

RESTATED BY-LAWS
OF THE
ASSOCIATION OF APARTMENT OWNERS OF
WAIKALANI WOODLANDS

ARTICLE I

ASSOCIATION OF APARTMENT OWNERS

A. APPLICATION

All present and future owners, employees of owners, mortgagees, tenants and occupants of units and their employees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations. The acceptance of a unit conveyance, a rental agreement, agreement of sale or other document of conveyance or possession, or the act of occupancy. or use of a unit shall constitute an agreement that these By-Laws, the Declaration, and the Rules and Regulations, as they may be amended from time to time, are accepted, ratified and will be complied with. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or management agent on behalf of the Association or, in a proper case, by an aggrieved unit owners

B. CONFLICTS

These By-Laws shall in all cases be interpreted, applied and enforced in such a manner as to comply with the requirements of Chapter 514A of the Hawaii Revised Statutes, of the Declaration, and of any applicable governmental statute, ordinance, rule or regulation, including, without limitation, those pertaining to fair housing, as the same may be amended from time to time. In case any of these By-Laws conflict with the provisions of said Chapter, Declaration, or of any such applicable governmental statute, ordinance, rule or regulation, the latter shall, as the case may be, controls

C. MEMBERSHIP

Section 1. Qualification. All owners of residential

¹Paragraph added to address Sections 514A-87(a) and 514A-88, HRS, as amended.

²Paragraph added to address the Fair Housing Amendments of 1988 to the Fair Housing Act (42 U.S.C. Sect. 3601, et seq.)

units (herein called the "apartments") of the Project shall constitute the Association of Apartment Owners (herein called the "Association"). The owner of any apartment (herein called the "owner"), upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by lease of any apartment filed with the Board of Directors of the Association (herein sometimes called the "Board"), the lessee of such apartment shall be deemed to be the owner thereof.

D. MEETINGS

Section 2. Annual Meetings. Owners shall meet annually within three (3) months after the end of each accounting year. At such meetings, the owners shall elect directors to replace those whose terms have expired and for other reasons and to transact other business as may properly come before them.

Section 3. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President, or upon a demand in the form of a petition signed by at least twenty five per cent (25%) of the owners and presented to the Secretary.

Section 4. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every owner according to the Association's record of ownership, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, the day and the hour of such meeting and the purpose therefor, and containing a standard proxy form authorized by the Association, if any, in any of the following ways:

- (a) By delivering it to him personally.
- (b) By leaving it at his apartment in the Project or at his usual residence or place of business.
- (c) By mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 5. Quorum. The presence at any meeting in person or by proxy of a majority of owners shall constitute a quorum, and the acts of a majority of the owners at any meeting at

which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of owners" herein means the owners of apartments to which are appurtenant more than fifty per cent (50%) of the common interests of said Project as established by the Declaration, and any other specified percentage of the owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 6. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the apartment deed. Votes may be cast in person or by proxy by the respective owners as shown in the record of ownership of the Association. An executor, guardian, administrator or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two (2) or more persons may be exercised by any one of them present at the meeting in the absence of protest by the other or others, and in case of protests each co-owner shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

Section 7. Proxies. A proxy, to be valid, must be delivered to the Association's Secretary or 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 the proxy is given. A proxy shall only be valid for the meeting to which it pertains and its adjournments, may designate any person or the Board of Directors as proxy, and may be limited as the apartment owner desires and indicates.

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

Section 9. Order of Business. All meetings of the Association shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings. 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) Report of officers.
- (e) Report of committees.
- (f) Election of directors (when so required).
- (g) Unfinished business.
- (h) New Business.

Section 10. Membership List. The Secretary or Managing Agent, if any, shall keep an accurate and current list of members of the Association of Apartment Owners and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. 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 its By-Laws or rules and regulations or, in any case, to any member who furnishes to the Association a duly executed and acknowledged affidavit stating that the list will be used by such owners personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to the Association matters and shall not be used by such owner or furnished to anyone else for any other purpose.

