

/s/ NICKI ANN THOMPSON, REGISTRAR
CGG 82

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL ☒ PICK-UP ☐:

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Total pages: 82

KOA LAGOON
SECOND RESTATED AND AMENDED DECLARATION OF
CONDOMINIUM PROPERTY REGIME

WHEREAS, by Declaration of Horizontal Property Regime dated February 17, 1977 recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12070, Page 20, together with Condominium Map No. 493, the Horizontal Property Regime known as Koa Lagoon was created by Owner of Fee, Koa Development, Inc., a Hawaii corporation; and

WHEREAS, attached to said Declaration and filed therewith were the Declaration of Covenants, Conditions And Restrictions and By-Laws of Association of Apartment Owners of Koa Lagoon, a Horizontal Property Regime; and

WHEREAS, said Declaration and By-Laws were amended by instruments dated December 12, 1977, recorded as aforesaid in Liber 12606 on Page 653, dated November 5, 1982, recorded as aforesaid in Liber 16694, Page 754, dated December 12, 1984, recorded as aforesaid in Liber 18351, Page 492, and dated June 22, 2000, recorded as aforesaid as Document No. 2000-088824; dated August 13, 2002,

recorded as aforesaid as Document No. 2002-151144; dated May 15, 2003, recorded as aforesaid as Document No. 2003-114688; dated October 31, 2003, recorded as aforesaid as Document No. 2003-258895ⁱ and

WHEREAS, said Declaration and By-Laws were restated by that Koa Lagoon Restated Declaration of Condominium Property Regime adopted July 11, 2000, recorded as aforesaid as Document No. 2000-098963ⁱⁱ and

WHEREAS, said Restated Declaration and the By-Laws attached thereto are hereby restated a second time by resolution adopted by the Board of Directors pursuant to Section 514B-109(a), Hawaii Revised Statutes, to set forth all of the above cited amendments and that amendment prohibiting smoking at the Koa Lagoon, as approved at the Annual Homeowner's Meeting duly held on February 4, 2015, in accord with the Koa Lagoon Restated Declaration of Condominium Property Regime, as referenced above, Section 11, it was resolved more than seventy-five percent (75%) of the common interest consented to so amend the Koa Lagoon Restated Declaration of Condominium Property Regime, and that Amendment adopting the provisions of Hawaii Revised Statutes, as amended, Chapter 514B, originally approved at the Annual Homeowner's Meeting duly held in 2013, and reconfirmed at the referenced February 4, 2015 Annual Homeowner's Meeting in accord with HRS§ 514B-23, it was resolved more than fifty percent (50%) of the unit owners consented to such amendment,ⁱⁱⁱ and

WHEREAS, said Restated Declaration and By-Laws are hereby restated for a second time as the Second Restated and Amended Declaration of Condominium Property Regime and By-Laws by resolution adopted by the Board of Directors pursuant to § 514B-109(a), Hawaii Revised Statutes, and approved by unanimous vote of the owners at the 2013 Annual Homeowners' Meeting to opt-in to and to conform with the provisions of Hawaii Revised Statutes Chapter 514B^{iv}

NOW, THEREFORE, pursuant to § 514B-109(a), Hawaii Revised Statutes, BE IT RESOLVED that the aforesaid Second Restated and Amended Declaration of Condominium Property Regime and the By-Laws attached hereto, shall be, and hereby are, adopted as the Second Restated and Amended Declaration of Condominium Property Regime and By-Laws for Koa Lagoon.

Portions of said Second Restated and Amended Declaration are so restated solely for purposes of information and convenience pursuant to § 514B-109(a), Hawaii Revised Statutes^v.

Portions of said Second Restated and Amended By-Laws so restated solely for purposes of information and convenience pursuant to §514B-109(a).^{vi}

Said Second Restated and Amended Declaration and the By-Laws correctly set forth

without change the corresponding provisions of the Restated Declaration of Horizontal Property Regime and By-Laws, as amended, and said Second Restated and Amended Declaration of Condominium Property Regime supersede the original Restated Declaration of Horizontal Property Regime and the By-Laws, and all prior amendments thereto.

In the event of any conflict, the Second Restated and Amended Declaration and the By-Laws attached thereto shall be subordinate to any cited statute, ordinance, rule or regulation and to the original Declaration of Horizontal Property Regime and all prior amendments and restatements thereto.

