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Covenants and restrictions if they based upon race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenants (if) is except under Chapter 42, Section 3607 of the United States Code (if) relates to his or her disability but does not discriminate against disabled persons.

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED
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FOR RECORDATION, RETURN TO:

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ANCHIE K. VIELA, REGISTRAR

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SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

BY-LAWS OF ASSOCIATION OF APARTMENT OWNERS
OF
HALEAKALA GARDENS - PHASE I

WHEREAS, BLACKFIELD SENIOR HAWAII JOINT VENTURE, a registered Hawaii joint venture (hereinafter called the "Declarant"), owns the fee simple interest to the land (the "land") described in Exhibit "A" to the Declaration of Condominium Property Regime (the "Declaration") to be recorded concurrently with these By-Laws; and

WHEREAS, the Declarant desires to submit the aforesaid land and the improvements constructed or to be constructed thereon to a condominium property regime by filing a Declaration of Condominium Property Regime and these By-Laws, all as provided for by Chapter 514A, Hawaii Revised Statutes, as amended (the "Act");

NOW, THEREFORE, the Declarant hereby declares that all of the property described above 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 to be in furtherance of the plan set forth in the Declaration of Condominium Property Regime to be filed concurrently with these By-Laws, and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of such property. These By-Laws shall constitute equitable servitudes and covenants running with the land and apartments established thereon 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 the Act, except as expressly otherwise provided herein. The term "common elements" means those elements designated in the Declaration as common elements, including limited common elements. The term "Property" shall include the land, the buildings and all other improvements and structures thereon (including the apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term "Rules and Regulations" refers to the Rules and Regulations for the conduct of occupants of the buildings adopted by the Board of Directors as hereinafter provided. The term "Rules and Regulations" is used interchangeably herein with the term "House Rules". "Owner" or "Apartment Owner" means a person owning severally or as a cotenant an apartment and the common interest appertaining thereto; provided that;

(i) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease recorded in the Bureau of Conveyances of the State of Hawaii, a lessee of an apartment shall be deemed to be the owner thereof;

(ii) The purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances of the State of Hawaii 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 his security interest in the apartment" as that term is used in the Condominium Property Act; and

(iii) In the event that any interest in an apartment and the common interest appertaining thereto is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment are vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the owner or owners of said apartment and appurtenant common interest to the extent of their interest therein except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an apartment owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the owner and shall have all of the rights and obligations of ownership.

The terms "Apartment Owners", "Association of Owners", "Association" and similar terms mean and refer to (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners. "Apartment" as used herein has the same meaning and definition as contained in the Act, and includes each of the apartments of the Project. "Board" means the Board of Directors of the Association of Apartment Owners. "Project" means the Property comprising the Haleakala Gardens - Phase I, Condominium Project.

SECTION 2. Conflicts. These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the Act or the Declaration, the provisions of the Act or 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 guests and employees, and any other persons who may use the Project in any manner shall comply strictly with these By-Laws, the Rules and Regulations, and the covenants, conditions and restrictions set forth in the Declaration, as any of the same may be lawfully amended from time to time. The acceptance of a deed or lease or an assignment of lease or other conveyance or the entry into a lease or the act of occupancy of an apartment shall constitute an agreement that these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

ARTICLE II.

ASSOCIATION OF OWNERS

SECTION 1. Membership. All Apartment Owners of the Project shall constitute the Association of Apartment Owners. 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. Notwithstanding anything to the contrary provided herein, the Declarant shall be entitled to vote and/or act on all matters as the Association and the Board of Directors until such time as the first conveyance

of an apartment of the Project. Thereafter, the Declarant, as the owner of any unsold apartments shall be entitled to vote the interest of each such apartment.

SECTION 2. Annual Meetings. The Declarant or the Managing Agent shall call the first annual meeting of the Apartment Owners, and give Apartment Owners thirty (30) days' prior written notice of the date thereof; the meeting shall be held not later than one hundred eighty (180) days after recordation of the first apartment conveyance, provided forty percent or more of the Project has been sold and recorded. If forty percent of the Project is not sold and recorded at the end of one year, an annual meeting shall be called upon the written request of ten percent of the Apartment Owners. At such meeting the Apartment Owners shall elect a Board. Prior to that time, the Declarant shall have authority to act in all matters as the Association. Thereafter, the annual meetings of the Association shall be held on a day selected by the Board. At such meetings the Board 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.

SECTION 3. Place of Meetings. All meetings of the Association shall be held at the address of the Property, or elsewhere within the State of Hawaii as determined by the Board.

SECTION 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or any three (3) Directors or upon the written request of not less than twenty-five percent (25%) of the Owners, and presented to the Secretary (and if the Regulatory Agreement referred to in the Declaration is executed and recorded or filed of record in the State of Hawaii, at the request of the Federal Housing Commissioner or his duly authorized representative). The business considered shall be limited to that stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary shall send written notice of the meeting to all Apartment Owners and the meeting shall be held at the time specified in such call or petition, or if unspecified then within thirty (30) days of the receipt of the call or petition at any reasonable time at the Project, unless some other suitable place within the State of Hawaii is designated by the Board.

SECTION 5. Notice of Meetings and Other Notices. Written notice of all meetings, whether annual or special, stating the place, date and hour of the meeting and whether it is annual or special and stating the items on the agenda for such meeting and the business proposed to be transacted thereat and containing a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these By-Laws shall be given by personally delivering or by mailing such notice, postage prepaid, at least fourteen (14) days but not more than sixty (60) days before the date assigned for the meeting, to each member of the Association at their addresses at the Property or at the addresses given to the Board for the purpose of service of such notices (and if the Regulatory Agreement referred to in the Declaration is executed and recorded or filed of record, to the Director of the local insuring office of the Federal Housing Administration). 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 whose interest is subject to such mortgage or deed of trust. All notices to co-tenants or joint owners of any apartment shall be sent to one address as shown on the list of members maintained by the Board of managing agent unless each co-tenant or joint owner specifically requests that a notice be sent to him/her/it at a specified address in addition to the notice to the other co-tenants. Upon notice being given in accordance with the provisions hereof, the failure of any Owner or mortgagee of an apartment to receive actual notice of the meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of any Apartment Owner or mortgagee in person or by Proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he shall at the opening thereof object to the holding of such meeting

because of the failure to give notice in accordance with the provisions hereof. Each Owner shall keep the Board informed of any changes in address.

SECTION 6. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum was not attained, 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. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the Apartment Owners present, whether or not a quorum is still 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 7. (a) Voting. Each apartment shall be entitled to a fraction of the total vote of all of the apartments equal to 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, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote for any apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary, or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of any meeting, 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 cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment. Votes allocated to any area which constitutes a common element under Section 514A-13(h) of the Act, whether or not so designated in the Declaration, shall not be cast at any Association meeting.

(b) 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 continue until revoked by a written instrument filed with the Secretary or by the death or incapacity of such Owner or by the attendance of such Owner at the meeting; PROVIDED, that a proxy form 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; and provided, further, that a proxy, to be valid, must be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the association 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. No proxy shall be irrevocable unless coupled with a financial interest in the apartment. Proxies may be given to the Board as an entity. Any one of two or more persons owning any apartment may give or revoke a proxy for the entire vote of such apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. Any proxy given by a cotenant or cotenants for only a share of an apartment's vote in proportion to the share of ownership of such cotenant or cotenants shall be revocable only by such cotenant or cotenants. Any proxy given by a cotenant or cotenants for only a share of an apartment's vote may be exercised to cast the entire vote for such apartment in the absence of protest by another cotenant or the holder of a proxy from another cotenant, and, in case of such protest, each cotenant or holder of a proxy from a cotenant, as the case may be, shall be entitled to only a share of such apartment's vote in proportion to the respective shares of ownership in such apartment.

No resident manager, or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the Association of owners which employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

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. 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.

No member of the 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 directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall:

(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 8. Conduct of Meetings and Order of Business. All meetings of the Association shall be conducted in accordance with the then most current edition of Roberts Rules of Order. 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;
- (f) Report of Federal Housing Administration representative, if any;
- (g) Reports of committees;
- (h) Selection of inspectors of election by Chairperson (when so required);
- (i) Election of members of the Board (when so required);
- (j) Unfinished business; and
- (k) New business.

SECTION 9. Cumulative Voting. Election of Directors shall be by cumulative voting, and each apartment may cast for any one or more nominees to the Board a vote equivalent to the common interest for the apartment multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his vote and give all thereof to one nominee or to distribute his vote 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 10. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Apartment Owners having at least fifty percent (50%) of the total common interests of all apartments shall constitute a quorum at all meetings of the Association.

SECTION 11. 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 unless the Declaration or these By-Laws or Hawaii law requires a higher percentage.

SECTION 12. Majority of Apartment Owners. As used in these By-Laws, the terms "majority" or "majority of Apartment Owners" shall mean the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests; and any specified percentage of the Apartment Owners means the Owners of apartments to which are appurtenant such percentage of the common interests.

SECTION 13. List of Members. The Managing Agent, as referred to in Section 3 of Article III hereof, or the Board shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under an agreement of sale, if any, covering any apartment, and lessees, if any, under a lease which provides that the lessee shall be deemed to be the Owner of the apartment. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association as provided in the Declaration or By-Laws or Rules and Regulations or, in any case, to any member who furnishes to the resident manager or Managing Agent or Board a duly executed and acknowledged affidavit stating that the list (A) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters and (B) shall not be used by such owner or furnished to anyone else for any other purpose. Every Owner shall pay to the Association or the Managing Agent on demand a service charge, in an amount fixed from time to time by the Board of Directors for the registration on the records of the Association of any change of ownership of an apartment.

SECTION 14. Minutes of Meetings. Minutes of the meetings of the Association of Apartment Owners and the Board of Directors shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board, shall be mailed to any owner upon the owner's request at the owner's cost and shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

SECTION 15. Committees. The President of the Association may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of five (5) persons, all of whom shall be Owners, co-owners or vendees under an agreement of sale or an officer of any corporate owner of an apartment; provided, that if the Property, after a legal or administrative merger as

provided in the Declaration, shall have more than one hundred individual apartment units, then the Board shall be composed of not less than nine members, unless not less than sixty-five percent of all apartment owners vote by mail ballot, to set the minimum number of directors at less than nine during a special or annual meeting called for the purpose of reducing the minimum number of directors. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the Owners of an apartment owned by their partnership for the purposes of this Section. There shall not be more than one representative on the Board of Directors from any one apartment. No resident manager or managing agent of the Project shall serve on the Board of Directors.

SECTION 2. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except such as by law, the Regulatory Agreement, if any, the Declaration or these By-Laws may not be delegated to the Board by the Apartment Owners. Any contract for goods or services having a term of more than one (1) year shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than sixty (60) days' written notice without cause or payment of a termination fee. Such powers and duties of the Board shall include, but shall not be limited to, the following:

(a) Enforcement of the provisions of the Declaration, these By-Laws and the Rules and Regulations;

(b) Operation, care, upkeep, maintenance and repair of the common elements and any additions or alterations thereto;

(c) Preparation annually of a budget of the common expenses required for the affairs of the Association (including without limitation, the operation and maintenance of the Property), determination of the amounts of monthly and special assessments, and notifying Apartment Owners of any increases in monthly and special assessments not less than thirty (30) days prior to the effective date of such increases;

(d) 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;

(e) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Apartment Owners;

(f) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;

(g) Adoption and amendment of the Rules and Regulations (House Rules) governing the details of the operation and use of the Property;

(h) Opening bank accounts on behalf of the Association of Apartment Owners and designating the signatories required therefor; provided, that the Board shall not transfer, by telephone, association funds between accounts, including, but not limited to, the general operating account and the reserve fund account.

(i) Obtaining insurance for the Property pursuant to the provisions of Article VII hereof;

(j) Making additions and improvements to or alterations of the Property and repairs to and restoration of the Property 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;

(k) Procuring legal and accounting services necessary or proper for the operation of the Property or the interpretation, enforcement or implementation of these By-Laws and any other material documents affecting the Property;

(l) Purchasing any other materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other common expenses which the Board is required to secure, make or pay pursuant to 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 the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, assessments, common expenses, expenses, costs, and fees recoverable by the Association under H.R.S. Section 514A-94 and any penalties and late charges 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;

(m) Purchase, lease, maintenance, repair, discarding, abandonment, sale or replacement of such tools and equipment as shall be necessary or appropriate to maintain and operate the common elements; providing water and other utility services required for the common elements;

(n) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the common elements or limited common elements rather than merely against the interest therein of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the Board by reason of such lien;

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

(p) Purchasing or leasing or otherwise acquiring any apartment in the name of the Board of Directors or its nominee, corporate or otherwise, on behalf of all Apartment Owners; provided that sixty percent (60%) or more of the Owners shall have approved the purchase of an apartment or the leasing of an apartment for a term of eighteen (18) months or more;

(q) Delegation of its powers to committees, agents, officers, representatives and employees;

(r) Giving to all persons having any interest in any apartment according to the Association's list of members, notice of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;

(s) Giving to all institutional holders of first mortgages on apartments, as identified in the Association's list of members, written notice of any loss to or taking of the common elements of the Property if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00) in value;

(t) Appointing a manager or Managing Agent or both and delegating to them or either of them such of its powers as it deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

(u) Establishment of the method of determination of violations and the amount of such penalties and late charges as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By-Laws and the Rules and Regulations, including penalties and late charges for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder; provided such penalties and late charges are not inconsistent with the law or the provisions herein. The unpaid amount of such penalties and late charges against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent in the same manner as provided herein and in the Condominium Property Act for common expenses; provided, however, that the said lien for such penalties and late charges shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record;

(v) Giving to the institutional holder of any first mortgage on an apartment, as identified in the Association's list of members, written notice of the failure of the Apartment Owner to comply fully (within thirty (30) days after written demand therefor by the Association) with any provision of the Declaration, these By-Laws, the Rules and Regulations or any other agreements, decisions and determinations of the Association lawfully made or amended from time to time;

(w) Leasing out any apartments acquired by the Association (as provided in paragraph (p) above); and

(x) Granting an easement across the common elements for any "reasonable purposes" as the term is herein used, which term shall include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance and repair of any apartment, the common elements or any limited common elements. The grant of the easement by the Board shall not be withheld unreasonably as to any Apartment Owner.

SECTION 3. Employment of Managing Agent. Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible person, Hawaii partnership or corporation as Managing Agent to manage and control the Property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated by the Board. The managing agent shall be licensed as a real estate broker in compliance with HRS Chapter 467 and the rules of the Real Estate Commission of the State of Hawaii, or a corporation authorized to do business under HRS Chapter 406 and shall be registered or will register after its appointment with the Real Estate Commission. The compensation of the Managing Agent shall be specified by the Board. Any contract for the employment of a Managing Agent must be approved by a vote of the majority of the members of the Board of Directors at a meeting duly called for such purpose; except that the initial Managing Agent may be appointed by the Declarant without necessity of confirmation by the Association or its Board of Directors. Every such employment contract shall provide that it may be terminated by either party thereto as provided in Article III, Section 2 above, and in no event may such employment contract be for a term exceeding three (3) years.

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

custody and control of all funds, provided that the Managing Agent shall not commingle the Association's funds with any funds belonging to the Managing Agent, (k) maintenance of books and records on a cash basis and (l) preparation of financial reports.

The Managing Agent shall provide evidence of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the agent's condominium management contracts; provided that the minimum amount of bond shall not be less than \$20,000 nor greater than \$100,000.

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.

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

The President of the Association 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 Owner individually to appear, sue or be sued.

SECTION 4. Election and Term of Office. At the first annual meeting of the Association two (2) Directors shall be elected for a term of one (1) year, two (2) Directors shall be elected for a term of two (2) years, and one (1) director shall be elected for a term of three (3) years. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three (3) years, subject to removal as provided below. In case of delay in the election of a successor, each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners and shall qualify to serve as a Director.

