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments with the prior written approval by the Board but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements except in transit when carried or on leash, provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently removed therefrom promptly upon notice given by the Board of Directors or Managing Agent;

These bylaws shall not forbid the tenants of the apartment owners from keeping pets in the apartments rented or leased from the owners; provided that:

(1) The apartment owner agrees in writing to allow the apartment owner's tenant to keep a pet in the apartment;

(2) The tenants may keep only those types of pets which may be kept by apartment owners;

(3) The animals shall not include those described as pests under section 150A-2, or animals prohibited from importation under sections 141 -2, 150A-5, or 150A-6, Hawaii Revised Statutes.

Any amendments to these bylaws pertaining to pet restrictions or prohibitions which exempt circumstances existing prior to the adoption of the amendments shall apply equally to apartment owners and tenants.;

(m) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any building of the project or protruding through the walls, windows or roof thereof;

(n) No apartment owner or occupant shall erect, place or maintain any television or other antennas on the project visible from any point outside of his apartment;

(o) Nothing shall be allowed, done or kept in any apartments or common elements of the project which would overload or impair the floors, walls, or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association;

(p) Anything to the contrary notwithstanding, the Developer of the project may engage in real estate sales activities in such apartments or on the premises of the project for the purpose of selling such apartments. Such activities may continue only until all such apartments have been initially sold by the Developer; and

(q) Occupancy of the apartments shall not exceed the following:

One bedroom, 4 persons;
One bedroom with loft, 6 persons;
Two bedrooms, 6 persons; and
Two bedrooms with loft, 8 persons.

Section 5. House Rules. The Board of Directors, upon giving notice to apartment owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these bylaws. Any owner who violates a House Rule, or allows his or her guest or invitee to violate any House Rule, shall be subject to a monetary fine in an amount determined by the Board of Directors. If payment of said fine is not made when due, such delinquency shall constitute a lien on the owner's unites).

Section 6. Expenses of Enforcement. Every apartment owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or enforcing any provisions of the Declaration, these bylaws, the house rules, the Condominium Property Act, or the rules and regulations of the Real Estate Commission, Department of Regulatory Agencies, State of Hawaii, against such owner or any occupant of such apartment; 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 the apartment owner as a result of the action of the Association, shall be promptly paid on demand to the apartment owner by the Association.

Section 7. Record of Ownership. Every apartment owner shall promptly cause to be duly recorded or filed of record the deed, lease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file such lease with and present such other evidence of his title to the Board of Directors through the Managing Agent. The Secretary shall maintain all such information together with an accurate and current list of members of the Association which shall include their current addresses and shall also maintain a record of the names and addresses of the vendees of an apartment under an agreement of sale, if any. The list shall be maintained at a place designated by the Board of Directors.

Section 8. Mortgages.

(a) Notice to Board of Directors. An apartment owner who mortgages his interest in an apartment shall notify the Association 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 such mortgage with the Association; the Association shall maintain such information in a book entitled "Mortgages of Apartments".

(b) Notice of Unpaid Common Expenses. The Association whenever so requested in writing by an owner or mortgagee of an interest in an apartment shall promptly report any then unpaid assessments or common expenses due from the apartment owner involved.

(c) Notice of Default. The Board, 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 Association. In each and every case where the lender-

mortgagee has made a request, the Association shall notify the lender-mortgagee of any unpaid assessment that is thirty (30) days delinquent or more.

(d) Examination of Books. Each apartment owner and each mortgagee shall be permitted to examine the books and records of the Association or the project at reasonable time on business days but not more .than once a month, and each mortgagee shall have the right to require the submission of annual reports and other financial data.

(e) Mortgage Protection. Notwithstanding all of the provisions hereof:

(1) The liens created hereunder under any apartment and its appurtenant interest 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 interest, made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such apartment if falling due after the date of such foreclosure sale.

(2) All taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Hawaii shall relate only to the individual apartment units and not to the condominium project as a whole.

(3) The Declaration and bylaws shall not give an apartment owner or any other party under him, priority over any rights of first mortgagees of apartment units pursuant to their mortgages Inthe case of a distribution to apartment owners of insurance proceeds or condemnation awards for losses to or a taking of apartment units and/or common elements.

(4) Notwithstanding any other provision of these bylaws, no amendment to this Section 7(e) shall affect the rights of the holder of any such mortgage filed in the Bureau of Conveyances, State of Hawaii and the Office of the Assistant Registrar of the Land Court, State of Hawaii prior to the filing of such amendment ~w-ho does not join in the execution thereof.

