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This document contains 8 pages

**AMENDMENT TO DECLARATION OF HORIZONTAL PROPERTY REGIME  
AND BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
OF LAHAINA RESIDENTIAL CONDOMINIUM**

**WHEREAS**, the Declaration of Horizontal Property Regime dated October 4, 1977, was recorded in the Bureau of Conveyances of the State of Hawaii (hereinafter called the "Bureau") in Liber 12484, Page 657 (hereinafter called the "Declaration"), and as shown on the Condominium Map No. 516, as it may have been amended, filed in the Bureau; and

**WHEREAS**, the By-Laws of the Association of Apartment Owners of Lahaina Residential Condominium (the "Association") were attached as an Exhibit to the Declaration and recorded in the Bureau in Liber 12484, Page 679 (the "By-Laws"); and

**WHEREAS**, Hawaii Revised Statutes § 514C-22(a) provides that the association of apartment owners may undertake the purchase of all or any part of the leased fee interest provided that an amendment to the declaration authorizing the purchase of the leased fee interest by the association is approved by the members; and

**WHEREAS**, Hawaii Revised Statutes § 514A-11(11) provides that the declaration may be amended by the owners of seventy-five percent (75%) of the common interest; and

**WHEREAS**, more than 75% of the owners approved by written consent the amendments to the Declaration authorizing the purchase of the leased fee interest as hereinafter set forth; and

**WHEREAS**, Hawaii Revised Statutes § 514B-108(e) provides that the By-Laws may be amended by the vote or written consent of at least sixty-seven percent (67%) of all unit owners; and

**WHEREAS**, more than 67% of all unit owners approved by written consent the amendments to the By-Laws as hereinafter set forth; and

**NOW, THEREFORE**, the Declaration and By-Laws, as they may have been amended and/or restated, are hereby amended as follows:

AMENDMENT NO. 1:

The Declaration is hereby amended to add a new Paragraph O to read as follows:

O. FEE CONVERSION/RENT RENEGOTIATION.

a. General Authority; Common Expenses.

(1) Notwithstanding any other provision contained in the Declaration or the By-Laws to the contrary, the Board of Directors shall have the power to do all such things as it deems necessary or appropriate to arrange for the purchase by the Association and/or its Members of the Leased Fee Interest and to facilitate the completion of any such purchase.

(2) In connection with the powers granted in this subparagraph S.a., the Board may:

- (a) purchase all or any portion of the Leased Fee Interest;
- (b) arrange for and pay whatever compensation shall be agreed to, whether monetary or otherwise;
- (c) arrange for and obtain any needed financing in connection with any such acquisition;
- (d) retain attorneys, appraisers, accountants, real estate agents, architects, engineers, and such other persons as it deems necessary or appropriate;
- (e) sign any documents;
- (f) incorporate the Association to facilitate the holding of title to the Leased Fee Interest; and
- (g) do any and all other acts or things incidental to the consummation of any such transaction(s).

(3) Except as set forth below, all costs incurred by the Board or the Association pursuant to this Paragraph O shall constitute a common expense of the Association.

b. Administration of Interests Acquired by Association.

(1) In the event that the Association acquires all or any portion of the Leased Fee Interest, the Board shall be empowered to take all such action as it deems necessary or appropriate to administer the Leased Fee Interest.



(2) In connection with the powers granted in this subparagraph O.b., the Board may:

- (a) set, arbitrate, and collect lease rents;
- (b) sell and/or convey all or any portion of the Leased Fee Interest upon such terms and conditions as the Board deems appropriate under the circumstances;
- (c) negotiate and set the sales price for the Leased Fee Interest;
- (d) sell the Leased Fee Interest on an agreement of sale;
- (e) retain attorneys, appraisers, accountants, real estate agents, architects, engineers, and such other persons as it deems necessary or appropriate;
- (f) sign any documents; and
- (g) do any and all other acts or things incidental to the consummation of any such transaction(s).