SECTION 5. Removal of Directors. At any regular or special meeting of the Apartment Owners, any one or more members of the Board may be removed with or without cause by the Apartment Owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. If the removal and replacement is to occur at a special Association meeting, the call for the meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-laws; provided that an individual Director shall not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one Director by cumulative voting present at such meeting shall vote against his removal. Any member of the Board whose removal is proposed by the Apartment Owners shall be given an opportunity to speak at such meeting if such member is present and requests to speak. In addition, if any Director shall fail to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a vote of a majority of the other members may remove him and select a replacement to serve his unexpired term.

SECTION 6. Vacancies. Vacancies in the Board caused by any reason other than a vacancy caused by the natural expiration of the term of any director, or 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 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 for the unexpired remainder of the term of the member whose vacancy he filled (unless sooner 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 or be deemed an Owner of an apartment, shall cause his office to become vacant.

SECTION 7. Board Meetings. (a) All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise.

(b) The Board, 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. Annual Meetings. The first meeting of the new Board following the annual meeting of the Association shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, provided a majority of the whole Board shall be present thereat. At such meeting the Board shall elect the officers of the Association for the ensuing year. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days prior to such meeting and may be included with any notice of the annual meeting of the Association.

SECTION 9. 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, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, or telegraph at least three (3) business days prior to the day named for such meeting. Both regular and special Board meetings may be conducted by means of telephone conference calls.

SECTION 10. Special Meetings. Special meetings of the Board may be called by the President on three (3) business days' notice to each member of the Board given personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice by the written request of at least two (2) members of the Board. Notwithstanding anything in these By-Laws to the contrary, the Declarant, when acting as the Association as provided in Article II Section 4, may act without a formal meeting and without call or notice.

SECTION 11. Waiver of Notice. Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board 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 are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

SECTION 12. Rules of Order. All meetings of the Board shall be conducted in accordance with the then most current edition of Roberts Rules of Order.

SECTION 13. Quorum of Board. At all meetings of the Board, 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 present at a meeting at which a quorum is present shall constitute the decision of the

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

SECTION 14. Fidelity Bonds. The Board shall obtain, if available, adequate fidelity bonds covering all Directors, Officers, trustees, employees, and volunteers responsible for handling funds belonging to or administered by the Association, naming the Association as the obligee and providing coverage in an amount not less than one and one half times the estimated annual operating expenses and reserves of the Association, or the minimum amount required under the Act, whichever is greater. The premiums on such bonds shall constitute a common expense and every such bond shall:

(a) Provide that the bond(s) may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board, the first mortgagees and every other person in interest who shall have requested such notice; and

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

The Managing Agent shall obtain a fidelity bond as provided in this Article III, Section 3, above.

SECTION 15. Compensation. No member of the Board shall receive any compensation from the Association for acting as such, except for a reasonable Director's fee for attendance at meetings of the Board, which fee shall be set by the Owners at any annual meeting. Directors may be reimbursed for actual expenses incurred in the course of acting as a Director.

SECTION 16. Liability and Indemnity of the Board of Directors. The members of the Board and Officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall obtain and maintain, if available, at the Association's expense a policy of Director's and Officer's liability insurance covering all Directors and Officers of the Association, and shall indemnify each Director and Officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for reasonable attorney's fees 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, 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, but not including such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in performance of his duties as such Director or Officer. In determining whether a Director or Officer is liable by reason of gross negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer in the absence of a final adjudication of the existence or nonexistence of such liability, the Board and each Director or Officer may conclusively rely upon an opinion of legal counsel selected by the Board. The foregoing right of indemnification shall not be exclusive of other rights which any Director or Officer may have and shall inure to the benefit of the heirs, executors, personal representatives, administrators and assigns of each such Director or Officer.

SECTION 17. Conflict of Interest. A member of the Board of Directors shall not cast any proxy vote at any meeting of the Board of Directors nor shall a director vote at any meeting on any issue in which the director has a conflict of interest. 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. The determination of whether a conflict of interest exists as to a particular director or directors shall be made by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties.

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. The Board 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.

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

SECTION 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board 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 the Board. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

SECTION 5. Vice President. The Vice President shall 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 shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as shall be assigned to him from time to time by the Board or by the President.

SECTION 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, keep the minute book wherein resolutions shall be recorded; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to the Managing Agent.

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 statements and reports. He shall be responsible for the deposit of all moneys and

designated by the Board; and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent.

SECTION 8. Agreements, Contracts, Deeds, Checks and Other Instruments. All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the By-Laws as hereafter provided, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated by the Board.

SECTION 9. Compensation of Officers. Except as specifically authorized by the Association at a regular or special meeting, no officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer.

SECTION 10. Proxy Solicitation. No officer of a board of directors shall use Association funds to solicit proxies; provided this shall not prevent an officer from exercising his right as an apartment owner under HRS 514A-82(b) (4).

ARTICLE V

USE, MAINTENANCE AND ALTERATION OF PROJECT

SECTION 1. Maintenance and Repair of Apartments. Except as otherwise provided by law or the Declaration, each Apartment Owner shall, at his own expense, keep the apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his apartment. In furtherance thereto, each Owner shall be responsible for the maintenance, repair and replacement of the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such apartment, and any plumbing fixtures, water heater, air conditioner, heating or cooling equipment, lighting fixtures, telephone, refrigerator, dishwasher, garbage disposal and compactor, range, oven, hood, other appliances, doors, windows, interior walls and partitions and similar installations in his apartment which are not part of the common elements. Each Apartment Owner shall perform promptly all repair and maintenance work to 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.

SECTION 2. Maintenance and Repair of Common Elements. All maintenance, repairs and replacements of the common elements, whether located inside or outside of the apartment, shall be made only by or at the direction of the Board and be charged to all the Owners as a common expense; provided, that (1) the costs of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment establishing a lien on such Owner's apartment in accordance with Section 4 of Article VI hereof and (2) all costs of maintenance, repair, replacement, additions and improvements to any limited common element shall be charged to the Owners of the apartments to which such limited common element is appurtenant as a special assessment constituting a lien on such Owner's apartment in accordance with Section 4 of Article VI hereof.

SECTION 3. Use of Property.

(a) The apartments of the Property shall be used only for their respective purposes as set forth in the Declaration, these By-Laws, and the Rules and Regulations and for no other purpose.

(b) All common elements of the Property shall be used only for their respective purposes as designed and in compliance with and subject to the Declaration, these By-Laws, and the Rules and Regulations.

(c) Each Owner shall be responsible for the care and maintenance of the entry/landing areas adjacent to and the stairway and railings leading to his apartment. However, no Owner may paint, stain, refinish or otherwise decorate his entry/landing area, stairway or railings without prior approval by the Board. It is intended that the exterior of the buildings shall present a uniform appearance, and to effect that end, the Owners of the apartments hereby agree that the Board may require the painting, staining, refinishing or repair of each entry/landing area and stairway, outside doors, windows, trim, fences, railings and other exterior portions of the buildings and regulate the type and color of paint to be used. The Board is authorized to contract for said painting, staining, refinishing and repair of all entry/landing areas, stairways and railings and to make payment therefor out of the capital improvements fund, subject to direct charges for negligence, misuse or neglect, as provided hereinabove. No awnings, shades, jalousies or other device shall be erected or placed on the entry/landing areas so as to be visible from the exterior without prior written permission from the Board; nor shall the entry/landing areas and stairways lands be used for the drying of clothing or the displaying of signs of any sort or kind whatsoever.

(d) Barbecuing, i.e., the broiling of any food items over a charcoal fire, gas grill or on an electric grill, shall not be allowed in the entry/landing areas and stairways of any apartment.

(e) No Apartment Owner or occupant shall place, store or maintain on walkways, roadways, grounds or other common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(f) 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 period during which the same are applicable to the use of the Property.

(g) 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.

(h) No Apartment Owner or occupant shall erect or place in the Property any building or structure including fences and walls, nor make any additions or alterations to any exterior common elements of the Property, nor place or maintain thereon any signs, posters or bills whatsoever, except as provided in the Declaration.

(i) No Apartment Owner or occupant shall decorate or landscape any entrance of his apartment or any other portion of the Property except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

(j) All owners and occupants shall exercise extreme care to avoid making noises in the use of musical instruments, radios, televisions, air conditioner(s) and amplifiers that may disturb other occupants.

(k) No garments, rugs or other objects shall be hung from the windows or facades of an apartment.

(l) No rugs or other objects shall be dusted or shaken from the windows of an apartment or cleaned by beating or sweeping on any exterior part of an apartment.

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

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

(o) No livestock, poultry, rabbits or other animals whatsoever, including but not limited to pests as defined in HRS §150A-2 or animals prohibited from importation under HRS §§141-2, 150A-5 or 150A-6, shall be allowed or kept in any part of the Property except that one dog (not to exceed thirty-five pounds in weight), or one cat or one other household pet as allowed by the Board may be kept in an apartment but shall not be kept, bred, or used therein for any commercial, profit making, or money generating purposes, nor allowed on any common elements except in transit when carried or on leash. Any authorized pet may be kept in an apartment on the following terms and conditions:

(1) All pets must be registered with the Board or Managing Agent.

(2) The Apartment Owner(s) and tenant(s) of an apartment with a pet shall indemnify and hold the Board and the Managing Agent harmless from and against any and all claims, liabilities, or damages arising out of the presence of such pet in the apartment and the Project.

(3) The Apartment Owner(s) agrees in writing to allow the Apartment Owner's tenant(s) to keep a pet in the apartment.

(4) The Apartment Owner(s) and tenant(s) owning or having custody of a dog must a) obtain a liability insurance policy with reasonable coverage and including the Board and the Association as additional insureds and provide a current certificate of such insurance to the Board or Managing Agent; b) diligently and promptly pick up and dispose of any solid waste discharged by the dog on any walkway, open area or other part of the common elements.

(5) Failure to register a pet or provide the required indemnity or certificate of insurance shall be grounds for the Board to order that the pet be permanently removed from the apartment and Project upon notice given by the Board of Managing Agent.

(6) Any pet causing a nuisance or unreasonable disturbance to any other occupant of the Property shall be permanently and promptly removed from the apartment upon notice given by the Board or Managing Agent.

(7) No pets belonging to visitors or guests shall be allowed in the Project.

(p) 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 fixtures, appliances, air conditioner, or appurtenances whatsoever on the exterior of the Property or protruding through the walls, windows or roof thereof.

(q) No Apartment Owner or occupant, without the prior approval of the Board, shall erect, place or maintain any television or other antennas on said Property visible from any point outside of the Property.

(r) Nothing shall be allowed, done or kept in any apartment or common element of the Property 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, unless the Owner of said apartment shall agree to pay any such increases or obtain substitute insurance.

(s) No waterbeds shall be allowed on the second floor of all buildings. Waterbeds may be allowed on the ground floor apartments with the prior written approval of the Board of Directors.

(t) No Apartment Owner or occupant shall regularly park or store a trailer, boat or truck with a load capacity exceeding one ton, without the prior approval by a vote of the majority of the members of the Board of Directors at a meeting duly called for such purpose.

SECTION 4. Alteration of the Property.

(a) Additions, alterations, repairs or improvements to the common or limited common elements of the Property may be made only by or at the direction of the Board and in accordance with the laws, ordinances, rules and regulations of the State of Hawaii and the County of Maui. No Owner of an apartment may, except with the prior written permission of the Board and the agencies or departments of the County of Maui, make any alteration, addition, repair or improvement (i) to his apartment which may affect the common elements or change the exterior appearance of the buildings, or (ii) to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his apartment.

(b) Whenever in the judgment of the Board the common or limited common elements shall require additions, alterations or improvements with a total cost of less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), the Board may proceed with such additions, alterations or improvements and shall assess the cost thereof as a common expense. Any additions, alterations or improvements costing in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) may be made by the Board as a common expense only after obtaining approval of the Owners of fifty-one percent (51%) of the interests in the common elements; except that such approval shall not be required for any additions, alterations or improvements required by law or in the event of an emergency threatening substantial damage to person or property.

(c) Unless otherwise prohibited by the provisions of the Declaration or these By-Laws, an Apartment Owner may make additions, alterations or improvements within his apartment at his sole cost and expense.

(d) Restoration or replacement of the Property or any building or other facility, or construction or structural alteration or addition to any such structure different in any material respect from the Condominium Map, shall be undertaken by the Association or any Apartment Owners only pursuant to an amendment of the Declaration, duly executed by or pursuant to the affirmative vote of seventy-five percent (75%) of all the Apartment Owners and of one hundred percent (100%) of all the Apartment Owners whose apartments or limited common elements appurtenant thereto are directly affected, and accompanied by the written consent of the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such restoration, replacement or construction the Association shall duly record such amendment together with a complete set of floor plans of the Project as so altered, certified by a registered architect or professional engineer to accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

(e) Notwithstanding any provision in the Declaration or these By-Laws to the contrary, any alterations or additions within an apartment or within a limited common element appurtenant to and for the exclusive use of an apartment, or of certain apartments, shall require the written consent and the written approval of the Apartment Owner's plans and specifications therefor, by all applicable governmental agencies and by the holders of liens affecting such apartment (if the lien holders require such approval), the Board, and all other Apartment Owners thereby directly affected (as determined by said Board), and such alterations or additions may be undertaken without an amendment to this Declaration.

SECTION 5. Alterations over \$10,000. Whether any Apartment Owner nor the Association will make or suffer any additions, alterations, repairs or improvements of the Property, change the grading or drainage of the Project, where the same involves an expenditure in excess of \$10,000 in any one instance, except in accordance with complete plans and specifications and detailed plot plans therefor and the posting of a performance and payment bond required by paragraph 11.03(d) of the Declaration.

SECTION 6. Insurance. The Association's original fire and extended coverage insurance policy covers all of the improvements as originally constructed and installed. Any alteration, renovation or repair of an apartment or the common elements may result in a change in the coverage of the insurance policy. Each Owner is responsible to determine the scope of coverage of insurance policies covering his/her/its apartment as a result of any alteration, renovation or repair work.

ARTICLE VI

COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING

SECTION 1. Common Expenses.

(a) Each Apartment Owner shall be liable for and pay a share of the common expenses in proportion to the common interest appurtenant to his apartment. In addition to the items otherwise designated in the Declaration or these By-Laws as common expenses, the following sums are hereby designated as common expenses: all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project including, without limiting the operation thereof, 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 Apartment Owner), assessments, insurance, including fire, flood 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, flood, 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 and operation actually necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, including limited common elements, and the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, and any other similar service, unless separately metered. All costs, expenses and charges which are not common expenses and are separately attributable to an apartment or group of apartments or to the limited common elements of such apartment or group of apartments, expenses, costs, and fees recoverable by the Association under Hawaii Revised Statutes Section 514A-94, and any penalties and late charges shall be payable by the Owners of such apartments in such amounts as shall be calculated by the Board; and no payments thereof shall be payments of such common expenses. The common expenses may also include such amounts as the Board of Directors may deem appropriate to make up any deficiency in these expenses for any prior year and a reserve fund for the operation and maintenance of the Project, including, without limitation, anticipated needs for working capital for the Project, and for replacements, repairs and contingencies. 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 Owner to the third person entitled to said payments from each Owner. The Board may delegate this duty and the duty to notify Apartment Owners of increases in common expenses to the Managing Agent. 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, unless Apartment Owners having more than fifty percent (50%) of the common interests vote to return such unexpended sums to the Apartment Owners.

The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any apartment by the Board or its designee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these By-Laws.

Assessments of common expenses shall be payable in monthly installments on the first day of each month, commencing with respect to each apartment on the first day of the first month following the issuance by the appropriate county agencies of a temporary or permanent certificate of occupancy for such apartment. The first monthly installment of common expenses shall be prorated for each apartment from the date of issuance of such certificate of occupancy. The developer shall fix the rate of monthly installments of common expenses until such rate shall be redetermined by the Board of Directors. The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board shall send to all Apartment Owners thereby affected written notice of any such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. Any portion of an Owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid in surplus.