Section 11. Minutes of Meetings. Minutes of meetings of the Association and the Board and the Association's financial statements 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, and shall include the recorded vote of each Director on all motions except motions voted on in executive session.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of not less than five (5) persons, each of whom shall be the sole owner, co-owner, vendee under an agreement of sale, or spouse of

an owner of record of an apartment. If a corporation is an owner, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation. Where a general or limited partnership is the owner of record of an apartment, each of the partners of the limited partnership shall be deemed owners for purposes of these By-Laws. The directors shall serve without compensation. No resident manager of the condominium shall serve on the Board of Directors. No director may have any interest in any management company performing management services for the Association or in any vendor providing goods or services to the Association.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the

Association, which powers are hereinafter more particularly set forth, and may do all such acts and things therefore as are not exercised or done only by the owners.

Section 3. Election and Term. Election of directors shall be by ballot at each annual meeting or any special meeting called for that purpose. Directors shall be elected for a period of two (2) years and one (1) year according to the percentage of votes received, highest percentages assigned to two year terms, and until their respective successors have been elected, subject to removal as provided herein. The number of two year and one year terms shall be determined from year to year ensuring that the terms of not less than one third (1/3) of the directors expire annually. Upon addition of any new phase to the Project, an increase in the number of directors may be made, but only at the next annual meeting or any special meeting called for that purpose. In any event, no director shall lose his/her seat on the Board, unless otherwise provided, as a result of an added phase or an increase in the number of directors.

Section 4. Vacancies. Vacancies on the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six (6) months, or his ceasing to be the sole owner or co-owner of an apartment, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one (1) or more of the directors may be removed with or without cause by vote of a majority of owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the owners shall be given an opportunity to be heard at such meeting.

Section 6. Annual Meetings. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association or any special meeting thereof at which new directors are elected, and no notice shall be necessary to any director in order to validly constitute such meeting, provided that a majority of the whole Board be present. 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 a reasonable manner, at least fourteen (14) days prior to such meeting.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or

telegraph, at least three (3) days prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least twenty-four (24) hours' notice to each director, given personally or by telephone or telegraph, which notice shall state the time, the place and the purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

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

Section 10. Quorum of Board; Voting. At all meetings of the Board of Directors a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business. The acts of a majority of the directors eligible to vote and present at any meeting at which a quorum is present shall be the acts of the Board. No director shall vote or cast proxy on any issue in which he has conflict of interest. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Rules of Order. All meetings of the Board shall be conducted in accordance with Roberts Rules of Order or other accepted rules for the conduct of meetings.

Section 12. Fidelity Bonds. The Board of Directors shall require that all officers, employees and agents of the Association handling or responsible for its funds, shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

Section 13. Liability and Indemnity of the Board of Directors. The directors shall not be liable to the owners for any mistake of judgment or otherwise except for their own willful misconduct. The Association shall indemnify each director against all costs, expenses and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such director; or by reason of any past or future action taken or authorized or

approved by him or any omission to act as such director, whether or not he continues to be such director at the time of the incurring or imposition of such costs; provided, however, that this paragraph shall not apply to 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 willful misconduct toward the Association in the performance of his duties as such director. As to whether or not a director was liable by reason of willful misconduct toward the Association in the performance of his duties as such director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such director.

ARTICLE III

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, whom shall be elected by and, in the case of the President, from the Board of Directors. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary.

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

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

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

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

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

Section 7. Treasurer. The Treasurer shall supervise the managing agent's custody of all funds of the Association, maintenance of accounts and records thereof and preparation of financial reports thereof.

Section 8. Auditor. The Association shall require a yearly audit of its financial accounts and no less than one yearly unannounced audit of its financial accounts by a certified public accountant who shall not be an officer of the Association nor own any interest in any apartment in the Association; provided that the yearly audit and the yearly unannounced audit may be waived by a majority vote of apartment owners taken at an Association meeting.