(3) To the extent permitted by the Condominium Property Act, and notwithstanding any provision in the condominium conveyance documents or any other conveyance document demising an interest in the apartments in the project, the Board shall have the authority to refuse to act as the agent of the apartment lessees for the purpose of negotiating and arbitrating the lease rent.

c. Termination of Rights of Lessor. Upon the acquisition by the Members of all of the Lessor's and/or Sublessor's interest in the land submitted to the Condominium Property Regime and all of the Lessor's and/or Sublessor's interest in any condominium conveyance documents, all approval and other requirements pertaining to the Lessor as contained in the Declaration or the By-Laws shall thereupon become null and void and of no effect. The Board may delete all approvals and other requirements pertaining to the Lessor by the restatement of the Declaration and the By-Laws.

d. Conditions for Purchase. The Board may, but shall not be required to, condition any purchase in accordance with this Paragraph O upon such terms and conditions as the Board deems appropriate under the circumstances in its sole and absolute discretion.

e. Authority to Assist and/or Advise in Sale Directly To Members. If the Lessor offers to sell the Leased Fee Interest directly to the Members, the Board shall have the power to: (1) waive the right of first refusal as set forth in Hawaii Revised Statutes Chapter 514C; (2) negotiate with the Lessor; (3) take all other actions incidental to the consummation of the sale as it shall, in its sole judgment, deem appropriate to assist and/or advise the Members about the proposal from the Lessor. This authority shall also be deemed to be the written authorization to represent the Members as described in said Chapter 514C. All costs incurred by the Board in representing such Members as set forth herein shall constitute a common expense of the Association and these allocations constitute an allocation in

a fair and equitable manner as provided in Hawaii Revised Statutes Chapter 514C, as amended.

f. Authority to Assist and/or Advise in Mandatory Conversion.  
The Board shall have the power, but not the obligation, to assist and advise the Members in the mandatory sale of the Leased Fee Interest to some or all of the Members. Such power shall include the power to represent Members in the conversion and to take all other actions incidental to the consummation of such conversion as it shall, in its sole judgment, deem necessary to assist and/or advise the Members. All costs incurred by the Board in representing such Members as set forth herein shall constitute a common expense of the Association; provided that the Board may but is not required to charge each owner participating in the conversion a fee to cover its costs in representing such Members.

g. Partial Conversion; Lease Rent Negotiation.

(1) In the event that some, but not all Members purchase their share of the Leased Fee Interest, then, pursuant to the authority granted in the condominium conveyance documents and other conveyance documents demising interests in the apartments in the project, the Association, acting by its Board, is authorized to act as the sole agent of the remaining apartment lessees for the negotiation and determination of lease rent. The Board is also authorized to refuse to act as the agent of the remaining lessees. If the Board decides to act as the agent of the remaining lessees, the Board shall have the power to do all acts and things which it deems appropriate in connection with such negotiation and determination.

(2) In connection with the powers granted in this subparagraph O.g., the Board may:

- (1) retain any attorneys, appraisers, accountants, real estate agents, architects, engineers, and such other persons as it deems necessary to represent the Association or the apartment lessees;
- (2) appoint any arbitrators on behalf of the Association or the apartment lessees;
- (3) elect not to represent one or more apartment lessees in the discretion of the Board;
- (4) accept or reject offers of new lease rent amounts on behalf of the apartment lessees;
- (5) make offers of new lease rent amounts on behalf of the apartment lessees;
- (6) prosecute the arbitration for determination of the new lease rent on behalf of the apartment lessees; and
- (7) sign any documents and do any and all other acts or things incidental to the negotiation or arbitration of the lease rent.



(3) All costs and expenses incurred by the Board in connection with any of the actions authorized by subparagraph O.g. shall be assessed to the remaining lessees in the same proportion that the common interest appurtenant to each lessee's apartment bears to the common interest appurtenant to all of the remaining lessees' apartments.

h. Partial Conversion; Right to Represent Remaining Lessees.

(1) In the event that some but not all Members purchase their share of the Leased Fee Interest, the Association, through its Board, is authorized but not required to exercise all the powers contained in this Paragraph O with respect to the interests of the remaining lessees.

(2) All costs and expenses incurred by the Board in connection with any of the actions authorized herein shall constitute a common expense of the Association; provided that the Board may charge each apartment lessee a fee to cover its costs in representing such Members.

i. Definition of Terms Used in This Paragraph O.

(1) "Lessor" means any or all of the persons having legal or equitable ownership interests in the Leased Fee Interest and/or ground leases including, but not limited to, any sublessor(s).

(2) "Assist and/or Advise" means the Board may take whatever action it deems appropriate or necessary, including without limitation, the authority to retain experts including attorneys, appraisers, accountants, architects, engineers, and to obtain studies and reports.