(b) The Board shall establish and maintain a General Operating Reserve by monthly assessment against and payment by all Owners in proportion to their respective common interest, of such additional amount not exceeding that portion of the total monthly assessment for current common expenses, as the Board 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. 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 may be used to meet any deficiencies in operating funds from time to time resulting from delinquency by Owners in the payment of assessments for common expenses but shall not operate to exempt any Owner from liability to contribute his proportionate share of such expenses or to pay any such assessments therefor. The proportionate interest of each Owner in said reserve and all interest earned thereon 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 Condominium Property Regime established hereby is terminated or waived, said reserve remaining after payment of all common expenses shall be distributed to all Owners in proportion to their respective common interests except for the Owners of any apartments then reconstituted as a new Condominium Property Regime, whose shares shall be placed in the general operating reserve fund or other capital contributions account provided for in the Declaration for such Condominium Property Regime. The unexpended reserve at the end of any year shall be applied toward current residential expenses in the following year, unless the Association votes to return such unexpended reserve to the Owners in proportion to their respective common interests.

(c) The Board may establish and maintain one or more Capital Improvements Reserve Funds by the monthly assessment against and payment by all 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 (including those common elements which must be replaced on a periodic basis) 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 expense of a capital nature. Each such Fund shall be deposited in a separate 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, any agency of the United States of America. Disbursements from said Fund shall be made only upon authorization of the Board. Expenditure of such Funds may be made only if it adds to the attractiveness or usefulness of the Project. The proportionate interests of each Apartment Owner in said Fund and all interest earned thereon 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 Condominium 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 after creation of said Fund, said Fund remaining shall be distributed to all Owners in proportion to their respective common interests, except for the Owners of any apartments then reconstituted as a new Condominium Property Regime, whose shares shall be placed in the capital improvements reserve fund or other capital contributions account provided for in the Declaration for such Condominium Property Regime.

(d) Combining Reserve Accounts. In order to maximize interest income, the Board may authorize the General Operating Reserve and Capital Reserve Funds to be combined into one or more accounts and deposited with a responsible financial institution insured by an agency of the United States of America, subject to the provisions of Section 7, Article VI below. The funds in the General Operating Account shall not be commingled with funds of other activities such as rental operations.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the appropriate Owners, all common expenses. Each Owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these By-Laws, of all such 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 payment must be made by the Owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as 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 Owners.

SECTION 3. Taxes and Assessments. Each Owner of an apartment shall be obligated to have the real property taxes for such apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. 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. Each Owner's proportionate share shall be the ratio that the current assessed value of an Owner's apartment bears to the current assessed values of all apartments in the Project. 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 as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Section 4 of this Article VI.

SECTION 4. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same are assessed and, in the case of an apartment owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment, expenses, costs and fees recoverable by the Association under HRS Section 514A-94, and any penalties and late charges not paid within ten (10) days after the due date thereof shall accrue interest at the rate of twelve percent (12%) per annum from such due date until paid. In the event of a default or defaults in payment of any such assessment or assessments, expenses, costs and fees recoverable by the Association under HRS Section 514A-94, and any penalties and late charges, and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits to enforce such assessment obligations. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought by the Board in the name of the Board and the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include, where permissible under any law, a sum for expenses, costs and 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 and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the mortgagee of such Owner if such mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency, together with all expenses, costs and fees recoverable by the Association under HRS Section 514A-94 and any penalties and late charges, and making demand for payment thereof. If such delinquency and additional amounts are not paid within ten (10) days after delivery of such notice, the Board may file a claim of lien against the apartment of such delinquent Owner. Such claim of lien shall state (i) the name of the delinquent Owner, (ii) a designation of the apartment against which the claim of lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper offset), (iv) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and the Act, and (v) that a lien is claimed against such apartment in an amount equal to the net amount of the stated delinquency plus any penalties, late charges, accrued interest and expenses and costs of enforcement, and fees recoverable under HRS Section 514A-94, including attorneys' fees, if any. Such claims of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board, or by the Managing Agent and shall be dated as of the date of the execution by such attorney or the Managing Agent or the last such Board member to execute such claim of lien. Upon recording of a duly executed original or copy of such claim of lien with the Bureau of Conveyances of the State of Hawaii, the Board shall have all remedies provided in the Act. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board or the Managing Agent 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. If any claim of lien is recorded and thereafter the Board received payment in full of

the amount claimed to be due and owing, (including accrued interest and any costs of enforcement), then upon demand of the Owner and payment of a reasonable fee, the Board, acting by any two members, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Bureau of Conveyances recording data of the claim of lien and that the lien is fully satisfied, released and discharged.

SECTION 5. Waiver. The failure of the Board to insist in any one or more instances upon 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, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach; and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 6. Collection from Tenant. If an Owner at any time rents or leases his apartment and defaults for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, so long as such default continues, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the apartment or from the Owner's rental agent, if any, 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 and costs of enforcement if any; and any such payment of such rent to the Board by the lessee or such rental agent shall be a full and sufficient discharge of such lessee and rental agent as between such lessee or rental agent and the Owner to the extent of the amount so paid; but no such demand or acceptance of rent from any lessee or rental agent shall be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder remaining unpaid or unperformed or an acknowledgement of surrender of any rights or duties hereunder. If the Board makes any such demand upon the lessee or rental agent, the lessee or rental agent shall not have the right to question the right of the Board to make such demand, but shall be obligated to make such payments to the Board as demanded by the Board with the effect as aforesaid; provided, that the Board may not exercise this right if a receiver or commissioner 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. Books of Account; Audit. The Board or Managing Agent shall maintain or cause to be maintained books of account of the common expenses in accordance with recognized accounting practices and shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board or Managing Agent also shall maintain or cause to be maintained monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board. The Association's financial records shall be available for examination by the Apartment Owners, their authorized representatives, prospective purchasers and their respective mortgagees at convenient hours of week days at a place designated by the Board. The Board or Managing Agent shall not transfer by telephone Association funds between accounts, including, but not limited to, the General Operating Account and Reserve Fund Account. Within sixty (60) days after the end of each fiscal year of the Association, the Board will render or cause to be rendered to each Owner a statement (determined on a cash or accrual basis, as the Board shall determine) of all receipts and disbursements during the preceding

year. Any Owner may, at his expense, cause an audit or inspection to be made of the books and records of the Association. The Association shall require a yearly audit of the Association's financial accounts and no less than one yearly unannounced verification of the Association's cash balance by an independent public accountant or certified public accountant as determined by the Board; provided that the yearly audit and the yearly unannounced cash balance verification may be waived by a majority vote of all Apartment Owners taken at an Association meeting.

ARTICLE VII

INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance. The Board shall procure and at all times maintain from a company or companies having a financial rating by Best's Insurance Reports Of Class VI or better or which has a financial rating of Class V provided that it has a general policy holder's rating of at least A and qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) a policy or policies (hereinafter in this Section 1 called the "Policy") of fire insurance, with a special extended coverage endorsement for flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973, since the Property is located in an identified flood hazard area as designated by the Federal Emergency Management Agency) and such broader forms of protection as the Board shall determine, for an amount as nearly as practicable equal to the full replacement cost without deduction for depreciation, with an Inflation Guard Endorsement and a water damage endorsement, covering all the apartments, appliances, carpets and fixtures therein and the buildings, fixtures, appliances, and building service equipment and the common elements and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings in accordance with the as-built condominium plans and specifications, but excluding any improvements made by an Owner, which the Owner himself may insure, and excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Association. The cost of the Policy shall be a common expense. The policy (unless unobtainable at a reasonable cost):

(a) Shall contain no provision limiting or prohibiting other insurance by the Owner of any apartment, but shall provide that the liability of the insured 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, and, if obtainable, shall not relieve the insurer from liability by reason of any breach of warranty or condition caused by the Board, 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 and the coverage provided thereunder may not be cancelled or substantially modified by the insurer except by the insurer giving to the Board, the Owner of each apartment, every first mortgagee of an apartment and every other person in interest who shall have requested such notice from the insurer sixty (60) days' prior written notice of such cancellation or modification.

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

(e) Shall contain a provision waiving any right of subrogation by the insurer to any right of the Board or any Apartment Owners against the Owner of any apartment;

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

(g) Shall contain a standard mortgagee clause which:

(i) Shall cover the interest of any mortgagee of any apartment as their interest may be established;

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

(iii) Shall waive (A) any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, (B) any requirement that the mortgagee pay any premium (provided, that if the Board fails to pay any premium due or to become due under the Policy, the mortgagee may pay the same prior to termination of the Policy by reason of nonpayment of such premium), (C) any contribution clause and (D) 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 against the mortgagor or Owner but without impairing the mortgagee's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

(iv) Shall provide that, without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause, if in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), shall be payable to a corporate trustee selected by the Board which shall be a bank or trust company doing business in Hawaii, herein referred to as the "Trustee"; and

(v) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees of any apartment, in their order of priority, whether or not named therein.

(h) Shall provide for payment of the proceeds to the Trustee if the total proceeds payable on account of any one casualty exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00);

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

(j) Shall, if available, include an "all risk" endorsement; and

(k) Shall if obtainable be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies all of the requirements contained in this Section 1.

SECTION 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) comprehensive policy or policies (hereinafter in this Section 2 called "Policy") of public liability insurance to insure the Board, the Declarant, as

Apartment Owner, and the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the Property or activities thereon or construction work under a Comprehensive General Liability form, with minimum limits of not less than \$1,000,000 for personal injury and/or property damage arising out of a single accident or occurrence to such higher limits as the Board may establish from time to time with due regard to then prevailing prudent business practices in the State of Hawaii as reasonably adequate for the protection of the Association, the Board, and the individual Apartment Owners. The cost of such policy shall be a common expense. The Policy:

(a) Shall, if obtainable, not relieve 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 Managing Agent, the Declarant, or the Board, or because of any breach of warranty or condition caused by the Owner of any apartment or any act or neglect of the Managing Agent, the Declarant, the Board, or Owner or tenant of any apartment;

(b) Shall provide that the Policy and the coverage provided thereunder may not be cancelled or substantially modified by the insurer except by the insurer giving to the Board, the Owner of each apartment, every first mortgagee of an apartment and every other person in interest who shall have requested such notice from the insurer sixty (60) days' prior written notice of such cancellation or modification;

(c) Shall, if obtainable at a reasonable cost, contain a waiver by the insurer of any right of subrogation to any right of the Board, the Managing Agent, the Declarant or Apartment Owners against any of them or any other persons under them; and

(d) Shall, if obtainable at a reasonable cost, contain a "severability of interest" endorsement precluding the insurer from denying the claim of an Apartment Owner because of negligent acts of the Association, the Managing Agent, the Declarant, or other Apartment Owners.

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

SECTION 4. Miscellaneous Insurance Provisions. The Board shall review not less frequently than annually the adequacy of the Association's entire insurance program and shall adjust its insurance program accordingly. The Board may elect to purchase any insurance policy having a deductible (non-insured) amount, provided that the Board shall pay for and include any deductible amount as a common expense of the Association. The Board shall then report in writing its conclusions and actions taken on such review to the Owner of each apartment, and to the holder of any first mortgage on any apartment who shall have requested a copy of such report or copies of all such reports. 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 a building is damaged by fire or other casualty which is insured against and said damage is limited to single apartment, the insurance proceeds shall be used by the Board or the Trustee for payment of the contractor retained by the Board to rebuild or repair

such apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor.

If such damage extends to two or more apartments or extends to any part of the limited common elements or to the common elements:

(a) If the Owners of the apartments do not within sixty (60) days after such casualty or, if by such date the insurance loss has not been finally adjusted, within thirty (30) days after such final adjustment, agree in writing in accordance with the provisions of the Declaration and this Section 5 that the buildings or any portion thereof need not be rebuilt or repaired and the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain also approve in writing, or if the Owners at an earlier date agree to rebuild immediately, then the Board shall contract to repair or rebuild the damaged portions of the building or buildings, including all apartments so damaged as well as common elements:

(i) In accordance with plans and specifications therefor which will restore the same in conformity with the design immediately prior to the destruction, or

(ii) If reconstruction in accordance with such design is not permissible under applicable laws and regulation then in force, in accordance with such modified plan as shall be approved by the Board and the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain, provided that, if such modified plan eliminates any apartment and such apartment is not reconstructed, the Trustee shall pay to the Owner and any mortgagee of such apartment, as their interests may appear, the portion of the insurance proceeds allocable to such apartment (less the proportionate share of such apartment in the cost of debris removal) and shall disburse the balance of the 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 cost of repairing and rebuilding all damaged apartments as well as the common elements and limited common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the General Operating Reserve and, if the General Operating Reserve is insufficient for this purpose, the Board shall levy a special assessment on the Owners of all apartments in proportion to their respective common interests. The special assessment shall be secured by the lien created under Section 4 of Article VI hereof.

If a decision is made in accordance with the Declaration, this Article and the Act not to repair or rebuild all or any lesser number of damaged or destroyed apartments, the insurance proceeds allocable to any apartment which is not to be rebuilt and its limited common elements (hereinafter called an "eliminated apartment"), less the proportionate share of such eliminated apartment in the cost of debris removal, shall be paid to the Owner and any mortgagee of the eliminated apartment as their interests may appear. The remaining insurance proceeds shall be paid to the Trustee, who shall apply such moneys to repair and rebuild any portion of the buildings that is to be reconstructed in accordance with this section. If a decision is made to eliminate an apartment, the common interests and other rights of the remaining Apartment Owners in the Project shall be adjusted by amendment of the Declaration pursuant to Section 514A-13(b) of the Act and the section of the Declaration entitled "Amendment"; provided, that the common interest of any Owner shall not be altered without his consent. The Owner of any eliminated apartment shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, if the Declaration is not amended

so as to discharge the Owners of eliminated apartments of all obligations to the Project and so as to adjust equitably the common interests appurtenant to those apartments not eliminated, the Owner of any eliminated apartment may, pursuant to Section 514A-92 of the Act, convey his interest to the Board on behalf of all other Apartment Owners and thereby be discharged of all obligations to the Project. The Owner of any eliminated apartment may, in addition to his allocable share of insurance proceeds, receive such additional reimbursement as the Board deems appropriate, including but not limited to compensation for the value of his undivided interest in the land.

(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, subject to the following conditions:

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

(ii) Each request for payment shall be made on not less than 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 (A) 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 (B) 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 other evidence satisfactory to the Trustee showing that no mechanics', materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the premises or any part of the work;

(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 regulation or 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) The Trustee may impose other reasonable conditions consistent with the foregoing.

(c) Upon completion of the work and payment in full therefor, any remaining insurance proceeds then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners and mortgagees of the apartments in proportion to the respective common interests appurtenant to the apartments.

(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

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of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation by the insurers.

SECTION 6. Disposition of Buildings. If the common elements of the Project suffer substantial damage within the meaning of Section 514A-21(a)(2), of the Act, and if Apartment Owners holding seventy-five percent (75%) or more of the common interests of the Project and the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain shall agree in writing that the Project need not be rebuilt, any insurance proceeds shall be used to remove any remaining improvements on the land included in the Project unless the Association votes not to remove such improvements, and the balance of such insurance proceeds, if any, shall be allocated among the Apartment Owners and their mortgagees, in accordance with the interest in the common elements appurtenant to each apartment.

SECTION 7. Notice of Right to Vote Against Rebuilding. Within thirty (30) days after the occurrence of any damage or destruction with respect to which some or all of the Apartment Owners will have the right to vote against any proposed rebuilding or restoration, the Board shall send notice to all such Owners so entitled to vote. Such notice shall recite the nature and extent of damage, the right of specified Owners to vote against rebuilding or restoration, the percentage of votes necessary to prevent rebuilding or restoration, the time when or within which any such vote must be cast, the place and manner in which any such vote must be cast, and any other information deemed relevant by the Board.