Section 9. Liability and Indemnity of Officers. The officers shall not be liable to the owners for any mistake of judgment or otherwise except for their own willful misconduct. The Association shall indemnify each officer against all costs, expenses and liabilities, including amounts of judgments, amounts paid in compromised settlements and amounts paid for other services of counsel and other related expenses which may be incurred by or imposed on him in conjunction with any claim, action, suit, proceeding, investigation or inquiry hereinafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been an officer, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such officer, whether or not he continues to be such officer at the time of incurring or in a position of such costs; provided, however, that this paragraph shall not apply to 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 willful misconduct toward the Association whether or not an officer was liable by reason of willful misconduct toward the Association in the performance of his duties as such existence of such liability, the officers and each officer may conclusively rely upon the opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing rate of indemnification shall not be exclusive of other rights to which any such officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such officer.

ARTICLE IV

ADMINISTRATION

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

- (a) Supervision of its immediate management and operation, including the adoption and amendment of suitable "House Rules".
- (b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto.
- (c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements.
- (d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board.
- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project.
- (f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year.
- (g) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board.
- (h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board.
- (i) 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.
- (j) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such apartment.
- (k) Borrow money in contract debts; to place mortgages upon the common elements of the Association to secure such indebtedness; to make, issue and dispose of bonds, debentures, notes and other obligations, secured or unsecured; and to make any lawful contract of guarantee, suretyship or of any kind whatsoever in connection with or in aid of, any corporation or organization any of whose securities the Association owns or in which the Association has an interest; to secure contracts, obligations and liabilities or any thereof, in whole or in part, by mortgage, deed or trust,

creation of security interest in, pledge or other lien, upon any or all of the property of the Association wheresoever situated, acquired or to be acquired; and all financing costs, including interest, incurred therewith are common expenses. No mortgage or security interest shall be created by the Association unless there shall first be obtained the consent of a simply majority, more than Fifty Percent (50%) of the owners.³

Section 2. Managing Agent. The Board shall annually employ a responsible Hawaii corporation as managing agent to manage and control the Project subject at all times to direction by the Board, with all the administrative functions set forth specifically in Section 1 above and such other powers and duties and at such compensation as the Board may establish.

Section 3. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Secretary or Treasurer.

ARTICLE V

USE AND MAINTENANCE OF PREMISES

Section 1. Use of Project.

(a) All apartments of the Project shall be used only as dwelling units by the respective owners thereof, their tenants, families, domestic servants and guests.

(b) All common elements of the Project shall be used only for their respective purposes as designated.

(c) All apartment owners shall comply with the "House Rules" adopted by the Board of Directors, as the same may be duly amended from time to time.

Section 2. Maintenance of Apartment. Every owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air-conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all

³Subparagraph (k) added by Amendment to By-Laws dated June 17, 1987.

walls, floors and ceilings of such apartment, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the *Managing Agent*. Every owner shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, *furnishings* and equipment thereof caused by such owner or any person under him and shall give prompt notice to the *managing agent* of any such loss or damage or other defect in the Project when discovered.

Notwithstanding any other provision of these By-Laws to the contrary, a handicapped owner or *tenant* shall have the right, pursuant to reasonable design and procedural requirements made by the Board, to make, at his/her expense, such reasonable modifications to a unit and to the common elements which may be necessary to allow such person full enjoyment of the Project.⁴

Section 3. Expenses of Enforcement. Every owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or *enforcing* any provisions of the Declaration or these By-Laws against such owner.

Section 4. Record of Ownership. Every owner shall promptly cause to be duly recorded or filed of record the lease, *assignment* or other conveyance to him such apartment or other evidence of his title thereto and shall file such conveyance with and present such other evidence of his title to the Board of Directors through the managing agent, and the Secretary shall *maintain* all such information in the record of ownership of the Association.