(3) "Member" means any person and/or entity who is a member of the Association pursuant to the Declaration and/or Bylaws.

(4) "Leased Fee Interest" means all or part of all of the interest of the lessors, sub-lessors and all legal and equitable owners of the land submitted to the Condominium Property Regime, in the various apartment leases for the apartments at the condominium project including, without limitation, any reversionary interest of the lessors (excluding lessors' interest as lessee in any apartments).

Paragraphs currently designated O, P & Q in the Declaration will be designated Paragraph P, Q & R, respectively.

AMENDMENT NUMBER 2:

Article VII, Section 2 of the By-Laws is hereby amended to read as follows:

The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation

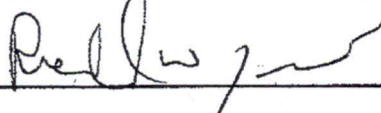
to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or wilful misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

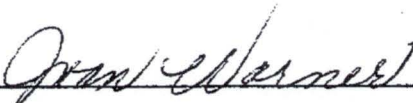
**IN ALL OTHER RESPECTS**, the Declaration and the By-Laws, as they may have been amended and/or restated, are hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**AND**, the undersigned officers of the Association of Apartment Owners of Lahaina Residential Condominium hereby certify that the foregoing amendments to the Declaration were adopted by the written consent of more than 75% of all unit owners, and the amendment to the By-Laws were adopted by the written consent of more than 67% of all unit owners.

**IN WITNESS WHEREOF**, the undersigned have executed these presents as of the 27<sup>th</sup> day of March, 2007

ASSOCIATION OF APARTMENT OWNERS OF  
LAHAINA RESIDENTIAL CONDOMINIUM

By:   
Richard Wayne  
Type Name  
Its: President

By:   
Joan Warner  
Type Name  
Its: Secretary

STATE OF HAWAII )

: SS.

COUNTY OF MAUI )

On this 27 day of MARCH, 2007, before me appeared RICHARD WAYNE to me personally known, who being by me duly sworn, did say that he or she is the PRESIDENT of the Board of Directors of the Association of Apartment Owners of Lahaina Residential Condominium; that the foregoing instrument was signed on behalf of said Association by authority of its Board of Directors; and acknowledged that he or she executed the same as the free act and deed of said Association. Said Association has no seal.

Glenn F. Nagao  
GLENN F. NAGAO

Type/Print Name

Notary Public, State of Hawaii

My Commission Expires: 10-30-10

STATE OF HAWAII

)

: SS.

COUNTY OF MAUI

)

On this 27 day of MARCH, 2007, before me appeared JOAN WARNER, to me personally known, who being by me duly sworn, did say that he or she is the SECRETARY of the Board of Directors of the Association of Apartment Owners of Lahaina Residential Condominium; that the foregoing instrument was signed on behalf of said Association by authority of its Board of Directors; and acknowledged that he or she executed the same as the free act and deed of said Association. Said Association has no seal.

Glenn F. Nagao

GLENN F. NAGAO

Type/Print Name

Notary Public, State of Hawaii

My Commission Expires: 10-30-10



R-775

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

SEP 29, 1993 / 09:40 AM

Doc No(s) 93-159844

/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES *af*

CONVEYANCE TAX: \$0.00

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 // // // // // // // // // // // // // // // //  
 JAMES P. BRUMBAUGH, ESQ. // // // // DO NOT // // // //  
 RUSH MOORE CRAVEN SUTTON MORRY // // // // WRIT E IN // // // //  
 & BEH // // T H I S S P A C E // //  
 2200 Main Street, Suite 650  
 Wailuku, HI 96793  
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TITLE OF DOCUMENT:

AMENDMENT TO DECLARATION OF HORIZONTAL  
PROPERTY REGIME AND BY-LAWS OF  
LAHAINA RESIDENTIAL CONDOMINIUM

PARTIES OF DOCUMENT:

ASSOCIATION OF APARTMENT OWNERS OF  
LAHAINA RESIDENTIAL CONDOMINIUM

PROPERTY DESCRIPTION: : LIBER/PAGE:  
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 : DOCUMENT NO.:  
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 : TRANSFER CERTIFICATE OF  
 : TITLE NO(S).:  
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AMENDMENT TO DECLARATION OF  
HORIZONTAL PROPERTY REGIME AND BY-LAWS  
OF LAHAINA RESIDENTIAL CONDOMINIUM