ARTICLE VIII

MORTGAGES

SECTION 1. Notice of Unpaid Common Expenses. The Board, 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 2. Notice of Default. When giving notice to an Apartment Owner of a default in paying common expenses or other default, the Board of Directors shall send a copy of such notice to each holder and insurer of a mortgage covering such apartment or interest therein whose name and address has theretofore been furnished to the Board.

SECTION 3. Additional Notices to Mortgagees. A holder or insurer of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder or insurer and the apartment number), will be entitled to:

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

(b) Prior written notice of any proposed termination of the Condominium Property Regime;

(c) Prior written notice of any actual or threatened condemnation or eminent domain proceedings affecting the Condominium Property Regime or any portion thereof;

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

(e) A copy of all pleadings filed in any lawsuit, administrative proceeding or other action affecting the Project or any portion thereof;

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

(g) Prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause); and

(h) Timely written notice of all meetings of the Association; and said holder or insurer of a first mortgage shall be permitted to designate a representative to attend all such meetings.

SECTION 4. Mortgagee Approval.

(a) Unless the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain have given their prior written approval, the Association shall not be entitled to adopt an amendment of these By-Laws which establishes, provides for, governs, or regulates any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the common elements;
- (4) Insurance or fidelity bonds;
- (5) Right to use of the common elements;
- (6) Responsibility for maintenance and repair of the several portions of the Property;
- (7) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- (8) Boundaries of any apartment;
- (9) The interests in the general or limited common elements;
- (10) Convertibility of apartments into common elements or of common elements into apartments;
- (11) Leasing of apartments;
- (12) Imposition of any right of first refusal or similar restriction on the right of an apartment owner to sell, transfer, or otherwise convey his or her apartment in the Property;
- (13) Establishment of self-management by the condominium association where professional management has been required by any of the agencies or corporations.
- (14) Amendment of any provision in the Declaration, these By-Laws or other documents which are for the express benefit of holders or insurers of first mortgages of apartments in the Project;

(b) The owners or holders of first mortgages securing apartments in the Project to which at least sixty-seven percent (67%) of the votes of apart-

ments subject to a mortgage appertain must approve in writing an amendment to terminate the condominium property regime.

SECTION 5. Examination of Books. Each holder or insurer of a mortgage 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 6. Annual Reports and Other Financial Data. Each holder or insurer of a mortgage of an apartment may require, and shall receive upon request, such financial data and/or an annual audited financial statement of the financial status of the Association and of the Project within ninety (90) days following the end of any fiscal year of the Project.

SECTION 7. Notice to Board of Directors. An Apartment Owner who mortgages his interest in an apartment shall notify the Board 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. The Board shall maintain such information in its list of members.

ARTICLE IX

CONDEMNATION

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

In the event all or any of the apartments are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each apartment so taken, the amount of the condemnation proceeds allocable to the land included in the Property and to each apartment (including the apartment's appurtenant interest in the common elements exclusive of the land and any limited common elements) shall be determined by a real estate appraiser ("appraiser") who shall be a member of the American Institute of Real Estate Appraisers, or any successor organization and who shall have acted on behalf of the Apartment Owners in the condemnation proceedings; or, if no such appraiser shall have acted on behalf of the Apartment Owners, or if more than one appraiser shall have acted on behalf of the Apartment Owners, then an appraiser with such qualifications shall be selected by the Board to determine the amount of condemnation proceeds allocable to each apartment.

If the entire Property is taken, the Condemnation Trustee shall pay to each Apartment Owner and mortgagee, as their interest may appear, the portion of the condemnation proceeds determined by the appraiser.

In the event of a partial taking of the Property in which (i) any apartment is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the apartment and to the Board, then such apartment shall be removed from the Property and the Condemnation Trustee shall disburse to the Owner and any mortgagee of such apartment, as their interests may appear, in full satisfaction of their interests in the apartment, the portion of the proceeds of such award allocable to such eliminated or removed apartment after deducting the proportionate share of such apartment in the cost of debris removal.

In the event of any partial taking of the Project, the Board shall, subject to the provisions of the preceding sentence concerning removal of an apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or, if repair and restoration in accordance with such design are not permissible under applicable laws and

regulations then in force, in accordance with such modified plan as shall be approved by the Board, and the mortgagee of record of each apartment in the Property remaining after such taking. Such work shall be undertaken, and disbursements therefor shall be made, in the manner prescribed in Section 5(b) of Article VII hereof. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, the Board shall pay such excess according to the same procedures set forth in Section 5 of Article VII in case of damage to the Project.

If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and any mortgagee of a removed apartment and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Apartment Owners including the owners of any eliminated apartments in accordance with their interest in the common elements prior to the condemnation.

Nothing hereinabove contained shall be construed so as to disturb the first lien priority of any holder of a first mortgage on the subject property.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. Rules and Regulations (House Rules). The Declarant may initially establish and the Board (upon giving notice to all Apartment Owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon) may, by a vote of a majority of its members present at a meeting called for such purpose, thereafter establish and amend such Rules and Regulations. The Apartment Owner's rights under this instrument shall in all respects be subject to the Rules and Regulations, as they may be lawfully amended from time to time, which shall be deemed to be a part hereof; and each Apartment Owner shall abide by all such Rules and Regulations, as the same may from time to time be amended and shall see that the same and the Declaration, these By-Laws, and the Regulatory Agreement, if any, are faithfully observed by the invitees, guests, employees, and tenants of the Apartment Owner; and the Rules and Regulations, the By-Laws, the Declaration and the Regulatory Agreement, if any, shall uniformly apply to and be binding upon all tenants, employees of the Owner, occupants, and other persons using the property. A copy of the initial Rules and Regulations (House Rules) is attached hereto as Exhibit A and incorporated herein by reference. The number of votes required to amend the By-laws does not apply to an amendment of the House Rules.

SECTION 2. Abatement and Enjoinment of Violations. The violation of any of the Rules and Regulations, the breach of any of these By-Laws or the breach of any provision of the Declaration or Regulatory Agreement, if any, shall give rise to the following rights in addition to any other rights set forth in these By-Laws:

(a) The right of the Board and Managing Agent to enter the apartment during reasonable hours in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these By-Laws or the Declaration or Regulatory Agreement, if any; and the Association, Board and Managing Agent shall not thereby be guilty of any trespass; or

(b) An action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or Board on behalf of the Association or, in a proper case, by an aggrieved owner.

SECTION 3. Expenses of Enforcement. Every Apartment Owner and any occupant, tenant, employee of the Owner, or any person who may in any manner use the property, jointly and severally, 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 or these By-Laws or the Rules and Regulations or Regulatory Agreement, if any, against any Owner or any occupant, tenant, employee of an Owner, or any other person who may in any manner use the apartment. The unpaid amount of such costs and expenses against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent as herein provided and in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the said lien for such costs and expenses shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record.

SECTION 4. Right of Access. The Managing Agent and any other person authorized by the Board or the Managing Agent shall have a right of access to any Owner's apartment for the purposes of making inspections or correcting any condition existing in an 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 an apartment or elsewhere in the buildings, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be granted and effective immediately, whether the Owner is present at the time or not.

SECTION 5. Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a nonprofit membership corporation formed by the Owners under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the written approval of seventy-five percent (75%) in interest of the voting Owners. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles and By-Laws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

SECTION 6. Notices. All notices to the Association shall be mailed or delivered to the Board, in care of the Managing Agent, or, if there is no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate by notice in writing to all Owners and all mortgagees of apartments. All notices to any Owner shall be mailed or delivered to the building or to such other address designated by him in writing given to the Board. Any notices to mortgagees of apartments shall be sent by mail to their respective addresses, as designated by them in writing given to the Board. 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. In the event any interest in an apartment and its appurtenant common interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, notice shall be deemed given sufficiently for all purposes if it is in writing and is delivered personally or by registered or certified mail to the trustee of any such trust and to any beneficiary whose name and address has theretofore been furnished to the Board.

SECTION 7. Inspection of Condominium Property Regime Documents. During normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Owners, lenders and prospective purchasers, current copies of the Declaration, By-Laws and other rules governing the operation of the Condominium Property Regime.

SECTION 8. Captions. The captions herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or prescribe the scope of these By-Laws or the intent of any provision hereof.

SECTION 9. 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 requires.

SECTION 10. Waiver. No restriction, condition, obligation or provision in these By-Laws shall be deemed 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 11. 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 Property as a mutually beneficial and efficient establishment.

Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board to conduct or engage in active business for profit on behalf of any or all of the Apartment Owners.

SECTION 12. Amendment. The provisions of these By-Laws may be amended at any time by the vote or written consent of not less than sixty-five percent (65%) of all apartment owners and, if applicable, fifty-one percent (51%) of the first mortgagees as set forth in Article VIII, Section 4 above, provided that each one of the particulars set forth in HRS §514A-82, as amended from time to time, shall always be embodied in these By-Laws; and provided further that any proposed by-laws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership. The proposed by-laws, rationale, and ballots for voting on any proposed by-law shall be mailed by the Board of Directors to the Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed by-law shall be sixty-five percent of all Apartment Owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the by-law is duly adopted, then the Board shall cause the by-law amendment to be recorded in the Bureau of Conveyances or filed in the Land Court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed by-law which is substantially similar to that which has been previously mailed to the Owners within one year after the original petition was submitted to the Board. This section shall not preclude any Apartment Owner or voluntary apartment owners' committee from proposing any by-law amendment at any annual Association meeting.

SECTION 13. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

The Declarant acting as the initial Association of Apartment Owners hereby adopts the foregoing By-Laws as the By-Laws of the Association of Apartment Owners of the Haleakala Gardens - Phase I, condominium project on behalf of the Association this 28th day of October, 1988.

BLACKFIELD SENIOR HAWAII JOINT VENTURE

By BLACKFIELD HAWAII CORPORATION

By J. Hoan
Its President

By SENIOR HAWAII CORP.

By John M. Sh
Its Vice President

STATE OF HAWAII)
 : SS.
 CITY AND COUNTY OF HONOLULU)

On this 28th day of October, 1988, before me appeared

J. Horner, to me personally known, who, being by me duly sworn,

did say that he is the President of BLACKFIELD HAWAII CORPORATION, a Hawaii corporation, as a Joint Venturer of and for BLACKFIELD SENIOR HAWAII JOINT VENTURE, a registered Hawaii joint venture; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Officer acknowledged said instrument to be the free act and deed of said corporation, as such Joint Venturer.

Frederick A. Shores
NOTARY PUBLIC, State of Hawaii.

My commission expires: Nov. 29, 1991

L.P.

STATE OF HAWAII)
 : SS.
 CITY AND COUNTY OF HONOLULU)

On this 28th day of October, 1988, before me appeared

John M. Harper, to me personally known, who, being by me duly sworn,

did say that he is the Vice President of SENIOR HAWAII CORP., a Delaware corporation, as a Joint Venturer of and for BLACKFIELD SENIOR HAWAII JOINT VENTURE, a registered Hawaii joint venture; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Officer acknowledged said instrument to be the free act and deed of said corporation, as such Joint Venturer.

Frederick A. Shores
NOTARY PUBLIC, State of Hawaii.

My commission expires: Nov. 29, 1991

L.P.

BY-LAWS OF ASSOCIATION OF
APARTMENT OWNERS OF HALEKALA GARDENS - PHASE I
EXHIBIT A

HOUSE RULES

The purpose of these house rules is to promote the harmonious occupancy of the condominium apartments and to protect all occupants from annoyance and nuisance caused by improper use. It should be noted that several of the house rules are State laws concerning occupancy in a condominium.

Any flagrant noncompliance of these house rules should be brought to the attention of the Resident Manager. Continued noncompliance should be reported to the Board of Directors in writing through the Managing Agent.

The Board of Directors decide upon actions to be taken for violations, i.e., fine and/or eviction. All legal fees incurred shall be assessed against owners, agents, and/or tenant.

COMMON AREAS

1. Damages to common elements shall be surveyed by the Resident Manager. The cost of repair or replacement may be assessed by the Board against the person(s) responsible. In the case of damage caused by a tenant, the owner will be held responsible to the Association.
2. The stairways, walks, and entries shall not be obstructed or used for any purpose other than ingress and egress.
3. Items of personal property, including baby carriages, shopping carts, bicycles, shoes, door mats or plants shall not be left or allowed to stand in any part of the stairways, walks, entries or parking area.
4. No bicycles or velocipedes shall be used on any of the common areas, except the roadway portion of the parking areas.
5. Clothing or laundry shall not be hung in doorways, windows, stairways or entries.
6. Nothing shall be allowed, done or kept in any apartment or common element of the Project which would overload or impair the floors, walls or roofs thereof, or cause any increase in the ordinary insurance rates or cancellation or invalidation of any insurance thereon.
7. No waterbeds shall be allowed on the second floor of all buildings. Waterbeds may be allowed on the ground floor apartments with the prior written approval of the Board of Directors.
8. All trash must be wrapped or bagged and placed in the trash bins. Empty cardboard boxes and large, bulky items shall be carried and placed in the trash bin. Do not leave trash of any kind on the trash area floor.
9. No soliciting of goods, services or religious activities shall be permitted, except as approved by the Board of Directors.
10. Anyone found tampering with the fire fighting equipment or fire alarms will be subject to criminal charges and liable for all repair costs, replacement, or damage caused to the buildings or personal property.

RECREATION AREA

1. Use of the recreation area shall be limited to occupants and their guests.
2. The Resident Manager has been given authority and responsibility by the Board to exclude from the recreation area any person who, in his opinion, is disturbing others, causing a hazard to himself or others or violating any other rules.
3. Outdoor cooking shall be limited to designated areas within the recreation area and subject to regulation by management. No fires or barbecuing will be permitted anywhere else on the Project.

PARKING AREAS

1. Occupants must park their vehicles within the confines of the designated stall.
2. A vehicle may be washed only in a designated wash stall.
3. No mechanical repairs or maintenance shall be performed on a vehicle in the common area or in any parking stalls except in an emergency, i.e., change a flat tire.
4. All vehicles will be registered with the Resident Manager.
5. Parking areas may not be used for loitering or any recreation (i.e., ball playing, skateboard riding, roller skating, etc.).
6. Speeding will not be permitted.
7. All vehicles must be in operable condition for removal in case of emergencies.
8. Guests are permitted to park their cars only within designated guest parking stalls. Occupants may not park their car within designated guest parking stalls.
9. Occupants and/or owners are responsible for the cleanliness of their parking stalls, including removal of grease.
10. Violators of parking regulations shall have their cars towed away at their own expense. If the violator is a lessee, tenant or guest of an owner, the owner shall be held responsible for payment of the towing charge.

OCCUPANCY

1. An apartment shall be used only as a residence, and shall not be used for business or other purposes.
2. Each owner shall register all occupants with the Resident Manager. All guests remaining after 15 days will be considered permanent residents.
3. No apartment will be occupied by a tenant or guest who has been evicted from Haleakala Gardens - Phase I by the Board of Directors. A list of these names is in the Resident Manager's apartment.
4. Every apartment shall at all times be kept clean and sanitary.

5. The Resident Manager shall retain a pass key to each apartment. A lock may not be altered and a new lock may not be installed without giving to the Board of Directors a key for the new lock.
6. The Resident Manager shall not be required to allow anyone access to an apartment without written permission from the occupant.

PETS

1. No livestock, poultry, rabbits or other animals whatsoever, including but not limited to pests as defined in HRS §150A-2 or animals prohibited from importation under HRS §§141-2, 150A-5 or 150A-6, shall be allowed or kept in any part of the Property except that one dog (not to exceed thirty-five pounds in weight), or one cat or one other household pet as allowed by the Board may be kept in an apartment but shall not be kept, bred, or used therein for any commercial, profit making, or money generating purposes, nor allowed on any common elements except in transit when carried or on leash. Any authorized pet may be kept in an apartment on the following terms and conditions:

(1) All pets must be registered with the Board or Managing Agent.

(2) The apartment owner(s) and tenant(s) of an apartment with a pet shall indemnify and hold the Board and the Managing Agent harmless from and against any and all claims, liabilities, or damages arising out of the presence of such pet in the apartment and the Project.