ARTICLE VI

COMMON EXPENSES. APARTMENT EXPENSES AND TAXES

Section 1. Common Expenses. Each owner shall be liable for and pay a share of the common expenses in proportion to his interest in the common elements *appurtenant* to his apartment. Common expenses shall include all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner),

⁴Paragraph added to address the Fair Housing Amendments of 1988 to the Fair Housing Act (42 U.S.C. Sect. 3601, et seq.)

assessments, insurance, including fire and other casualty and liability insurance, cost of repair, reinstatement, rebuilding and replacement of the premises, yard, janitorial, and other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance and operation actually incurred on or for the common elements, including limited common elements. The common expenses may also include such amounts as the Board of Directors may deem proper to make up any deficit in the common expenses for any prior year and a reserve fund for the operation and maintenance of the property, including, without limitation, anticipated needs for working capital of the Association, and for replacements, repairs and contingencies. The common expenses may also include such amounts as may be required for the purchase or lease by the Board of Directors or its designee, corporate or otherwise, on behalf of all the owners, the apartment of any owner who has elected to sell or lease such apartment or of any apartment which is to be sold at a foreclosure or other judicial sale. Unless otherwise provided by the Board, payments shall be made directly to the Managing Agent.

Section 2. Apartment Expenses. The owners shall be liable for and pay a share of the expenses, herein referred to as "apartment expenses", of utility service, including water, gas, electricity, garbage disposal and other similar services, provided for or made available to the owners, which are not separately assessed to and paid by the owners, and all wages, accounting and legal fees, management fees and other costs incident thereto. Payment of apartment expenses shall be made to the Board, as agent of the owners, and the Board shall transmit said payments on behalf of each owner to the third person entitled to said payments from each owner.

Section 3. Allocation of Common Expenses and Apartment Expenses.

(a) The amounts so allocated to the common expenses shall be prorated among the owners in proportion to the common interests in the common elements appurtenant to the apartments.

(b) The amounts so allocated to the apartment expenses shall be allocated to the owners in accordance with generally accepted accounting principles as determined by such certified public accountant as shall be selected by the Board.

(c) Said allocated amounts of the estimated common expenses and apartment expenses, as determined from time to time by the Board, shall be payable by the owner in monthly installments in advance on or before the 10th of each month. Any omission or delay in determining and allocating the common expenses and apartment expenses for any period shall not relieve the owner therefrom. In such event, the owner,

pending the determination and allocation thereof, shall continue to pay the same common expenses and apartment expenses that the owner had been paying during the last preceding period and shall pay the deficiency, if any, upon the determination and allocation of the proper common expenses and apartment expenses within ten (10) days after notice thereof.

Section 4. Records To Be Kept. The Board or Managing Agent 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 shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing payments, and statements shall be kept and maintained at a place within the State as determined by the Board, and shall be available for examination by the apartment owners during normal business hours. The Board or Managing Agent shall not transfer by telephone Association funds between accounts, including, but not limited to, the general operating account and the reserve fund account.

Section 5. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the owner against whom the same are assessed. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies herein or by law provided, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorney's fees in such amount as the Court may adjudge against such defaulting owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize its Managing Agent, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after thirty (30) days after the occurrence of any such default, the Board (acting upon the authority of the majority thereof at any regular or special meeting) may give notice to the defaulting owner, with a copy to the mortgagee of such owner, if such mortgagee has

furnished its name and address to the Board, which notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the apartment of such delinquent owner. Such claim of lien shall state (1) the name of the delinquent owner or reputed owner, (2) a description of the apartment against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and of Chapter 514A, Hawaii Revised Statutes, and (5) that a lien is claimed against the apartment in an amount equal to the amount stated in the delinquency. Any such claim of lien shall be signed and acknowledged by the Managing Agent. Upon filing of a duly executed original or copy of such claim in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and upon recordation of a duly executed original copy of such claim of lien with the Bureau of Conveyances of the State of Hawaii, the Board shall have all remedies provided in Section 514A-90, Hawaii Revised Statutes, as the same may be amended. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under power of sale, the Board, or any person designated by it in writing shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by the Managing Agent or by the person conducting the sale.