WHEREAS, by Declaration of Horizontal Property Regime dated October 4, 1977 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12484, Page 657, (hereinafter "Declaration"), LAHAINA RESIDENTIAL CONDOMINIUM did submit the property described in the Declaration to the provisions of Chapter 514A, Hawaii Revised Statutes; and

WHEREAS, the Declaration provided for the organization of the Association of Apartment Owners of LAHAINA RESIDENTIAL CONDOMINIUM and established By-Laws therefore, which said By-laws (hereinafter "By-Laws") were attached to the Declaration and incorporated therein by reference; and

WHEREAS, LAHAINA RESIDENTIAL CONDOMINIUM apartment owners voted to amend the Declaration and By-Laws, as hereinafter set forth.

NOW, THEREFORE, the Declaration and By-Laws are hereby amended as follows:

Article V, Section 2, Managing Agent, of the By-Laws is amended to read as follows:

"The Board of Directors 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 the preceding Section 1 and such other powers and duties at such compensation as the Board may establish. The identity of the Managing Agent as the developer or its affiliate shall be disclosed to the Association no later than the first meeting of the Association."

In all other respects, the Declaration and By-laws, as amended, are hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

The undersigned President and Secretary of the Association of Apartment Owners of Lahaina Residential hereby certify that the foregoing amendment was adopted by the Association of Apartment Owners of LAHAINA RESIDENTIAL CONDOMINIUM by a vote of LAHAINA RESIDENTIAL CONDOMINIUM apartment owners owning more than sixty-five percent (65%) of the common interest in the common elements of LAHAINA RESIDENTIAL CONDOMINIUM.

IN WITNESS WHEREOF, the parties hereto have executed these presents this 14<sup>th</sup> day of September, 1993.

ASSOCIATION OF APARTMENT OWNERS OF LAHAINA RESIDENTIAL CONDOMINIUM

By [Signature]  
Its President  
By [Signature]  
Its Secretary



STATE OF HAWAII )  
 )  
COUNTY OF MAUI ) SS.

On this 14<sup>th</sup> day of September, 1993,  
before me appeared Kelly Lewis, to me  
personally known, who being by me duly sworn, did say that he  
is the President of the ASSOCIATION OF APARTMENT OWNERS OF  
LAHAINA RESIDENTIAL CONDOMINIUM, that the foregoing instrument  
was signed on behalf of said Association by authority of its  
Board of Directors, and acknowledged that he executed the  
same as the free act and deed of said Association. Said  
Association has no seal.

*Myrtle N. Alijama*  
Notary Public, State of Hawaii  
My Commission Expires: 6-11-96

STATE OF HAWAII )  
 )  
COUNTY OF MAUI ) SS.

On this 14<sup>th</sup> day of September, 1993,  
before me appeared Christine Peterson, to me  
personally known, who being by me duly sworn, did say that he  
is the Secretary of the ASSOCIATION OF APARTMENT OWNERS OF  
LAHAINA RESIDENTIAL CONDOMINIUM, that the foregoing instrument  
was signed on behalf of said Association by authority of its  
Board of Directors, and acknowledged that he executed the  
same as the free act and deed of said Association. Said  
Association has no seal.

*Myrtle N. Alijama*  
Notary Public, State of Hawaii  
My Commission Expires: 6-11-96

BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF  
LAHAINA RESIDENTIAL CONDOMINIUM

The following by-laws shall apply to the above-named condominium project (herein called the "project"), as described in and created by Declaration of Horizontal Property Regime (herein called the "Declaration") to be recorded or filed of record in the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project:

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Act, as amended from time to time, except as expressly otherwise provided herein. "Common elements" mean those elements designated in the Declaration as common elements and limited common elements. "Project" shall include the Land, the buildings and all other improvements thereon (including the Apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. "Rules and Regulations" refers to the Rules and Regulations or House Rules for the conduct of occupants of the buildings adopted by the Board of Directors as hereafter provided. "Owner" or "Apartment Owner" means a person owning severally or as a co-tenant an apartment and the common interest appertaining thereto, to the extent of such interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by agreement of sale or lease filed with the Board of Directors, a vendee under an agreement of sale or lessee or sublessee of an apartment or interest therein shall be deemed to be the Owner of such apartment or interest therein. "Apartment" as used herein has the same meaning and definition as contained in the Act and includes each of the apartments of the Project. "Association" means the Association of Apartment Owners. "Apartment lease" means the instrument issued by Lessor demising to each Apartment Owner his apartment and undivided interest in the land within the Horizontal Property Regime. "Board" means the Board of Directors of the Association of Apartment Owners.