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

(4) The apartment owner(s) and tenant(s) owning or having custody of a dog must (a) obtain a liability insurance policy with reasonable coverage and including the Board and the Association as additional insureds and provide a current certificate of such insurance to the Board or Managing Agent; (b) diligently and promptly pick up and dispose of any solid waste discharged by the dog on any walkway, open area or other part of the common elements.

(5) Failure to register a pet or provide the required indemnity or certificate of insurance shall be grounds for the Board to order that the pet be permanently removed from the apartment and Project upon notice given by the Board of Managing Agent.

(6) Any pet causing a nuisance or unreasonable disturbance to any other occupant of the Property shall be permanently and promptly removed from the apartment upon notice given by the Board or Managing Agent.

2. Any damage to any apartment building, grounds, flooring, or walls, caused by a pet will be the full responsibility of the owner/occupant of the apartment maintaining such pet and the costs of repair or replacement shall be specially assessed to the owner of such apartment.
3. Owners are responsible for picking up after their pets. Pet trash (sand, litter paper, etc.) must be wrapped with extra care.

NOISE

Each occupant should avoid excessive noise of any nature at any time, so as to be considerate to other residents.

RENTAL/SALE

1. No apartment shall be rented for a period of less than one month.
2. The Resident Manager shall be notified by the owner or agent of the name of any tenant.
3. See section on (Occupancy).
4. Each owner is responsible to see that the occupant of his apartment is made aware of these house rules and has received a copy.
5. Collection from Tenant. If any owner shall at any time default for a period of 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 the default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "Lessee") of his apartment the rent due or becoming due from the lessee to the owner up to an amount sufficient to pay all sums due from the owner, including interest, if any, and other charges made pursuant to the house rules or by-laws. Any such payment of rent to the Board by the Lessee shall be sufficient discharge of the Lessee. As between the 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 or a release or discharge of any of the obligations of the owner or any acknowledgment of surrender of any rights or duties of the owner. If 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 the demand, but shall be obligated to make the payments to the Board as demanded, provided, however, that the Board will not exercise this right while the apartment is in the possession of a receiver or mortgagee pending a mortgage foreclosure if the receiver or mortgagee is paying current maintenance fees.
6. Signs, including "For Sale," "For Rent," or "Open House" signs, will be strictly regulated, on policy approved by the Board of Directors.

BUILDING MODIFICATION

1. No awnings or other projection shall be attached to the outside walls of any building or to the exterior of any door. No air conditioner on or extending beyond the exterior face of any building may be installed except with the prior written approval of the Board as to the size, location and color of the air conditioner.
2. No radio, television or other antenna will be erected or installed on or anywhere within the Project without the prior written approval by the Board.
3. No alteration or addition to any apartment which is visible from the exterior of the apartment, nor any alteration or addition to the common elements may be made without the prior written approval of the Board.
4. No drapes or under drapes will be permitted which differ in color from the draperies originally provided with the apartment.

MAINTENANCE

1. Common elements: Under the supervision of the Board, the maintenance of the common elements is a responsibility of the Manager. Defects and deficiencies should be reported when and as observed.
2. Apartments: Maintenance of individually-owned apartments, including all windows, is the responsibility of the respective owners and/or occupants.

- 3. Maintenance employees of the Association shall not be asked to do work within the area of any apartment during the prescribed hours of work or asked by an owner or occupant to leave the common elements for any reason.
- 4. Plumbing equipment, such as toilets and garbage disposals, shall be used only for the purposes for which they were constructed. Sweepings, diapers, rubbish, rags, and paper will be disposed of in the trash and not through the plumbing system. Damage resulting to the building or other apartments from such misuse shall be paid for by the occupant who caused it.

AMENDMENTS

The house rules may be amended from time to time as provided in the By-Laws.

ADOPTION

Blackfield Senior Hawaii Joint Venture, pursuant to Section 1, Article X of the By-laws, hereby adopts the foregoing house rules as the rules and regulations of the Association of Apartment Owners of Haleakala Gardens - Phase I, condominium project this 28th day of October, 1988.

BLACKFIELD SENIOR HAWAII JOINT VENTURE
By BLACKFIELD HAWAII CORPORATION

By J. Hoopes
Its President

By SENIOR HAWAII CORP.

By John M. [Signature]
Its Vice President

RECORDATION REQUESTED BY:

89 128987

AFTER RECORDATION, RETURN TO:

Takahara & Kawata
333 Queen St.
600 Arden Bldg.
Hon. HI 96813

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED FOR RECORD

1989 AUG 25 AM 10:05
LIBER/P6 23567 703
ARCINE K. VIELA, REGISTRAR

RETURN BY: MAIL () PICKUP ()

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

BY-LAWS OF ASSOCIATION OF APARTMENT OWNERS
OF
HALEAKALA GARDENS - PHASE II

WHEREAS, BLACKFIELD SENIOR HAWAII JOINT VENTURE, a registered Hawaii joint venture (hereinafter called the "Declarant"), owns the fee simple interest to the land (the "land") described in Exhibit "A" to the Declaration of Condominium Property Regime (the "Declaration") to be recorded concurrently with these By-Laws; and

WHEREAS, the Declarant desires to submit the aforesaid land and the improvements constructed or to be constructed thereon to a condominium property regime by filing a Declaration of Condominium Property Regime and these By-Laws, all as provided for by Chapter 514A, Hawaii Revised Statutes, as amended (the "Act");

NOW, THEREFORE, the Declarant hereby declares that all of the property described above 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 to be in furtherance of the plan set forth in the Declaration of Condominium Property Regime to be filed concurrently with these By-Laws, and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of such property. These By-Laws shall constitute equitable servitudes and covenants running with the land and apartments established thereon 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 the Act, except as expressly otherwise provided herein. The term "common elements" means those elements designated in the Declaration as common elements, including limited common elements. The term "Property" shall include the land, the buildings and all other improvements and structures thereon (including the apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term "Rules and Regulations" refers to the Rules and Regulations for the conduct of occupants of the buildings adopted by the Board of Directors as hereinafter provided. The term "Rules and Regulations" is used interchangeably herein with the term "House Rules". "Owner" or "Apartment Owner" means a person owning severally or as a cotenant an apartment and the common interest appertaining thereto; provided that:

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(i) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease recorded in the Bureau of Conveyances of the State of Hawaii, a lessee of an apartment shall be deemed to be the owner thereof;

(ii) The purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances of the State of Hawaii 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 his security interest in the apartment" as that term is used in the Condominium Property Act; and

(iii) In the event that any interest in an apartment and the common interest appertaining thereto is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the owner or owners of said apartment and appurtenant common interest to the extent of their interest therein except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an apartment owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the owner and shall have all of the rights and obligations of ownership.

The terms "Apartment Owners", "Association of Owners", "Association" and similar terms mean and refer to (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners. "Apartment" as used herein has the same meaning and definition as contained in the Act, and includes each of the apartments of the Project. "Board" means the Board of Directors of the Association of Apartment Owners. "Project" means the Property comprising the Haleakala Gardens - Phase II, Condominium Project.

SECTION 2. Conflicts. These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the Act or the Declaration, the provisions of the Act or 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 guests and employees, and any other persons who may use the Project in any manner shall comply strictly with these By-Laws, the Rules and Regulations, and the covenants, conditions and restrictions set forth in the Declaration, as any of the same may be lawfully amended from time to time. The acceptance of a deed or lease or an assignment of lease or other conveyance or the entry into a lease or the act of occupancy of an apartment shall constitute an agreement that these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

ARTICLE II

ASSOCIATION OF OWNERS

SECTION 1. Membership. All Apartment Owners of the Project shall constitute the Association of Apartment Owners. 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. Notwithstanding anything to the contrary provided herein, the Declarant shall be entitled to vote and/or act on all matters as the Association and the Board of Directors until such time as the first conveyance

of an apartment of the Project. Thereafter, the Declarant, as the owner of any unsold apartments shall be entitled to vote the interest of each such apartment.

SECTION 2. Annual Meetings. The Declarant or the Managing Agent shall call the first annual meeting of the Apartment Owners, and give Apartment Owners thirty (30) days' prior written notice of the date thereof; the meeting shall be held not later than one hundred eighty (180) days after recordation of the first apartment conveyance, provided forty percent or more of the Project has been sold and recorded. If forty percent of the Project is not sold and recorded at the end of one year, an annual meeting shall be called upon the written request of ten percent of the Apartment Owners. At such meeting the Apartment Owners shall elect a Board. Prior to that time, the Declarant shall have authority to act in all matters as the Association. Thereafter, the annual meetings of the Association shall be held on a day selected by the Board. At such meetings the Board 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.

SECTION 3. Place of Meetings. All meetings of the Association shall be held at the address of the Property, or elsewhere within the State of Hawaii as determined by the Board.

SECTION 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or any three (3) Directors or upon the written request of not less than twenty-five percent (25%) of the Owners, and presented to the Secretary (and if the Regulatory Agreement referred to in the Declaration is executed and recorded or filed of record in the State of Hawaii, at the request of the Federal Housing Commissioner or his duly authorized representative). The business considered shall be limited to that stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary shall send written notice of the meeting to all Apartment Owners and the meeting shall be held at the time specified in such call or petition, or if unspecified then within thirty (30) days of the receipt of the call or petition at any reasonable time at the Project, unless some other suitable place within the State of Hawaii is designated by the Board.

SECTION 5. Notice of Meetings and Other Notices. Written notice of all meetings, whether annual or special, stating the place, date and hour of the meeting and whether it is annual or special and stating the items on the agenda for such meeting and the business proposed to be transacted thereat and containing a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these By-Laws shall be given by personally delivering or by mailing such notice, postage prepaid, at least fourteen (14) days but not more than sixty (60) days before the date assigned for the meeting, to each member of the Association at their addresses at the Property or at the addresses given to the Board for the purpose of service of such notices (and if the Regulatory Agreement referred to in the Declaration is executed and recorded or filed of record, to the Director of the local insuring office of the Federal Housing Administration). 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 whose interest is subject to such mortgage or deed of trust. All notices to co-tenants or joint owners of any apartment shall be sent to one address as shown on the list of members maintained by the Board of managing agent unless each co-tenant or joint owner specifically requests that a notice be sent to him/her/it at a specified address in addition to the notice to the other co-tenants. Upon notice being given in accordance with the provisions hereof, the failure of any Owner or mortgagee of an apartment to receive actual notice of the meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of any Apartment Owner or mortgagee in person or by Proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he shall at the opening thereof object to the holding of such meeting.

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because of the failure to give notice in accordance with the provisions hereof. Each Owner shall keep the Board informed of any changes in address.

SECTION 6. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum was not attained, 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. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the Apartment Owners present, whether or not a quorum is still 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 7. (a) Voting. Each apartment shall be entitled to a fraction of the total vote of all of the apartments equal to 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, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote for any apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary, or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of any meeting, 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 cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment. Votes allocated to any area which constitutes a common element under Section 514A-13(h) of the Act, whether or not so designated in the Declaration, shall not be cast at any Association meeting.

(b) 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 continue until revoked by a written instrument filed with the Secretary or by the death or incapacity of such Owner or by the attendance of such Owner at the meeting; PROVIDED, that a proxy form 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; and provided, further, that a proxy, to be valid, must be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the association 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. No proxy shall be irrevocable unless coupled with a financial interest in the apartment. Proxies may be given to the Board as an entity. Any one of two or more persons owning any apartment may give or revoke a proxy for the entire vote of such apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. Any proxy given by a cotenant or cotenants for only a share of an apartment's vote in proportion to the share of ownership of such cotenant or cotenants shall be revocable only by such cotenant or cotenants. Any proxy given by a cotenant or cotenants for only a share of an apartment's vote may be exercised to cast the entire vote for such apartment in the absence of protest by another cotenant or the holder of a proxy from another cotenant, and, in case of such protest, each cotenant or holder of a proxy from a cotenant, as the case may be, shall be entitled to only a share of such apartment's vote in proportion to the respective shares of ownership in such apartment.

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No resident manager, or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the Association of owners which employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

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. 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.

No member of the 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 directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall:

(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 8. Conduct of Meetings and Order of Business. All meetings of the Association shall be conducted in accordance with the then most current edition of Roberts Rules of Order. 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;
- (f) Report of Federal Housing Administration representative, if any;
- (g) Reports of committees;
- (h) Selection of inspectors of election by Chairperson (when so required);
- (i) Election of members of the Board (when so required);
- (j) Unfinished business; and
- (k) New business.

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SECTION 9. Cumulative Voting. Election of Directors shall be by cumulative voting, and each apartment may cast for any one or more nominees to the Board a vote equivalent to the common interest for the apartment multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his vote and give all thereof to one nominee or to distribute his vote in such manner as he shall determine among any or all of the nominees; and the nominee 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 10. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Apartment Owners having at least fifty percent (50%) of the total common interests of all apartments shall constitute a quorum at all meetings of the Association.

SECTION 11. 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 unless the Declaration or these By-Laws or Hawaii law requires a higher percentage.

SECTION 12. Majority of Apartment Owners. As used in these By-Laws, the terms "majority" or "majority of Apartment Owners" shall mean the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests; and any specified percentage of the Apartment Owners means the Owners of apartments to which are appurtenant such percentage of the common interests.

SECTION 13. List of Members. The Managing Agent, as referred to in Section 3 of Article III hereof, or the Board shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under an agreement of sale, if any, covering any apartment, and lessees, if any, under a lease which provides that the lessee shall be deemed to be the Owner of the apartment. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association as provided in the Declaration or By-Laws or Rules and Regulations or, in any case, to any member who furnishes to the resident manager or Managing Agent or Board a duly executed and acknowledged affidavit stating that the list (A) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters and (B) shall not be used by such owner or furnished to anyone else for any other purpose. Every Owner shall pay to the Association or the Managing Agent on demand a service charge, in an amount fixed from time to time by the Board of Directors for the registration on the records of the Association of any change of ownership of an apartment.

SECTION 14. Minutes of Meetings. Minutes of the meetings of the Association of Apartment Owners and the Board of Directors shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board, shall be mailed to any owner upon the owner's request at the owner's cost and shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

SECTION 15. Committees. The President of the Association may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of five (5) persons, all of whom shall be Owners, co-owners or vendees under an agreement of sale or an officer of any corporate owner of an apartment; provided, that if the Property, after a legal or administrative merger as

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provided in the Declaration, shall have more than one hundred individual apartment units, then the Board shall be composed of not less than nine members, unless not less than sixty-five percent of all apartment owners vote by mail ballot, to set the minimum number of directors at less than nine during a special or annual meeting called for the purpose of reducing the minimum number of directors. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the Owners of an apartment owned by their partnership for the purposes of this Section. There shall not be more than one representative on the Board of Directors from any one apartment. No resident manager or managing agent of the Project shall serve on the Board of Directors.

SECTION 2. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except such as by law, the Regulatory Agreement, if any, the Declaration or these By-Laws may not be delegated to the Board by the Apartment Owners. Any contract for goods or services having a term of more than one (1) year shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than sixty (60) days' written notice without cause or payment of a termination fee. Such powers and duties of the Board shall include, but shall not be limited to, the following:

(a) Enforcement of the provisions of the Declaration, these By-Laws and the Rules and Regulations;

(b) Operation, care, upkeep, maintenance and repair of the common elements and any additions or alterations thereto;

(c) Preparation annually of a budget of the common expenses required for the affairs of the Association (including without limitation, the operation and maintenance of the Property), determination of the amounts of monthly and special assessments, and notifying Apartment Owners of any increases in monthly and special assessments not less than thirty (30) days prior to the effective date of such increases;

(d) 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;

(e) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Apartment Owners;

(f) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;

(g) Adoption and amendment of the Rules and Regulations (House Rules) governing the details of the operation and use of the Property;

(h) Opening bank accounts on behalf of the Association of Apartment Owners and designating the signatories required therefor; provided, that the Board shall not transfer, by telephone, association funds between accounts, including, but not limited to, the general operating account and the reserve fund account.