The Second Restated^{vii} and Amended Declaration of Condominium Property Regime, including the attached By-Laws is hereby adopted this 18th day of November 2015.

ASSOCIATION OF APARTMENT OWNERS
OF KOA LAGOON

By Darrell E. Pearson
Print Name Darrell E. Pearson
Its President

By Maxine J. Johnson
Print Name Maxine J. Johnson
Its Secretary

STATE OF WASHINGTON)
COUNTY OF Skagit) SS.

On this 20th day of November, 2015, before me personally appeared Darrell E. Pierson, to me personally known, who, being by me duly sworn or affirmed, did say that he is the President of the Association of Apartment Owners of Koa Lagoon, an unincorporated condominium association formed under the laws of the State of Hawaii; such person executed the foregoing instrument on behalf of said Association by authority of its Board of Directors, as the free act and deed of said Association and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Pamela G. Aldridge
Print Name: Pamela G. Aldridge
Notary Public
State of Washington

My commission expires: 11-26-17

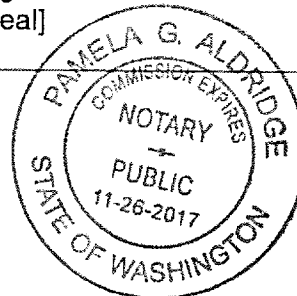
Subscribed and sworn before me this
20th day of November, 2015

Pamela G. Aldridge
Name: Pamela G. Aldridge
Notary Public, State of Washington

My commission expires: 11-26-17

NOTARY CERTIFICATION

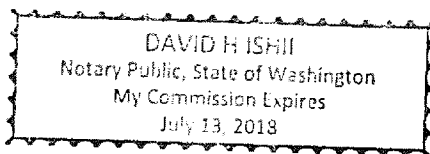
Doc. Date: 11-18-15
No. of Pgs: 82
Notary Name: Pamela G. Aldridge
Second Circuit
Doc. Description: KOA Lagoon
Second Restated and Amended
Declaration of Condominium
Pamela G. Aldridge Regime
Notary Signature: Pamela G. Aldridge Date: 11-20-15
[Stamp/Seal]



STATE OF WASHINGTON)

COUNTY OF King) SS.
)

On this 18 day of Nov, 2015, before me personally appeared Maryanne S. Schubert, to me personally known, who, being by me duly sworn or affirmed, did say that she is the Secretary of the Association of Apartment Owners of Koa Lagoon, an unincorporated condominium association formed under the laws of the State of Hawaii; such person executed the foregoing instrument on behalf of said Association by authority of its Board of Directors, as the free act and deed of said Association and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



David Ishii
Print Name: David Ishii
Notary Public
State of Washington

My commission expires: July 13, 2018

Subscribed and sworn before me this
18 day of Nov, 2015

David Ishii
Name: David Ishii
Notary Public, State of Washington

My commission expires: July 13, 2018

NOTARY CERTIFICATION

Doc. Date: 11/18/15
No. of Pgs: 82
Notary Name: David Ishii
Second Circuit
Doc. Description: KOA Lagoon Second
Restatement Amended Declaration of
Condominium Property Regime

David Ishii 11/18/15
Notary Signature: _____ Date
[Stamp/Seal]

DAVID H ISHII
Notary Public, State of Washington
My Commission Expires
July 13, 2018

KOA LAGOON SECOND RESTATED AND
AMENDED DECLARATION OF
CONDOMINIUM PROPERTY REGIME

CONDOMINIUM MAP NO. 493

KOA LAGOON
SECOND RESTATED AND AMENDED DECLARATION OF CONDOMINIUM
PROPERTY REGIME
CONDOMINIUM MAP NO. 493

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KOA LAGOON

SECOND RESTATED AND AMENDED DECLARATION OF CONDOMINIUM
PROPERTY REGIME

CONDOMINIUM MAP NO. 493

WHEREAS:

A. KOA DEVELOPMENT, INC., a Hawaii corporation, whose principal place of business and post office address is 250 Waiehu Beach Road, Wailuku, Maui, Hawaii, hereinafter called "OWNER OF FEE", is the fee simple owner of that certain parcel of land hereinafter more particularly described.