(c) In the event any lien is fully satisfied then upon demand of the owner or his successor, and payment of a reasonable fee, the Managing Agent shall execute and acknowledge (in the manner provided above) and deliver to the owner or his successor a release of lien.

Section 6. Collection From Lessee. If the owner shall at any time rent his apartment and shall default for a period of thirty (30) days or more in the payment of the owner's share of the common expenses or apartment expenses or any part thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any person or persons occupying the apartment, (herein called "lessee"), the rent due or becoming due from such lessee to the owner up to an amount sufficient to pay all sums due from the owner, including interest, if any, and any such payment of such rent to the Board by lessee shall be sufficient discharge of such lessee, as between such lessee and the owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the owner or a release or discharge of any

of the obligations of the owner hereunder or an acknowledgment of surrender of any rights or duties hereunder; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the apartment pending a mortgage foreclosure or if a charge of the apartment pending a mortgage foreclosure of if a mortgagee is in possession pending a mortgage foreclosure.

Section 7. Waiver. The failure of the Board to insist upon a strict performance of or compliance with any of the covenants of the owners hereunder or to exercise any right or option herein contained, shall not be construed as a waiver of such covenant or option or right. The receipt by the Board of any sum paid by the owners hereunder, with or without knowledge by the Board of the breach, and no waiver, expressed or implied by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

ARTICLE VII

INSURANCE AND RESTORATION

Section 1. Fire and Extended Coverage Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) an "All Risk" policy or policies (herein in this section called the "policy") of fire insurance, with extended coverage endorsement, for one hundred per cent (100%) of the replacement cost with no less than a ninety per cent (90%) coinsurance factor, covering the apartments and fixtures therein and the buildings and their fixtures and building service equipment, but excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, or below the level of the lowest basement floor of the buildings and/or structure, except underground conduit or wiring therein when beneath the buildings and/or structure). The insurance coverage shall be written on the property in the name of the Association of Apartment Owners. Flood insurance shall also be provided under the federal Flood Disaster Protection Act if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development. The cost of the policy shall be a common expense. Such insurance requirement and method of insuring may not be changed without the consent of the mortgagees, if any. Such policy shall:

(a) Contain no provision limiting or prohibiting other insurance by the owners.

(b) Provide that the policy may not be cancelled or materially amended without the Developer's written consent until the Developer has transferred all of its fee interests in Buildings A and B and after such transfers by Developer provide that the policy may not be materially amended or cancelled (whether or not requested by the Board) except by giving the Board and to the owners and/or mortgagees who shall have requested such notice of the insurer in writing addressed to him at the apartment, thirty (30) days' written notice of such amendment or cancellation.

(c) Contain a provision waiving any right of subrogation by the insurer against any Director, Officer, owner or any owner's lessee, guest or invitee.

(d) Contain a provision waiving any right of the insurer to repair, rebuild or replace, if a decision is made pursuant to Section 4 of this Article VII not to repair, reinstate, rebuild or restore the damage or destruction.

(e) Provide that any loss shall be adjusted by the Board or its Managing Agent.

(f) Contain a standard mortgagee clause which shall:

(1) Name the mortgagee whose name shall have been furnished to the Board.

(2) Provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board or the owners.

(3) Waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the rights of any mortgagee against the owners or the Board or to require an assignment of any proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or owners, but without impairing mortgagee's right

to sue.

(4) Provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be paid to the Board or its Managing Agent.

(g) Name all owners as insured.

(h) Not contain a deductible in excess of One Hundred Dollars (\$100.00).

Section 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein in this section called the "policy") or Public Liability Insurance to insure the Board, the officers, each owner 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 elevators therein under a comprehensive general liability form. Such policies shall:

(a) Contain such limits as the Board of Directors may from time to time determine but not less than One Million Dollars (\$1,000,000.00) combined single limits with at least the following coverages: bodily injury, property damage (broad form), personal injury, host liquor liability, non-owned and hired autos and contractual liability.