(i) Obtaining insurance for the Property pursuant to the provisions of Article VII hereof;

(j) Making additions and improvements to or alterations of the Property and repairs to and restoration of the Property 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;

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(k) Procuring legal and accounting services necessary or proper for the operation of the Property or the interpretation, enforcement or implementation of these By-Laws and any other material documents affecting the Property;

(l) Purchasing any other materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other common expenses which the Board is required to secure, make or pay pursuant to 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 the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, assessments, common expenses, expenses, costs, and fees recoverable by the Association under H.R.S. Section 514A-94 and any penalties and late charges 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;

(m) Purchase, lease, maintenance, repair, discarding, abandonment, sale or replacement of such tools and equipment as shall be necessary or appropriate to maintain and operate the common elements; providing water and other utility services required for the common elements;

(n) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the common elements or limited common elements rather than merely against the interest therein of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the Board by reason of such lien;

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

(p) Purchasing or leasing or otherwise acquiring any apartment in the name of the Board of Directors or its nominee, corporate or otherwise, on behalf of all Apartment Owners; provided that sixty percent (60%) or more of the Owners shall have approved the purchase of an apartment or the leasing of an apartment for a term of eighteen (18) months or more;

(q) Delegation of its powers to committees, agents, officers, representatives and employees;

(r) Giving to all persons having any interest in any apartment according to the Association's list of members, notice of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;

(s) Giving to all institutional holders of first mortgages on apartments, as identified in the Association's list of members, written notice of any loss to or taking of the common elements of the Property if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00) in value;

(t) Appointing a manager or Managing Agent or both and delegating to them or either of them such of its powers as it deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

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(u) Establishment of the method of determination of violations and the amount of such penalties and late charges as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By-Laws and the Rules and Regulations, including penalties and late charges for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder; provided such penalties and late charges are not inconsistent with the law or the provisions herein. The unpaid amount of such penalties and late charges against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent in the same manner as provided herein and in the Condominium Property Act for common expenses; provided, however, that the said lien for such penalties and late charges shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record;

(v) Giving to the institutional holder of any first mortgage on an apartment, as identified in the Association's list of members, written notice of the failure of the Apartment Owner to comply fully (within thirty (30) days after written demand therefor by the Association) with any provision of the Declaration, these By-Laws, the Rules and Regulations or any other agreements, decisions and determinations of the Association lawfully made or amended from time to time;

(w) Leasing out any apartments acquired by the Association (as provided in paragraph (p) above); and

(x) Granting an easement across the common elements for any "reasonable purposes" as the term is herein used, which term shall include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance and repair of any apartment, the common elements or any limited common elements. The grant of the easement by the Board shall not be withheld unreasonably as to any Apartment Owner.

SECTION 3. Employment of Managing Agent. Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible person, Hawaii partnership or corporation as Managing Agent to manage and control the Property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated by the Board. The managing agent shall be licensed as a real estate broker in compliance with HRS Chapter 467 and the rules of the Real Estate Commission of the State of Hawaii, or a corporation authorized to do business under HRS Chapter 406 and shall be registered or will register after its appointment with the Real Estate Commission. The compensation of the Managing Agent shall be specified by the Board. Any contract for the employment of a Managing Agent must be approved by a vote of the majority of the members of the Board of Directors at a meeting duly called for such purpose; except that the initial Managing Agent may be appointed by the Declarant without necessity of confirmation by the Association or its Board of Directors. Every such employment contract shall provide that it may be terminated by either party thereto as provided in Article III, Section 2 above, and in no event may such employment contract be for a term exceeding three (3) years.

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

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custody and control of all funds, provided that the Managing Agent shall not commingle the Association's funds with any funds belonging to the Managing Agent, (k) maintenance of books and records on a cash basis and (l) preparation of financial reports.

The Managing Agent shall provide evidence of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the agent's condominium management contracts; provided that the minimum amount of bond shall not be less than \$20,000 nor greater than \$100,000.

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.

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

The President of the Association 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 Owner individually to appear, sue or be sued.

SECTION 4. Election and Term of Office. At the first annual meeting of the Association two (2) Directors shall be elected for a term of one (1) year, two (2) Directors shall be elected for a term of two (2) years, and one (1) director shall be elected for a term of three (3) years. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three (3) years, subject to removal as provided below. In case of delay in the election of a successor, each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners and shall qualify to serve as a Director.

SECTION 5. Removal of Directors. At any regular or special meeting of the Apartment Owners, any one or more members of the Board may be removed with or without cause by the Apartment Owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. If the removal and replacement is to occur at a special Association meeting, the call for the meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-laws; provided that an individual Director shall not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one Director by cumulative voting present at such meeting shall vote against his removal. Any member of the Board whose removal is proposed by the Apartment Owners shall be given an opportunity to speak at such meeting if such member is present and requests to speak. In addition, if any Director shall fail to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a vote of a majority of the other members may remove him and select a replacement to serve his unexpired term.

SECTION 6. Vacancies. Vacancies in the Board caused by any reason other than a vacancy caused by the natural expiration of the term of any director, or 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 held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute

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less than a quorum, and each person so elected shall be a member of the Board for the unexpired remainder of the term of the member whose vacancy he filled (unless sooner 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 or be deemed an Owner of an apartment, shall cause his office to become vacant.

SECTION 7. Board Meetings. (a) All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise.

(b) The Board, 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. Annual Meetings. The first meeting of the new Board following the annual meeting of the Association shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, provided a majority of the whole Board shall be present thereat. At such meeting the Board shall elect the officers of the Association for the ensuing year. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days prior to such meeting and may be included with any notice of the annual meeting of the Association.

SECTION 9. 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, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, or telegraph at least three (3) business days prior to the day named for such meeting. Both regular and special Board meetings may be conducted by means of telephone conference calls.

SECTION 10. Special Meetings. Special meetings of the Board may be called by the President on three (3) business days' notice to each member of the Board given personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice by the written request of at least two (2) members of the Board. Notwithstanding anything in these By-Laws to the contrary, the Declarant, when acting as the Association as provided in Article II Section 4, may act without a formal meeting and without call or notice.

SECTION 11. Waiver of Notice. Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board 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 are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

SECTION 12. Rules of Order. All meetings of the Board shall be conducted in accordance with the then most current edition of Roberts Rules of Order.

SECTION 13. Quorum of Board. At all meetings of the Board, 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 present at a meeting at which a quorum is present shall constitute the decision of the

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

SECTION 14. Fidelity Bonds. The Board shall obtain, if available, adequate fidelity bonds covering all Directors, Officers, trustees, employees, and volunteers responsible for handling funds belonging to or administered by the Association, naming the Association as the obligee and providing coverage in an amount not less than one and one half times the estimated annual operating expenses and reserves of the Association, or the minimum amount required under the Act, whichever is greater. The premiums on such bonds shall constitute a common expense and every such bond shall:

(a) Provide that the bond(s) may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board, the first mortgagees and every other person in interest who shall have requested such notice; and

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

The Managing Agent shall obtain a fidelity bond as provided in this Article XII, Section 3, above.

SECTION 15. Compensation. No member of the Board shall receive any compensation from the Association for acting as such, except for a reasonable Director's fee for attendance at meetings of the Board, which fee shall be set by the Owners at any annual meeting. Directors may be reimbursed for actual expenses incurred in the course of acting as a Director.

SECTION 16. Liability and Indemnity of the Board of Directors. The members of the Board and Officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall obtain and maintain, if available, at the Association's expense a policy of Director's and Officer's liability insurance covering all Directors and Officers of the Association, and shall indemnify each Director and Officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for reasonable attorney's fees 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, 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, but not including such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in performance of his duties as such Director or Officer. In determining whether a Director or Officer is liable by reason of gross negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer in the absence of a final adjudication of the existence or nonexistence of such liability, the Board and each Director or Officer may conclusively rely upon an opinion of legal counsel selected by the Board. The foregoing right of indemnification shall not be exclusive of other rights which any Director or Officer may have and shall inure to the benefit of the heirs, executors, personal representatives, administrators and assigns of each such Director or Officer.

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SECTION 17. Conflict of Interest. A member of the Board of Directors shall not cast any proxy vote at any meeting of the Board of Directors nor shall a director vote at any meeting on any issue in which the director has a conflict of interest. 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. The determination of whether a conflict of interest exists as to a particular director or directors shall be made by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties.

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. The Board 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.

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

SECTION 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board 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 the Board. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

SECTION 5. Vice President. The Vice President shall 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 shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as shall be assigned to him from time to time by the Board or by the President.

SECTION 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, keep the minute book wherein resolutions shall be recorded; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to the Managing Agent.

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 and reports. He shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be

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designated by the Board; and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent.

SECTION 8. Agreements, Contracts, Deeds, Checks and Other Instruments. All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the By-Laws as hereafter provided, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated by the Board.

SECTION 9. Compensation of Officers. Except as specifically authorized by the Association at a regular or special meeting, no officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer.

SECTION 10. Proxy Solicitation. No officer of a board of directors shall use Association funds to solicit proxies; provided this shall not prevent an officer from exercising his right as an apartment owner under HRS 514A-82(b) (4).

ARTICLE V

USE, MAINTENANCE AND ALTERATION OF PROJECT

SECTION 1. Maintenance and Repair of Apartments. Except as otherwise provided by law or the Declaration, each Apartment Owner shall, at his own expense, keep the apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his apartment. In furtherance thereto, each Owner shall be responsible for the maintenance, repair and replacement of the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such apartment, and any plumbing fixtures, water heater, air conditioner, heating or cooling equipment, lighting fixtures, telephone, refrigerator, dishwasher, garbage disposal and compactor, range, oven, hood, other appliances, doors, windows, interior walls and partitions and similar installations in his apartment which are not part of the common elements. Each Apartment Owner shall perform promptly all repair and maintenance work to 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.

SECTION 2. Maintenance and Repair of Common Elements. All maintenance, repairs and replacements of the common elements, whether located inside or outside of the apartment, shall be made only by or at the direction of the Board and be charged to all the Owners as a common expense; provided, that (1) the costs of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment establishing a lien on such Owner's apartment in accordance with Section 4 of Article VI hereof and (2) all costs of maintenance, repair, replacement, additions and improvements to any limited common element shall be charged to the Owners of the apartments to which such limited common element is appurtenant as a special assessment constituting a lien on such Owner's apartment in accordance with Section 4 of Article VI hereof.

SECTION 3. Use of Property.

(a) The apartments of the Property shall be used only for their respective purposes as set forth in the Declaration, these By-Laws, and the Rules and Regulations and for no other purpose.

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(b) All common elements of the Property shall be used only for their respective purposes as designed and in compliance with and subject to the Declaration, these By-Laws, and the Rules and Regulations.

(c) Each Owner shall be responsible for the care and maintenance of the entry/landing areas adjacent to and the stairway and railings leading to his apartment. However, no Owner may paint, stain, refinish or otherwise decorate his entry/landing area, stairway or railings without prior approval by the Board. It is intended that the exterior of the buildings shall present a uniform appearance, and to effect that end, the Owners of the apartments hereby agree that the Board may require the painting, staining, refinishing or repair of each entry/landing area and stairway, outside doors, windows, trim, fences, railings and other exterior portions of the buildings and regulate the type and color of paint to be used. The Board is authorized to contract for said painting, staining, refinishing and repair of all entry/landing areas, stairways and railings and to make payment therefor out of the capital improvements fund, subject to direct charges for negligence, misuse or neglect, as provided hereinabove. No awnings, shades, jalousies or other devices shall be erected or placed on the entry/landing areas so as to be visible from the exterior without prior written permission from the Board; nor shall the entry/landing areas and stairways lanes be used for the drying of clothing or the displaying of signs of any sort or kind whatsoever.

(d) Barbecuing, i.e., the broiling of any food items over a charcoal fire, gas grill or on an electric grill, shall not be allowed in the entry/landing areas and stairways of any apartment.

(e) No Apartment Owner or occupant shall place, store or maintain on walkways, roadways, grounds or other common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(f) 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 period during which the same are applicable to the use of the Property.

(g) 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.

(h) No Apartment Owner or occupant shall erect or place in the Property any building or structure including fences and walls, nor make any additions or alterations to any exterior common elements of the Property, nor place or maintain thereon any signs, posters or bills whatsoever, except as provided in the Declaration.

(i) No Apartment Owner or occupant shall decorate or landscape any entrance of his apartment or any other portion of the Property except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

(j) All owners and occupants shall exercise extreme care to avoid making noises in the use of musical instruments, radios, televisions, air conditioner(s) and amplifiers that may disturb other occupants.

(k) No garments, rugs or other objects shall be hung from the windows or facades of an apartment.

(l) No rugs or other objects shall be dusted or shaken from the windows of an apartment or cleaned by beating or sweeping on any exterior part of an apartment.

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

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

(o) No livestock, poultry, rabbits or other animals whatsoever, including but not limited to pests as defined in HRS §150A-2 or animals prohibited from importation under HRS §§141-2, 150A-5 or 150A-6, shall be allowed or kept in any part of the Property except that one dog (not to exceed thirty-five pounds in weight), or one cat or one other household pet as allowed by the Board may be kept in an apartment but shall not be kept, bred, or used therein for any commercial, profit making, or money generating purposes, nor allowed on any common elements except in transit when carried or on leash. Any authorized pet may be kept in an apartment on the following terms and conditions:

(1) All pets must be registered with the Board or Managing Agent.

(2) The Apartment Owner(s) and tenant(s) of an apartment with a pet shall indemnify and hold the Board and the Managing Agent harmless from and against any and all claims, liabilities, or damages arising out of the presence of such pet in the apartment and the Project.

(3) The Apartment Owner(s) agrees in writing to allow the Apartment Owner's tenant(s) to keep a pet in the apartment.

(4) The Apartment Owner(s) and tenant(s) owning or having custody of a dog must a) obtain a liability insurance policy with reasonable coverage and including the Board and the Association as additional insureds and provide a current certificate of such insurance to the Board or Managing Agent; b) diligently and promptly pick up and dispose of any solid waste discharged by the dog on any walkway, open area or other part of the common elements.

(5) Failure to register a pet or provide the required indemnity or certificate of insurance shall be grounds for the Board to order that the pet be permanently removed from the apartment and Project upon notice given by the Board or Managing Agent.

(6) Any pet causing a nuisance or unreasonable disturbance to any other occupant of the Property shall be permanently and promptly removed from the apartment upon notice given by the Board or Managing Agent.

(7) No pets belonging to visitors or guests shall be allowed in the Project.

(p) 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 fixtures, appliances, air conditioner, or appurtenances whatsoever on the exterior of the Property or protruding through the walls, windows or roof thereof.

(q) No Apartment Owner or occupant, without the prior approval of the Board, shall erect, place or maintain any television or other antennas on said Property visible from any point outside of the Property.

(r) Nothing shall be allowed, done or kept in any apartment or common element of the Property 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, unless the Owner of said apartment shall agree to pay any such increases or obtain substitute insurance.

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(s) No waterbeds shall be allowed on the second floor of all buildings. Waterbeds may be allowed on the ground floor apartments with the prior written approval of the Board of Directors.

(t) No Apartment Owner or occupant shall regularly park or store a trailer, boat or truck with a load capacity exceeding one ton, without the prior approval by a vote of the majority of the members of the Board of Directors at a meeting duly called for such purpose.

SECTION 4. Alteration of the Property.

(a) Additions, alterations, repairs or improvements to the common or limited common elements of the Property may be made only by or at the direction of the Board and in accordance with the laws, ordinances, rules and regulations of the State of Hawaii and the County of Maui. No Owner of an apartment may, except with the prior written permission of the Board and the agencies or departments of the County of Maui, make any alteration, addition, repair or improvement (i) to his apartment which may affect the common elements or change the exterior appearance of the buildings, or (ii) to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his apartment.