B. Owner of Fee desires to submit such parcel of land, including the buildings and structures to be constructed thereon in accordance with this Declaration of Condominium Property Regime, and the floor plans thereof showing the layout, location, apartment numbers, and dimensions of the apartments ("CONDOMINIUM MAP"), to be filed simultaneously with the Bureau of Conveyances of the State of Hawaii, and all easements, rights and appurtenances belonging thereto, to a fee simple condominium property regime under and pursuant to the provisions of Haw. Rev. Stat., Chapters 514A and 514B,^{viii} and as the same may from time to time be subsequently amended and reenacted ("CONDOMINIUM PROPERTY REGIME" or "PROPERTY ", as the case may be) (to reflect the re-designation in 1988 of "HORIZONTAL" PROPERTY REGIME to "CONDOMINIUM" PROPERTY REGIME).

C. Owner of Fee desires to impose on each of the apartments and the common elements of the condominium property regime certain uniform restrictions, covenants, and conditions for the mutual benefit of all of the owners of such apartments, and desires to adopt By-Laws for the government of the Association of Apartment Owners of the Condominium Property Regime ("ASSOCIATION").

D. The condominium property regime consists of forty-two (42) apartments and

certain common elements.

E. Owner of Fee shall execute and deliver a uniform apartment deed for each such apartment hereby created, and the several owners of such fee simple estates, who shall be the owners of the several apartments, shall constitute the Association of Apartment Owners of "KOA LAGOON", the fee simple condominium property regime hereby created.

F. NOW THEREFORE, Owner of Fee, it being the sole owner of the property, expressly declares its desire to, and does hereby, submit such parcel of land hereinafter more particularly described, including the buildings and structures to be constructed thereon in accordance with the plans and specifications hereinafter more particularly described, and the Condominium Map, and all easements, rights and appurtenances belonging thereto., to a condominium property regime under and pursuant to the provisions of Haw. Rev. Stat. Chapters 514A and 514B, and as, from time to time, the same may be amended and reenacted.

1. Description of Land. The land hereby submitted to the condominium property regime ("LAND") is described as follows:

ALL of that certain parcel of land being all of Lot 1-A of the Waiohuli- Keokea Beach Homesteads and portions of Land Patent Grant S-14,200 to Edward K. Kenolio and Angeline H. Kenolio and Land Patent Grant S-1 5,262 to County of Maui, situate Waiohuli, Wailuku (Kula), Maui, Hawaii.

Beginning at a pipe on the northeasterly corner of this parcel of land, on the southerly side of Lot 1 of the Kaonoulu Beach Lots and on the westerly side of the Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu O Kali" being:

11,486.70 feet North

24,477.40 feet West

and running by azimuths measured clockwise from true south:

1. 350° 00' 278.95 feet along the westerly side of the Kihei Road to a pipe;

thence along Lot B, along remainder of L.P. Grant S-15,262 to County of Maui, and along an arc of a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 2. | 36° | 18' | 30" | 28.92 | feet to a pipe; |
| 3. | 82° | 37' | | 149.29 | feet along Lot B and along remainder of L.P. Grant S-15,262 to County of Maui to a pipe; |
| 4. | 179° | 54' | 30" | 40.33 | feet along Government Beach Reserve to a pipe; |
| 5. | 180° | 06' | 30" | 286.94 | feet along same to a pipe; |
| 6. | 274° | 57' | | 116.70 | feet along Lot 1 of the Kaonoulu Lots and along R.P. 7447, L.C. A w. 3237 to Hewahewa to the point of beginning and containing an area of 1.020 Acres. |

2. Name of Condominium Property Regime. The name of the condominium property regime is, and the property hereby submitted shall be known as, "KOA LAGOON", and the association of apartment owners hereby created shall be known as the "Association Of Apartment Owners Of Koa Lagoon".

3. Description of Building. One building shall be constructed upon the land submitted to the condominium property regime. The building will when complete consist of six (6) stories, including the ground floor, and forty-two (42) apartments. The location of the building with respect to the land upon which it is situated is shown by the Condominium Map.