(b) Contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board, or by any breach of warranty or condition caused by the owner or by any act or neglect of the owner.

(c) Provide that the policy may not be cancelled or materially amended (whether or not requested by the Board) except by giving to the Board and to the owner and any mortgagee, who shall have requested such notice of the insurer in writing, thirty (30) days' written notice of such amendment or cancellation.

(d) Contain no provision providing for a deductible.

(e) Provide workman's compensation insurance.

(f) Contain a provision waiving any right of subrogation by the insurer against any Director, officer, occupant, owner, or any owner's lessee, guest or invitee.

Section 3. Miscellaneous Insurance Provisions. The Board shall review not less frequently than annually the adequacy of

its insurance program and shall report in writing the Board's conclusions and action taken on such review to the owner and mortgagee who shall have requested a copy of such report. Any coverage procured by the Board shall be without prejudice to the right of the owner to insure such apartment and the contents thereof for his own benefit at his own expense.

Section 4. Damage and Destruction. If the buildings are damaged by fire or other casualty which is insured against and said damage is limited to fifty per cent (50%) or less of the apartments in Buildings A or B, the insurance proceeds shall be used by the Board or its Managing Agent for payment of the contractor employed by the Board to rebuild or repair such apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If such damage extends to over fifty per cent (50%) of the apartment in Building A or B or extends to any part of the limited common elements or to the common elements:

(a) If the owners do not within thirty (30) days after

such casualty agree in writing, in accordance with the provisions of the Declaration, that the buildings need not be rebuilt, the Board shall thereupon contract to repair or rebuild the damaged portions of the buildings, including all apartments so damaged, as well as the common elements, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in an apartment directly affected thereby; provided that in the event said modified plan eliminates any apartment and such apartment is not reconstructed the Board or its Managing Agent shall pay to the owner of said apartment the portion of said insurance proceeds allocable to said apartment (less the proportionate share of said apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the owners of apartments in proportion to their respective common interests. Any of the foregoing work shall be in the charge of and under the supervision of an architect or engineer (who may be an employee of the Board).

(b) Upon completion of the work and payment in full therefore, any remaining proceeds of insurance then or thereafter in the hands of the Board or its Managing Agent shall be paid or credited to the owners or if there be a mortgagee to the mortgagee in proportion to their respective

common interests.

(c) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, neither the Board nor the Association shall have no claim or cause of action for such loss, damage or destruction against any owner, officer or Director. To the extent that any loss, damage or destruction to the property of any owner is covered by insurance procured by such owner, such owner shall have no claim or cause of action for such loss, damage or destruction against the Board, the Officers, any other owner, or the Association.

Section 5. Disposition of Premises. In the event seventy-five per cent (75%) of the owners shall agree thereto in writing consented to by the mortgagees of their respective interests the Board, as soon as reasonably possible and as agent for all owners, shall sell the entire property, in its then condition, free from the effect of these By-Laws, which shall terminate upon such sale, on terms satisfactory to the Board. The net proceeds of the sale, together with the insurance proceeds, shall thereupon be distributed to the owners and to the mortgagees of the interests of such owners, as their interests may appear, in accordance with their percentage interest in the common elements.

ARTICLE VIII

MORTGAGES

Section 1. Notice to Board of Directors. An owner who mortgages his interest in an apartment shall notify the Board of Directors of the name and address of his mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the note and mortgage with the Board of Directors; the Board of Directors shall maintain such information in a book entitled "Mortgages of Apartments", and as soon as practicable advise mortgagee that the provision of this section 1 has been complied with by the owners.

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

Section 3. Notice of Default. The Board of Directors, when giving notice to an owner of a default in paying common expenses or other default, shall send a copy of such notice to each mortgagee covering such apartment or interest therein whose name and address has heretofore been furnished to the Board of Directors.

Section 4. Examination of Books. Each owner and each

mortgagee shall be permitted to examine the books of account of the Association at reasonable times, on business days, but not more than once a month.