(b) Whenever in the judgment of the Board the common or limited common elements shall require additions, alterations or improvements with a total cost of less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), the Board may proceed with such additions, alterations or improvements and shall assess the cost thereof as a common expense. Any additions, alterations or improvements costing in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) may be made by the Board as a common expense only after obtaining approval of the Owners of fifty-one percent (51%) of the interests in the common elements; except that such approval shall not be required for any additions, alterations or improvements required by law or in the event of an emergency threatening substantial damage to person or property.

(c) Unless otherwise prohibited by the provisions of the Declaration or these By-Laws, an Apartment Owner may make additions, alterations or improvements within his apartment at his sole cost and expense.

(d) Restoration or replacement of the Property or any building or other facility, or construction or structural alteration or addition to any such structure different in any material respect from the Condominium Map, shall be undertaken by the Association or any Apartment Owners only pursuant to an amendment of the Declaration, duly executed by or pursuant to the affirmative vote of seventy-five percent (75%) of all the Apartment Owners and of one hundred percent (100%) of all the Apartment Owners whose apartments or limited common elements appurtenant thereto are directly affected, and accompanied by the written consent of the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefor first approved in writing by the Board; and promptly upon completion of such restoration, replacement or construction the Association shall duly record such amendment together with a complete set of floor plans of the Project as so altered, certified by a registered architect or professional engineer to accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

(e) Notwithstanding any provision in the Declaration or these By-Laws to the contrary, any alterations or additions within an apartment or within a limited common element appurtenant to and for the exclusive use of an apartment, or of certain apartments, shall require the written consent and the written approval of the Apartment Owner's plans and specifications therefor, by all applicable governmental agencies and by the holders of liens affecting such apartment (if the lien holders require such approval), the Board, and all other Apartment Owners thereby directly affected (as determined by said Board), and such alterations or additions may be undertaken without an amendment to this Declaration.

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SECTION 5. Alterations over \$10,000. Neither any Apartment Owner nor the Association will make or suffer any additions, alterations, repairs or improvements of the Property, change the grading or drainage of the Project, where the same involves an expenditure in excess of \$10,000 in any one instance, except in accordance with complete plans and specifications and detailed plot plans therefor and the posting of a performance and payment bond required by paragraph 11.03(d) of the Declaration.

SECTION 6. Insurance. The Association's original fire and extended coverage insurance policy covers all of the improvements as originally constructed and installed. Any alteration, renovation or repair of an apartment or the common elements may result in a change in the coverage of the insurance policy. Each Owner is responsible to determine the scope of coverage of insurance policies covering his/her/its apartment as a result of any alteration, renovation or repair work.

ARTICLE VI

COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING

SECTION 1. Common Expenses.

(a) Each Apartment Owner shall be liable for and pay a share of the common expenses in proportion to the common interest appurtenant to his apartment. In addition to the items otherwise designated in the Declaration or these By-Laws as common expenses, the following sums are hereby designated as common expenses: all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project including, without limiting the operation thereof, 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 Apartment Owner), assessments, insurance, including fire, flood 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, flood, 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, start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, including limited common elements, and the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, and any other similar service, unless separately metered. All costs, expenses and charges which are not common expenses and are separately attributable to an apartment or group of apartments or to the limited common elements of such apartment or group of apartments, expenses, costs, and fees recoverable by the Association under Hawaii Revised Statutes Section 514A-94, and any penalties and late charges shall be payable by the Owners of such apartments in such amounts as shall be calculated by the Board; and no payments thereof shall be payments of such common expenses. The common expenses may also include such amounts as the Board of Directors may deem appropriate to make up any deficiency in these expenses for any prior year and a reserve fund for the operation and maintenance of the Project, including, without limitation, anticipated needs for working capital for the Project, and for replacements, repairs and contingencies. 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 Owner to the third person entitled to said payments from each Owner. The Board may delegate this duty and the duty to notify Apartment Owners of increases in common expenses to the Managing Agent. 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, unless Apartment Owners having more than fifty percent (50%) of the common interests vote to return such unexpended sums to the Apartment Owners.

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The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any apartment by the Board or its designee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these By-Laws.

Assessments of common expenses shall be payable in monthly installments on the first day of each month, commencing with respect to each apartment on the first day of the first month following the issuance by the appropriate county agencies of a temporary or permanent certificate of occupancy for such apartment. The first monthly installment of common expenses shall be prorated for each apartment from the date of issuance of such certificate of occupancy. The developer shall fix the rate of monthly installments of common expenses until such rate shall be redetermined by the Board of Directors. The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board shall send to all Apartment Owners thereby affected written notice of any such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. Any portion of an Owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid in surplus.

(b) The Board shall establish and maintain a General Operating Reserve by monthly assessment against and payment by all Owners in proportion to their respective common interest, of such additional amount not exceeding that portion of the total monthly assessment for current common expenses, as the Board 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. 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 may be used to meet any deficiencies in operating funds from time to time resulting from delinquency by Owners in the payment of assessments for common expenses but shall not operate to exempt any Owner from liability to contribute his proportionate share of such expenses or to pay any such assessments therefor. The proportionate interest of each Owner in said reserve and all interest earned thereon 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 Condominium Property Regime established hereby is terminated or waived, said reserve remaining after payment of all common expenses shall be distributed to all Owners in proportion to their respective common interests except for the Owners of any apartments then reconstituted as a new Condominium Property Regime, whose shares shall be placed in the general operating reserve fund or other capital contributions account provided for in the Declaration for such Condominium Property Regime. The unexpended reserve at the end of any year shall be applied toward current residential expenses in the following year, unless the Association votes to return such unexpended reserve to the Owners in proportion to their respective common interests.

(c) The Board may establish and maintain one or more Capital Improvements Reserve Funds by the monthly assessment against and payment by all 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 (including those common elements which must be replaced on a periodic basis) and the furniture, fixtures, and mechanical equipment thereof, and for such other

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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 expense of a capital nature. Each such Fund shall be deposited in a separate 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, any agency of the United States of America. Disbursements from said Fund shall be made only upon authorization of the Board. Expenditure of such Funds may be made only if it adds to the attractiveness or usefulness of the Project. The proportionate interests of each Apartment Owner in said Fund and all interest earned thereon 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 Condominium 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 after creation of said Fund, said Fund remaining shall be distributed to all Owners in proportion to their respective common interests, except for the Owners of any apartments then reconstituted as a new Condominium Property Regime, whose shares shall be placed in the capital improvements reserve fund or other capital contributions account provided for in the Declaration for such Condominium Property Regime.

(d) Combining Reserve Accounts. In order to maximize interest income, the Board may authorize the General Operating Reserve and Capital Reserve Funds to be combined into one or more accounts and deposited with a responsible financial institution insured by an agency of the United States of America, subject to the provisions of Section 7, Article VI below. The funds in the General Operating Account shall not be commingled with funds of other activities such as rental operations.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the appropriate Owners, all common expenses. Each Owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these By-Laws, of all such 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 payment must be made by the Owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as 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 Owners.

SECTION 3. Taxes and Assessments. Each Owner of an apartment shall be obligated to have the real property taxes for such apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. 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. Each Owner's proportionate share shall be the ratio that the current assessed value of an Owner's apartment bears to the current assessed values of all apartments in the Project. 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 as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Section 4 of this Article VI.

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SECTION 4. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same are assessed and, in the case of an apartment owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment, expenses, costs and fees recoverable by the Association under HRS Section 514A-94, and any penalties and late charges not paid within ten (10) days after the due date thereof shall accrue interest at the rate of twelve percent (12%) per annum from such due date until paid. In the event of a default or defaults in payment of any such assessment or assessments, expenses, costs and fees recoverable by the Association under HRS Section 514A-94, and any penalties and late charges, and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits to enforce such assessment obligations. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or by the Managing Agent if the latter is an authorized in writing. Each such action shall be brought by the Board in the name of the Board and the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include, where permissible under any law, a sum for expenses, costs and 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 and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the mortgagee of such Owner if such mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency, together with all expenses, costs and fees recoverable by the Association under HRS Section 514A-94 and any penalties and late charges, and making demand for payment thereof. If such delinquency and additional amounts are not paid within ten (10) days after delivery of such notice, the Board may file a claim of lien against the apartment of such delinquent Owner. Such claim of lien shall state (i) the name of the delinquent Owner, (ii) a designation of the apartment against which the claim of lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper offset), (iv) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and the Act, and (v) that a lien is claimed against such apartment in an amount equal to the net amount of the stated delinquency plus any penalties, late charges, accrued interest and expenses and costs of enforcement, and fees recoverable under HRS Section 514A-94, including attorneys' fees, if any. Such claims of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board, or by the Managing Agent and shall be dated as of the date of the execution by such attorney or the Managing Agent and the last such Board member to execute such claim of lien. Upon recording of a duly executed original or copy of such claim of lien with the Bureau of Conveyances of the State of Hawaii, the Board shall have all remedies provided in the Act. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board or the Managing Agent 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. If any claim of lien is recorded and thereafter the Board received payment in full of

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the amount claimed to be due and owing, (including accrued interest and any costs of enforcement), then upon demand of the Owner and payment of a reasonable fee, the Board, acting by any two members, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Bureau of Conveyances recording data of the claim of lien and that the lien is fully satisfied, released and discharged.

SECTION 5. Waiver. The failure of the Board to insist in any one or more instances upon 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, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach; and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 6. Collection from Tenant. If an Owner at any time rents or leases his apartment and defaults for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, so long as such default continues, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the apartment or from the Owner's rental agent, if any, 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 and costs of enforcement if any; and any such payment of such rent to the Board by the lessee or such rental agent shall be a full and sufficient discharge of such lessee and rental agent as between such lessee and rental agent and the Owner to the extent of the amount so paid; but no such demand or acceptance of rent from any lessee or rental agent shall be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder remaining unpaid or unperformed or an acknowledgement of surrender of any rights or duties hereunder. If the Board makes any such demand upon the lessee or rental agent, the lessee or rental agent shall not have the right to question the right of the Board to make such demand, but shall be obligated to make such payments to the Board as demanded by the Board with the effect as aforesaid; provided, that the Board may not exercise this right if a receiver or commissioner 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. Books of Account; Audit. The Board or Managing Agent shall maintain or cause to be maintained books of account of the common expenses in accordance with recognized accounting practices and shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board or Managing Agent also shall maintain or cause to be maintained monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board. The Association's financial records shall be available for examination by the Apartment Owners, their authorized representatives, prospective purchasers and their respective mortgagees at convenient hours of week days at a place designated by the Board. The Board or Managing Agent shall not transfer by telephone Association funds between accounts, including, but not limited to, the General Operating Account and Reserve Fund Account. Within sixty (60) days after the end of each fiscal year of the Association, the Board will render or cause to be rendered to each Owner a statement (determined on a cash or accrual basis, as the Board shall determine) of all receipts and disbursements during the preceding

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year. Any Owner may, at his expense, cause an audit or inspection to be made of the books and records of the Association. The Association shall require a yearly audit of the Association's financial accounts and no less than one yearly unannounced verification of the Association's cash balance by an independent public accountant or certified public accountant as determined by the Board; provided that the yearly audit and the yearly unannounced cash balance verification may be waived by a majority vote of all Apartment Owners taken at an Association meeting.

ARTICLE VII

INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance. The Board shall procure and at all times maintain from a company or companies having a financial rating by Best's Insurance Reports Of Class VI or better or which has a financial rating of Class V provided that it has a general policy holder's rating of at least A and qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) a policy or policies (hereinafter in this Section 1 called the "Policy") of fire insurance, with a special extended coverage endorsement for flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973, since the Property is located in an identified flood hazard area as designated by the Federal Emergency Management Agency) and such broader forms of protection as the Board shall determine, for an amount as nearly as practicable equal to the full replacement cost without deduction for depreciation, with an Inflation Guard Endorsement and a water damage endorsement, covering all the apartments, appliances, carpets and fixtures therein and the buildings, fixtures, appliances, and building service equipment and the common elements and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings in accordance with the as-built condominium plans and specifications, but excluding any improvements made by an Owner, which the Owner himself may insure, and excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Association. The cost of the Policy shall be a common expense. The policy (unless unobtainable at a reasonable cost):

(a) Shall contain no provision limiting or prohibiting other insurance by the Owner of any apartment, but shall provide that the liability of the insured 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, and, if obtainable, shall not relieve the insurer from liability by reason of any breach of warranty or condition caused by the Board, 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 and the coverage provided thereunder may not be cancelled or substantially modified by the insurer except by the insurer giving to the Board, the Owner of each apartment, every first mortgagee of an apartment and every other person in interest who shall have requested such notice from the insurer sixty (60) days' prior written notice of such cancellation or modification.

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

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(e) Shall contain a provision waiving any right of subrogation by the insurer to any right of the Board or any Apartment Owners against the Owner of any apartment;

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

(g) Shall contain a standard mortgagee clause which:

(i) Shall cover the interest of any mortgagee of any apartment as their interest may be established;

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

(iii) Shall waive (A) any provision invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, (B) any requirement that the mortgagee pay any premium (provided, that if the Board fails to pay any premium due or to become due under the Policy, the mortgagee may pay the same prior to termination of the Policy by reason of nonpayment of such premium), (C) any contribution clause and (D) 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 against the mortgagor or Owner but without impairing the mortgagee's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

(iv) Shall provide that, without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause, if in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), shall be payable to a corporate trustee selected by the Board which shall be a bank or trust company doing business in Hawaii, herein referred to as the "Trustee"; and

(v) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees of any apartment, in their order of priority, whether or not named therein.

(h) Shall provide for payment of the proceeds to the Trustee if the total proceeds payable on account of any one casualty exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00);

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

(j) Shall, if available, include an "all risk" endorsement; and

(k) Shall if obtainable be accompanied by the certificate of a licensed insurance broker or agent certifying that the Policy complies with and satisfies all of the requirements contained in this Section 1.

SECTION 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) a comprehensive policy or policies (hereinafter in this Section 2 called the "Policy") of public liability insurance to insure the Board, the Declarant, each

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Apartment Owner, and the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the Property or activities thereon or construction work under a Comprehensive General Liability form, with minimum limits of not less than \$1,000,000 for personal injury and/or property damage arising out of a single accident or occurrence to such higher limits as the Board may establish from time to time with due regard to then prevailing prudent business practices in the State of Hawaii as reasonably adequate for the protection of the Association, the Board, and the individual Apartment Owners. The cost of such policy shall be a common expense. The Policy:

(a) Shall, if obtainable, not relieve 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 Managing Agent, the Declarant, or the Board, or because of any breach of warranty or condition caused by the Owner of any apartment or any act or neglect of the Managing Agent, the Declarant, the Board, or Owner or tenant of any apartment;

(b) Shall provide that the Policy and the coverage provided thereunder may not be cancelled or substantially modified by the insurer except by the insurer giving to the Board, the Owner of each apartment, every first mortgagee of an apartment and every other person in interest who shall have requested such notice from the insurer sixty (60) days' prior written notice of such cancellation or modification;

(c) Shall, if obtainable at a reasonable cost, contain a waiver by the insurer of any right of subrogation to any right of the Board, the Managing Agent, the Declarant or Apartment Owners against any of them or any other persons under them; and

(d) Shall, if obtainable at a reasonable cost, contain a "severability of interest" endorsement precluding the insurer from denying the claim of an Apartment Owner because of negligent acts of the Association, the Managing Agent, the Declarant, or other Apartment Owners.