The principal materials of which the building shall be constructed are as follows:
the foundation shall be constructed of reinforced concrete; all floor slabs shall be constructed of

six (6) inch thick cast in place reinforced concrete; the structural frame, all bearing walls and columns, and the perimeter walls between the apartments, shall be constructed of eight (8) inch reinforced concrete block; the walls within each apartment shall be constructed of metal studs covered with gypsum board; the roof of the building shall be cast in place nine (9) to five (5) inch thick reinforced concrete built up with asbestos felt over rigid insulation, asphalt emulsion and perma cap sheets; the interior concrete floors of the apartments shall be covered with carpet or vinyl asbestos tile.

4. Location and Description of Apartments. The condominium property regime consists of forty-two (42) apartments, and certain common elements, as shown on the Condominium Map. Apartments 101 through 107 are located on the ground floor of the building, and are numbered, in ascending order, from south to north. Apartments 201 through 207 are located on the second floor of the building, and are numbered, in ascending order, from south to north. Apartments 301 through 307 are located on the third floor of the building, and are numbered, in ascending order, from south to north. Apartments 401 through 407 are located on the fourth floor of the building, and are numbered, in ascending order, from south to north. Apartments 501 through 507 are located on the fifth floor of the building, and are numbered, in ascending order, from south to north. Apartments 601 through 607 are located on the sixth floor of the building, and are numbered, in ascending order, from south to north.

There are seven types of apartments: A-One Bedroom Apartment; A-One Bedroom Penthouse Apartment; B-Two Bedroom End Apartment; B-Two Bedroom Interior Apartment; B-One Bedroom Ground Floor Apartment; B-Two Bedroom End Penthouse Apartment; B-Two Bedroom interior Penthouse Apartment.

The following twenty (20) apartments are A-One Bedroom Apartments: 102, 103,

105, 106, 202, 203, 205, 206, 302, 303, 305, 306, 402, 403, 405, 406, 502, 503, 505 and 506.

Each A-One Bedroom Apartment shall consist of a bedroom, bath, kitchen, living-dining area, hall, and a lanai, and each such apartment shall have an approximate enclosed floor space of 647 square feet, a lanai of approximately 170 square feet, and an approximate total floor area of 817 square feet.

The following four (4) apartments are A-One Bedroom Penthouse Apartments:

602, 603, 605 and 606.

Each A-One Bedroom Penthouse Apartment shall consist of a bedroom, bath, kitchen, living-dining area, hall, and a lanai, and each such apartment shall have an approximate enclosed floor space of 647 square feet, a lanai of approximately 202 square feet, and an approximate total floor area of 849 square feet.

The following ten (10) apartments are B-Two Bedroom End Apartments: 101,

107, 201, 207, 301, 307, 401, 407, 501 and 507.

Each B-Two Bedroom End Apartment shall consist of two bedrooms, two baths, hall, foyer, kitchen, living-dining area, and a lanai, and each such apartment shall have an approximate enclosed floor space of 979 square feet, a lanai of approximately 170 square feet, and an approximate total floor area of 1,149 square feet.

The following two (2) apartments are B-Two Bedroom End Penthouse Apartments: 601 and 607.

Each B-Two Bedroom End Penthouse Apartment shall consist of two bedrooms, two baths, hall, foyer, kitchen, living-dining area, and a lanai, and each such apartment shall have an approximate enclosed floor space of 979 square feet, a lanai of approximately 213 square feet, and an approximate total floor area of 1,192 square feet.

The following four apartments are B-Two Bedroom Interior Apartments: 204, 304, 404 and 504.

Each B-Two Bedroom Interior Apartment shall consist of two bedrooms, two baths, hall, foyer, kitchen, living-dining area, and a lanai, and each such apartment shall have an approximate enclosed floor space of 965 square feet, a lanai of approximately 170 square feet, and an approximate total floor area of 1, 135 square feet.

The following apartment is a B-One Bedroom Ground Floor Apartment: 104.

The B-One Bedroom Ground Floor Apartment shall consist of one bedroom, two baths, hall, foyer, kitchen, living-dining area, and a lanai, and such apartment shall have an approximate enclosed floor space of 836 square feet, a lanai of approximately 170 square feet, and an approximate total floor area of 1,006 square feet.

The following apartment is a B-Two Bedroom Interior Penthouse Apartment: 604.

The B-Two Bedroom Interior Penthouse Apartment shall consist of two bedrooms, two baths, hall, foyer, kitchen, living-dining area, and a lanai, and such apartment shall have an approximate enclosed floor space of 965 square feet, a lanai of approximately 202 square feet, and an approximate total floor area of 1, 167 square feet.