Section 2. Application. All present and future owners, mortgagees, vendees

any other persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations. The acceptance of an assignment of lease or conveyance or mortgage or agreement of sale or the entering into of a lease or the act of occupancy of an Apartment shall constitute an agreement that these Bylaws, the House Rules and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

## ARTICLE II

### MEMBERSHIP

Section 1. Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by lease of any apartment filed with the Board of Directors of the Association (hereinafter sometimes called the "Board"), the lessee of such apartment shall be deemed to be the owner thereof.

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

Section 3. Annual Meetings. The first annual meeting of the Association shall be held not later than 180 days after a certificate of occupancy for the project has been issued by the appropriate county agency. Thereafter the annual meetings of the Association shall be held within three months after the end of each accounting year.

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

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, at least fourteen days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and, if a special meeting, the items of business to be considered, and a standard proxy form authorized by the Association, in any of the following ways: (a) by delivering it to him personally, or



(b) by leaving it at his apartment in the project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. Where notice is mailed, it shall be deemed to be delivered three (3) days after deposited in the mail. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such 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. Any apartment owner may waive notice before, at or after any meeting by written waiver filed with the Secretary.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum; and the acts of a majority of the apartment owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "Majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty per cent (50%) of the common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the same as the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other co-owner or co-owners, provided written notice of such co-ownership has been given the Board at least two (2) days prior to any meeting. In case of protest each co-owner shall be entitled to only the share of such vote proportionate to his share of ownership in such apartment.

Section 8. Proxies and Pledges. The authority given by any apartment owner

to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such owner; provided, however, that any proxy form which accompanies a notice of meeting of the Association shall be valid for the meeting to which the notice pertains and its adjournment only. 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.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the apartment owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all meetings of the Association shall be as follows:

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

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of five (5) persons, each of whom shall be the sole owner, co-owner or vendee under an agreement of sale of record of an apartment. If a corporation is an apartment owner, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. The directors shall

serve without compensation. No resident manager of the project shall serve on the Board of Directors.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these by-laws directed to be exercised or done only by the apartment owners. A director shall not vote at any board meeting on any issue in which he has a conflict of interest.

Section 3. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and each special meeting called for the purpose. Directors shall hold office for a period of two (2) years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting the three directors receiving the largest number of votes shall be elected for two (2) years and the two (2) receiving the second largest number of votes shall be elected for one (1) year.

Section 4. Vacancies. Except as provided in the following paragraph, any vacancies in the Board of Directors (other than a vacancy caused by the natural expiration of the term of a director) 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 serve 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 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 or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor may then and there be elected to fill the vacancy thus created. If said vacancy is not so filled, the Board shall fill said vacancy as above provided. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may



be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting. For purposes of this and the following paragraphs, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail, or twelve (12) hours after communicated to a telegraph agent.

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

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

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these by-laws shall constitute a quorum for the transaction of business, and action by a majority of the directors present at any meeting at which a quorum is present shall constitute action by the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors shall require that any 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. The Managing Agent shall provide evidence of a fidelity bond in the minimum amount of \$25,000.00.

#### ARTICLE IV

##### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a

President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by, and in the case of the President, from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

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 shall be elected at any regular meeting of the Board or any special meeting called for such purposes.

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 Secretary.

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

Section 8. Auditor. The Association shall appoint annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors.

## ARTICLE V

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;
- (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, sewer and other utility services required for the common elements;
- (d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;
- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the project;
- (f) Preparation at least 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 30 days in the payment of any assessment against such apartment; and
- (k) Maintain at a place designated by the Board of Directors, 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.

Section 2. Managing Agent. The Board of Directors 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 the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish, subject to prior approval of every such employment contract by a majority of apartment owners. The identity of the Managing Agent as the developer or its affiliate shall be disclosed to the Association no later than the first meeting of the Association.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent. Every Managing Agent shall also be the agent of the respective lessees under any apartment leases filed with the Board for the collection, custody and payment of all rent, taxes, assessments and other charges thereunder payable to their Lessors.