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

SECTION 4. Miscellaneous Insurance Provisions. The Board shall review not less frequently than annually the adequacy of the Association's entire insurance program and shall adjust its insurance program accordingly. The Board may elect to purchase any insurance policy having a deductible (non-insured) amount, provided that the Board shall pay for and include any deductible amount as a common expense of the Association. The Board shall then report in writing its conclusions and actions taken on such review to the Owner of each apartment, and to the holder of any first mortgage on any apartment who shall have requested a copy of such report or copies of all such reports. 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 a building is damaged by fire or other casualty which is insured against and said damage is limited to a single apartment, the insurance proceeds shall be used by the Board or the Trustee for payment of the contractor retained by the Board to rebuild or repair

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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 the limited common elements or to the common elements:

(a) If the Owners of the apartments do not within sixty (60) days after such casualty or, if by such date the insurance loss has not been finally adjusted, within thirty (30) days after such final adjustment, agree in writing in accordance with the provisions of the Declaration and this Section 5 that the buildings or any portion thereof need not be rebuilt or repaired and the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain also approve in writing, or if the Owners at an earlier date agree to rebuild immediately, then the Board shall contract to repair or rebuild the damaged portions of the building or buildings, including all apartments so damaged as well as common elements:

(i) In accordance with plans and specifications therefor which will restore the same in conformity with the design immediately prior to the destruction, or

(ii) If reconstruction in accordance with such design is not permissible under applicable laws and regulation then in force, in accordance with such modified plan as shall be approved by the Board and the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain, provided that, if such modified plan eliminates any apartment and such apartment is not reconstructed, the Trustee shall pay to the Owner and any mortgagee of such apartment, as their interests may appear, the portion of the insurance proceeds allocable to such apartment (less the proportionate share of such apartment in the cost of debris removal) and shall disburse the balance of the 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 cost of repairing and rebuilding all damaged apartments as well as the common elements and limited common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the General Operating Reserve and, if the General Operating Reserve is insufficient for this purpose, the Board shall levy a special assessment on the Owners of all apartments in proportion to their respective common interests. The special assessment shall be secured by the lien created under Section 4 of Article VI hereof.

If a decision is made in accordance with the Declaration, this Article and the Act not to repair or rebuild all or any lesser number of damaged or destroyed apartments, the insurance proceeds allocable to any apartment which is not to be rebuilt and its limited common elements (hereinafter called an "eliminated apartment"), less the proportionate share of such eliminated apartment in the cost of debris removal, shall be paid to the Owner and any mortgagee of the eliminated apartment as their interests may appear. The remaining insurance proceeds shall be paid to the Trustee, who shall apply such moneys to repair and rebuild any portion of the buildings that is to be reconstructed in accordance with this section. If a decision is made to eliminate an apartment, the common interests and other rights of the remaining Apartment Owners in the Project shall be adjusted by amendment of the Declaration pursuant to Section 514A-13(b) of the Act and the section of the Declaration entitled "Amendment"; provided, that the common interest of any Owner shall not be altered without his consent. The Owner of any eliminated apartment shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, if the Declaration is not amended

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so as to discharge the Owners of eliminated apartments of all obligations to the Project and so as to adjust equitably the common interests appurtenant to those apartments not eliminated, the Owner of any eliminated apartment may, pursuant to Section 514A-92 of the Act, convey his interest to the Board on behalf of all other Apartment Owners and thereby be discharged of all obligations to the Project. The Owner of any eliminated apartment may, in addition to his allocable share of insurance proceeds, receive such additional reimbursement as the Board deems appropriate, including but not limited to compensation for the value of his undivided interest in the land.

(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, subject to the following conditions:

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

(ii) Each request for payment shall be made on not less than 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 (A) 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 (B) 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 other evidence satisfactory to the Trustee showing that no mechanics', materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the premises or any part of the work;

(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 regulation or 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) The Trustee may impose other reasonable conditions consistent with the foregoing.

(a) Upon completion of the work and payment in full therefor, any remaining insurance proceeds then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners and mortgagees of the apartments in proportion to the respective common interests appurtenant to the apartments.

(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

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of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation by the insurers.

SECTION 6. Disposition of Buildings. If the common elements of the Project suffer substantial damage within the meaning of Section 514A-21(a)(2), of the Act, and if Apartment Owners holding seventy-five percent (75%) or more of the common interests of the Project and the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain shall agree in writing that the Project need not be rebuilt, any insurance proceeds shall be used to remove any remaining improvements on the land included in the Project unless the Association votes not to remove such improvements, and the balance of such insurance proceeds, if any, shall be allocated among the Apartment Owners and their mortgagees, in accordance with the interest in the common elements appurtenant to each apartment.

SECTION 7. Notice of Right to Vote Against Rebuilding. Within thirty (30) days after the occurrence of any damage or destruction with respect to which some or all of the Apartment Owners will have the right to vote against any proposed rebuilding or restoration, the Board shall send notice to all such Owners so entitled to vote. Such notice shall recite the nature and extent of damage, the right of specified Owners to vote against rebuilding or restoration, the percentage of votes necessary to prevent rebuilding or restoration, the time when or within which any such vote must be cast, the place and manner in which any such vote must be cast, and any other information deemed relevant by the Board.

ARTICLE VIII

MORTGAGES

SECTION 1. Notice of Unpaid Common Expenses. The Board, 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 2. Notice of Default. When giving notice to an Apartment Owner of a default in paying common expenses or other default, the Board of Directors shall send a copy of such notice to each holder and insurer of a mortgage covering such apartment or interest therein whose name and address has theretofore been furnished to the Board.

SECTION 3. Additional Notices to Mortgagees. A holder or insurer of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder or insurer and the apartment number), will be entitled to:

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

(b) Prior written notice of any proposed termination of the Condominium Property Regime;

(c) Prior written notice of any actual or threatened condemnation or eminent domain proceedings affecting the Condominium Property Regime or any portion thereof;

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

(e) A copy of all pleadings filed in any lawsuit, administrative proceeding or other action affecting the Project or any portion thereof;

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

(g) Prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause); and

(h) Timely written notice of all meetings of the Association; and said holder or insurer of a first mortgage shall be permitted to designate a representative to attend all such meetings.

SECTION 4. Mortgages Approval.

(a) Unless the owners or holders of first mortgages securing apartments in the Property to which at least fifty-one percent (51%) of the votes of apartments subject to a mortgage appertain have given their prior written approval, the Association shall not be entitled to adopt an amendment of these By-Laws which establishes, provides for, governs, or regulates any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the common elements;
- (4) Insurance or fidelity bonds;
- (5) Right to use of the common elements;
- (6) Responsibility for maintenance and repair of the several portions of the Property;
- (7) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- (8) Boundaries of any apartment;
- (9) The interests in the general or limited common elements;
- (10) Convertibility of apartments into common elements or of common elements into apartments;
- (11) Leasing of apartments;
- (12) Imposition of any right of first refusal or similar restriction on the right of an apartment owner to sell, transfer, or otherwise convey his or her apartment in the Property;
- (13) Establishment of self-management by the condominium association where professional management has been required by any of the agencies or corporations.
- (14) Amendment of any provision in the Declaration, these By-Laws or other documents which are for the express benefit of holders or insurers of first mortgages of apartments in the Project;

(b) The owners or holders of first mortgages securing apartments in the Project to which at least sixty-seven percent (67%) of the votes of apart-

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ments subject to a mortgage appertain must approve in writing an amendment to terminate the condominium property regime,

SECTION 5. Examination of Books. Each holder or insurer of a mortgage 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 6. Annual Reports and Other Financial Data. Each holder or insurer of a mortgage of an apartment may require, and shall receive upon request, such financial data and/or an annual audited financial statement of the financial status of the Association and of the Project within ninety (90) days following the end of any fiscal year of the Project.

SECTION 7. Notice to Board of Directors. An Apartment Owner who mortgages his interest in an apartment shall notify the Board 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. The Board shall maintain such information in its list of members.

ARTICLE IX

CONDEMNATION

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

In the event all or any of the apartments are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each apartment so taken, the amount of the condemnation proceeds allocable to the land included in the Property and to each apartment (including the apartment's appurtenant interest in the common elements exclusive of the land and any limited common elements) shall be determined by a real estate appraiser ("appraiser") who shall be a member of the American Institute of Real Estate Appraisers, or any successor organization and who shall have acted on behalf of the Apartment Owners in the condemnation proceedings; or, if no such appraiser shall have acted on behalf of the Apartment Owners, or if more than one appraiser shall have acted on behalf of the Apartment Owners, then an appraiser with such qualifications shall be selected by the Board to determine the amount of condemnation proceeds allocable to each apartment.

If the entire Property is taken, the Condemnation Trustee shall pay to each Apartment Owner and mortgagee, as their interest may appear, the portion of the condemnation proceeds determined by the appraiser.

In the event of a partial taking of the Property in which (i) any apartment is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the apartment and to the Board, then such apartment shall be removed from the Property and the Condemnation Trustee shall disburse to the Owner and any mortgagee of such apartment, as their interests may appear, in full satisfaction of their interests in the apartment, the portion of the proceeds of such award allocable to such eliminated or removed apartment after deducting the proportionate share of such apartment in the cost of debris removal.

In the event of any partial taking of the Project, the Board shall, subject to the provisions of the preceding sentence concerning removal of an apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or, if repair and restoration in accordance with such design are not permissible under applicable laws and

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regulations then in force, in accordance with such modified plan as shall be approved by the Board, and the mortgagee of record of each apartment in the Property remaining after such taking. Such work shall be undertaken, and disbursements therefor shall be made, in the manner prescribed in Section 5(b) of Article VII hereof. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, the Board shall pay such excess according to the same procedures set forth in Section 5 of Article VII in case of damage to the Project.

If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and any mortgagee of a removed apartment and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Apartment Owners including the owners of any eliminated apartments in accordance with their interest in the common elements prior to the condemnation.

Nothing hereinabove contained shall be construed so as to disturb the first lien priority of any holder of a first mortgage on the subject property.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. Rules and Regulations (House Rules). The Declarant may initially establish and the Board (upon giving notice to all Apartment Owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon) may, by a vote of a majority of its members present at a meeting called for such purpose, thereafter establish and amend such Rules and Regulations. The Apartment Owner's rights under this instrument shall in all respects be subject to the Rules and Regulations, as they may be lawfully amended from time to time, which shall be deemed to be a part hereof; and each Apartment Owner shall abide by all such Rules and Regulations, as the same may from time to time be amended and shall see that the same and the Declaration, these By-Laws, and the Regulatory Agreement, if any, are faithfully observed by the invitees, guests, employees, and tenants of the Apartment Owner; and the Rules and Regulations, the By-Laws, the Declaration and the Regulatory Agreement, if any, shall uniformly apply to and be binding upon all tenants, employees of the Owner, occupants, and other persons using the property. A copy of the initial Rules and Regulations (House Rules) is attached hereto as Exhibit A and incorporated herein by reference. The number of votes required to amend the By-Laws does not apply to an amendment of the House Rules.

SECTION 2. Abatement and Enforcement of Violations. The violation of any of the Rules and Regulations, the breach of any of these By-Laws or the breach of any provision of the Declaration or Regulatory Agreement, if any, shall give rise to the following rights in addition to any other rights set forth in these By-Laws:

(a) The right of the Board and Managing Agent to enter the apartment during reasonable hours in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these By-Laws or the Declaration or Regulatory Agreement, if any; and the Association, Board and Managing Agent shall not thereby be guilty of any trespass; or

(b) An action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or Board on behalf of the Association or, in a proper case, by an aggrieved owner.

SECTION 3. Expenses of Enforcement. Every Apartment Owner and any occupant, tenant, employee of the Owner, or any person who may in any manner use the property, jointly and severally, 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

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such apartment, foreclosing its lien therefor, or enforcing any provisions of the Declaration or these By-Laws or the Rules and Regulations or Regulatory Agreement, if any, against any Owner or any occupant, tenant, employee of an Owner, or any other person who may in any manner use the apartment. The unpaid amount of such costs and expenses against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent as herein provided and in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the said lien for such costs and expenses shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record.

SECTION 4. Right of Access. The Managing Agent and any other person authorized by the Board or the Managing Agent shall have a right of access to any Owner's apartment for the purposes of making inspections or correcting any condition existing in an 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 an apartment or elsewhere in the buildings, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be granted and effective immediately, whether the Owner is present at the time or not.

SECTION 5. Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a nonprofit membership corporation formed by the Owners under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the written approval of seventy-five percent (75%) in interest of the voting Owners. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles and By-Laws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

SECTION 6. Notices. All notices to the Association shall be mailed or delivered to the Board, in care of the Managing Agent, or, if there is no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate by notice in writing to all Owners and all mortgagees of apartments. All notices to any Owner shall be mailed or delivered to the building or to such other address designated by him in writing given to the Board. Any notices to mortgagees of apartments shall be sent by mail to their respective addresses, as designated by them in writing given to the Board. 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. In the event any interest in an apartment and its appurtenant common interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, notice shall be deemed given sufficiently for all purposes if it is in writing and is delivered personally or by registered or certified mail to the trustee of any such trust and to any beneficiary whose name and address has theretofore been furnished to the Board.

SECTION 7. Inspection of Condominium Property Regime Documents. During normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Owners, lenders and prospective purchasers, current copies of the Declaration, By-Laws and other rules governing the operation of the Condominium Property Regime.

SECTION 8. Captions. The captions herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or prescribe the scope of these By-Laws or the intent of any provision hereof.

SECTION 9. 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 requires.

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SECTION 10. Waiver. No restriction, condition, obligation or provision in these By-Laws shall be deemed 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 11. 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 Property as a mutually beneficial and efficient establishment.

Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board to conduct or engage in active business for profit on behalf of any or all of the Apartment Owners.

SECTION 12. Amendment. The provisions of these By-Laws may be amended at any time by the vote or written consent of not less than sixty-five percent (65%) of all apartment owners and, if applicable, fifty-one percent (51%) of the first mortgagees as set forth in Article VIII, Section 4 above, provided that each one of the particulars set forth in HRS §514A-82, as amended from time to time, shall always be embodied in these By-Laws; and provided further that any proposed by-laws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership. The proposed by-laws, rationale, and ballots for voting on any proposed by-law shall be mailed by the Board of Directors to the Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed by-law shall be sixty-five percent of all Apartment Owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the by-law is duly adopted, then the Board shall cause the by-law amendment to be recorded in the Bureau of Conveyances or filed in the Land Court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed by-law which is substantially similar to that which has been previously mailed to the Owners within one year after the original petition was submitted to the Board. This section shall not preclude any Apartment Owner or voluntary apartment owners' committee from proposing any by-law amendment at any annual Association meeting.

SECTION 13. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

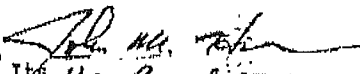
The Declarant acting as the initial Association of Apartment Owners hereby adopts the foregoing By-Laws as the By-Laws of the Association of Apartment Owners of the Haleakala Gardens - Phase II, condominium project on behalf of the Association this 23rd day of August, 1987.

BLACKFIELD SENIOR HAWAII JOINT VENTURE

By BLACKFIELD HAWAII CORPORATION

By 
Its PRESIDENT

By SENIOR HAWAII CORP.

By 
Its Vice President

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

23567 736

On this 20th day of August, 1989, before me appeared

James Hoover

, to me personally known, who, being by me duly sworn,

did say that he is the President of BLACKFIELD HAWAII CORPORATION, a Hawaii corporation, as a Joint Venturer of and for BLACKFIELD SENIOR HAWAII JOINT VENTURE, a registered Hawaii joint venture; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation, as such Joint Venturer.



Carol Y. Strong

NOTARY PUBLIC, State of Hawaii.

My commission expires: 7/7/92

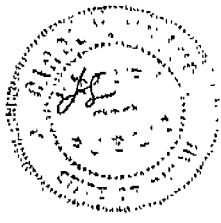
STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 23rd day of August, 1989, before me appeared

John Harper

, to me personally known, who, being by me duly sworn,

did say that he is the Vice President of SENIOR HAWAII CORP., a Delaware corporation, as a Joint Venturer of and for BLACKFIELD SENIOR HAWAII JOINT VENTURE, a registered Hawaii joint venture; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Officer acknowledged said instrument to be the free act and deed of said corporation, as such Joint Venturer.



Carol Y. Strong

NOTARY PUBLIC, State of Hawaii.

My commission expires: 7/7/92