ARTICLE IX

CONDEMNATION

Section 1. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the common elements, all compensation payable for or on account of the taking of any land shall be divided among the owners in accordance with their interests in the common elements, and all portions of any such award payable on account of the taking of any buildings or improvements on the land shall be payable to a bank or trust company designated by the Board doing business in Honolulu, Hawaii (herein called the "Condemnation Trustee"). The Board of Directors shall arrange for the repair and restoration of such buildings and improvements in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record or any interest in an apartment directly affected thereby. In the event of a partial taking in which any apartment is eliminated or not restored, the Condemnation Trustee shall disburse the portion of the proceeds of such award allocable to said apartment, less the proportionate share of said apartment in the cost of debris removal, to the mortgagee to the extent necessary to satisfy the mortgagee, and the balance, if any, to the owner in satisfaction of his interest in said apartment, then to the contractor. In the event such proceeds are insufficient to pay the costs thereof, the Board is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose the Board shall levy a special assessment on the owners in proportion to their common interests. In the event the sums are received in excess of the cost or repairing and restoring the remaining buildings and improvements, or in the event all said buildings and improvements are so taken or condemned, such excess proceeds or said proceeds, as the case may be, shall be divided among the mortgagees to the extent necessary to satisfy the mortgagees, and the balance, if any, to the owners in accordance with their interests in the common elements.

ARTICLE X

GENERAL PROVISIONS

Section 1. Rules and Regulations. The owners recognize the right to the Board from time to time to establish and amend such uniform rules and regulations (herein called "Rules and Regulations") as the Board may deem necessary for the management and control of residential apartments and the common elements and

limited common elements and the owners agree that the owners' rights under this instrument shall be in all respects subject to the appropriate Rules and Regulations which shall be taken to be a part hereof; and the owners agree to obey all such Rules and Regulations as the same now are or may from time to time be amended, and see that the same are now faithfully observed by the invitees, guests, employees and lessees of owners; and the Rules and Regulations shall uniformly apply to and be binding upon the owners.

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

(a) To enter the apartment in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors, the managing agent and employees thereof shall not thereby be deemed guilty in any manner of trespass.

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

Section 3. Additions, Alterations, or Improvements by Board of Directors. Any additions, alterations or improvements may be made by the Board of Directors only in accordance with the law then in effect and the Declaration, and the cost thereof shall constitute a part of the common expenses.

Section 4. Right of Access. An owner shall grant a right of access to his apartment to the manager and/or managing agent and/or any other person authorized by the Board of Directors, the manager or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his apartment and threatening another apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his apartment or elsewhere in the building, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately whether the owner is present at the time or not.

Section 5. Owners May Incorporate. All of the rights, powers, obligations and duties of the owners imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the owners. Said corporation shall be formed upon the written approval of a majority of the voting owners. The

formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and By-Laws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

Section 6. Notices. All notices hereunder shall be sent by registered or certified mail to the Board of Directors, c/o the managing agent, or if there be no managing agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all owners and to all mortgagees of apartments. All notices to any owner shall be in writing and may be personally delivered to such owner, or sent by registered or certified mail to the buildings or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. All notices to mortgagees of apartments shall be sent by registered or certified mail to their respective addresses, as designated from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when personally delivered or mailed, except notices of change of address which shall be deemed to have been given when received.

ARTICLE XI,

MISCELLANEOUS

Section 1. Amendment. These By-Laws may be modified or amended in any respect consistent with provisions of law or the Declaration pursuant to Section 514A-82 of the Act, by vote of not less than sixty five per cent (65%) of the owners at any meeting of the Association duly called for such purpose, such modification or amendment to be effective only when set forth in an amendment to the Declaration which amendment is duly recorded.

Section 2. Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration.

Section 3. Interpretation. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the owners.

Section 4. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, modify, enlarge, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 5. Gender. The use of any gender in these By-

Laws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 6. Parties. These By-Laws shall be binding upon the owners, lessees, occupants, guests or invitees, as the case may be, jointly and severally.