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

#### ARTICLE VI

##### OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. All apartment owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the project in accordance with the Declaration and also, with respect to any lease of any apartment filed with the Board of Directors which provides that the lessee thereunder shall be deemed to be the owner of such apartment, a monthly sum determined by the Managing Agent to be

sufficient to accumulate and pay when due all rent, taxes, assessments and other charges thereunder payable by the lessee of such apartment unless such sums are required to be paid and accumulated by the mortgagee under any subsisting mortgage of such apartment lease filed with the Board.

Section 2. Maintenance of Apartments. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air-conditioning, lights and all other fixtures and accessories belonging to such apartment, the interior decorated or finished surfaces of all walls, doors, floors and ceilings of such apartment, all window panes and any appurtenant storage areas, 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 costs, loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the project when discovered.

Section 3. Use of Project.

(a) All apartments of the project shall be used only for residential purposes, as provided by the Declaration.

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

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

(d) Every apartment owner and occupant shall at all times keep his apartment and any appurtenant storage areas in a strictly clean and sanitary condition and observe and perform all laws,

ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the project.

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

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

(g) No apartment owner shall decorate or landscape any entrance appurtenant to his apartment, nor any other portion of the project, except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

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

(i) No garments, rugs or other objects shall be hung from the windows or facades of the project.

(j) No rugs or other objects shall be dusted or shaken from the windows of the project or cleaned by beating or sweeping on any entry walkway, stairway or other exterior part of the project.

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

(l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project except



that dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purposes nor allowed on any common elements except in transit when carried or on leash, provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently removed therefrom promptly upon notice given by the Board of Directors or Managing Agent.

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

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

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

Section 4. House Rules. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements and any and all matters relating to the welfare of the project not inconsistent with any provision of law, the Declaration or these by-laws.

Section 5. Expenses of Enforcement. Every apartment owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or enforcing any provisions of the Declaration, these by-laws, House Rules and the Horizontal Property Act, against such owner or any occupant of such apartment.

Section 6. Record of Ownership. Every apartment owner shall promptly cause

to be duly recorded and filed of record the deed, lease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file such lease with and present such other evidence of his title to the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 7. Record of Agreement of Sale. Every apartment owner shall promptly cause to be duly recorded and filed of record the agreement of sale of such apartment, if any, and shall file such agreement of sale with the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association.

Section 8. Mortgages. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any apartment or interest therein shall report to such person the amount of any assessments against such apartment then due and unpaid. The Board of Directors or Managing Agent at the request of any mortgagee shall grant to the mortgagee the right to examine the books and records of the Association and to require the submission of annual reports and other financial data.

#### ARTICLE VII

##### MISCELLANEOUS

Section 1. Amendment. The provisions of these by-laws other than this paragraph may be amended in any respect not inconsistent with provisions of law or the Declaration by affirmative vote of seventy-five per cent (75%) of the apartment owners at any meeting of the Association duly called for such purpose, and evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association, which amendment shall be effective only upon the recording and filing of an amendment to the Declaration setting forth such amendment of these by-laws in each of the places in the State of Hawaii in which the Declaration has been recorded or filed of record.

Section 2. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in

such action, suit or proceeding to be liable for negligence or misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

Section 3. Subordination. These by-laws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Horizontal Property Act (Chapter 514, Hawaii Revised Statutes), which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Horizontal Property Act.

Section 4. 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 apartment owners.

Section 5. Examination of Minutes. The minutes of meetings of the Board of Directors and Association shall be available for examination by apartment owners at convenient hours at a place designated by the Board.

Section 6. Conduct of Meetings. All Association and Board of Directors meetings shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings.

CERTIFICATE OF ADOPTION

The undersigned owners and lessee of all apartments of the project hereby adopt the foregoing as the by-laws of the Association of Apartment Owners of LAHAINA RESIDENTIAL CONDOMINIUM this 4<sup>th</sup> day of October, 1977.

Raymond B. Thompson

Richard Spenser

Henry Wo Chiu  
Trustees of the Estate of  
Bernice Pauahi Bishop

HADLEY-PRUYN DEVELOPERS, INC.

By Wm H Pruhn  
Its President

By \_\_\_\_\_  
Its \_\_\_\_\_