Section 9. Collection from Tenant.

(a) If the owner of an apartment rents or leases the apartment and is in default for thirty days or more in the payment of the apartment's share of the common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the apartment 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 section 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 (HRS § 514A-90.5(a))

(b) Prior to taking any action under this section, the Board of Directors shall give to the delinquent apartment owner written notice of its intent to collect the rent owed. The notice shall:

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

(2) Set forth the exact amount the association claims is due and owing by the apartment owner; and

(3) Indicate the intent of the board of directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid. (HRS § 514A-90.5(b))

(c) The apartment owner shall not take any retaliatory action against the tenant for payments made under this section. (HRS § 514A-90.5(c))

(d) The payment of any portion of the apartment's share of common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the apartment owner against a tenant. (HRS § 514A-90.5(d))

(e) The Board may not demand payment from the tenant pursuant to this section if:

(1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;

(2) A mortgagee is in possession pending a mortgage foreclosure; or

(3) The tenant is served with a court order directing payment to a third party. (HRS § 514A-90.5(e))

ARTICLE VI

MISCELLANEOUS

Section 1. Amendment. Subject to the reservation in Article V, Section 7(e)(4) and excepting this paragraph, these bylaws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote of sixty-five (65%) of the apartment owners at any meeting of the Association duly called for such purpose, effective only upon the recording of an amendment to the Declaration setting forth such amendment of these bylaws.

Provided further that proposed bylaws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owners' committee. If submitted by such a committee, it shall be accompanied by a petition signed by not less than twenty-five percent of the apartment owners. The proposed bylaws, rationale, and ballots for voting on the proposed bylaws shall be mailed to the owners for approval without change within fourteen days of the receipt of the petition by the board of directors. Failure of the board of directors to comply with these provisions shall validate the vote taken by the volunteer apartment owners' committee provided the volunteer owners' committee has complied with all other applicable rules on voting for bylaw amendments.

Section 2. Documents. The Association shall make available pursuant to statute, the following:

(a) An accurate copy of the Declaration of Condominium Property Regime, the bylaws of the Association, the House Rules, if any, the master lease, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the office of the Managing Agent. The Managing Agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs. (HRS §514A-84.5)

(b)

(1) The Association's most current financial statement and minutes of the Board of Directors' meetings, once approved, shall be available to any apartment owner at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board of Directors. (HRS §514A-83.5(a))

(2) Minutes of meetings of the Board of Directors and the Association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the Board. The minutes shall include the recorded vote of each Board member on all motions except those voted on in executive session. Copies of meeting minutes shall be provided to any apartment owner upon the apartment owner's request provided that the apartment owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS §514A-83.5(b))

(3) 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 apartment owners at convenient hours at a place designated by the Board; provided:

(A) That the Board may require 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 interests of the Association or its members or both; and

(B) That 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 the apartment owner's request, provided that the apartment owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS§ 514A-83.5(c))

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

(A) That the Board may require 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

(B) That apartment owners pay for administrative costs in excess of eight (8) hours per year.

Proxies and ballots may be destroyed following the thirty day period. 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 pay a reasonable fee for duplicating~ postage, stationery, and other administrative costs associated with handling the request. (HRS §514A-83.5(d))

(5) 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. (HRS §514A-83.5(e))

Section 3. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being at having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct, and in the absence of such final adjudication, indemnification shall be provided only in Connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing

right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

Section 4. Subordination. These bylaws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended) which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act.

Section 5. Interpretation. In case any provision of these bylaws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these bylaws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the apartment owners.

Section 6. Restatement of Bylaws. Notwithstanding any other provision of these Bylaws, the Association may at any time restate these Bylaws to set forth all amendments thereof or to conform with Chapter 514A, Hawaii Revised Statutes, or any other statute, ordinance, rule or regulation enacted by any governmental authority. Such restated Bylaws shall be approved by resolution adopted by the Board of Directors and shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners. The Bylaws restated pursuant to this Section shall identify each portion so restated and shall contain a statement that such portions have been restated solely for purposes of information and convenience, identify the statute, ordinance, rule } regulation } or prior amendment, implemented by the amendment, and that in the event of any conflict, the restated Bylaws shall be subordinate to the cited statute, ordinance, rule, regulation, original Bylaws and all prior amendments. It shall further state that the restated Bylaws correctly set forth without change the corresponding provisions of the Bylaws, as amended, and that upon recordation thereof in the Bureau of Conveyances, the restated Bylaws shall supersede the original Bylaws and all prior amendments thereto. (HRS §514A-82.2)