Each apartment located on the ground floor of the building shall have immediate access to the land. Each other apartment shall have immediate access to the open corridor immediately adjacent to and connecting the apartments of each floor above the ground floor of the building, and the stairs and elevators between the floors.

Each apartment shall consist of the space measured horizontally by the distances between the interior surfaces of the perimeter walls of each apartment, and the space measured by the lanai of each apartment, and measured vertically by the distance between the

topside surface of the concrete floor and the underside surface of the concrete ceiling of each apartment.

In addition to the rights and easements created and established by Haw. Rev. Stat. Chapters 514A and 514B in and with respect to the common elements of the condominium property regime hereby established, each apartment shall have appurtenant thereto, under and by virtue of this Declaration of Condominium Property Regime, a non-exclusive easement in the common elements designed for such purpose for ingress and egress, utility services, support, maintenance and repair, as the case may be; and the Association shall have the irrevocable right, under and by virtue of this Declaration of Condominium Property Regime, and in addition to the rights created and given to the apartment owners by Haw. Rev. Stat. Section 514B-137,^x to be exercised by its Board of Directors, Manager or Managing Agent, as the case may be, to enter each apartment from time to time during reasonable hours as may be necessary for the repair, replacement, restoration or installation of any common element.

5. Description of Common Elements. The common elements include:

a) The land heretofore described, and the super-adjacent airspace above the roof, and next to the exterior walls, of the building.

b) All foundations, columns, girders, beams and supports, bearing walls, roof, structural frame (except that the windows, and window frames, doors and door frames, and the wall air conditioning unit, for each apartment, located within the structural frame of the building, shall be a part of the apartment, and not a common element) perimeter walls between apartments, floors and ceilings, the open corridors on each floor above the ground floor, the stairs, elevator, and elevator shaft, of the building.

c) The swimming pool, the filtration plant, the surrounding deck area, and the pool pavilion; all parking and loading areas; electrical equipment pad; trash areas; pool equipment room; manager's room located on the ground floor; the ground floor lobby; ground floor electrical room; the janitor's closet and trash room located next to the elevator on each floor.

d) All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, refrigeration, television, sewage disposal, and other utilities (including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located within common elements or within apartments), and all tanks, pumps, motors, fans, compressors, ducts and other apparatus and installations existing for common use.

e) All tangible personal property, accounts, general intangibles, instruments and money, and any apartment acquired and held by the Association or the Board of Directors of the condominium property regime, or their agents, for the administration, maintenance, safety and operation of the common elements of the regime, or for the common use and benefit of the apartment owners.

f) All other apparatus and installations existing for, or rationally of common use to, or necessary or convenient to the existence, maintenance or safety of all the apartments of the condominium property regime.

g) Designation of additional areas to be common elements or subject to common expenses shall require the approval of sixty-seven percent of the apartment owners.^x

6. Description of Limited Common Elements. Any pump, motor, fan, compressor or duct, or any installation for power, light, telephone, gas, hot and cold water, heating, refrigeration, television, sewage disposal, air conditioning, or other utilities (including all pipes, ducts, wires, cables and conduits used in connection therewith), located in a common element, designed to serve only one apartment (that is, not designed or existing for common use), shall

be appurtenant to such apartment, as a limited common element, and the same shall be reserved for the exclusive use and benefit of such apartment, and all costs and expenses of every description pertaining thereto including but not limited to the cost of the maintenance, repair and replacement thereof, and the making of any additions and improvements thereto, shall be charged to the owner of such apartment.

7. Percentage of Undivided Interest. The percentage of undivided interest in the common elements appertaining to each apartment is as follows:

Apartment	No.	101	2.85
		201	2.85
		301	2.85
		401	2.85
		501	2.85
		601	2.956
		102	2.026
		202	2.026
		302	2.026
		402	2.026
		502	2.026
		602	2.1 05
		103	2.026
		203	2.026
		303	2.026
		403	2.026
		503	2.026
		603	2.105
		104	2.494
		204	2.815
		304	2.815
		404	2.815
		504	2.815
		604	2.894
		105	2.026
		205	2.026

305	2.026
405	2.026
505	2.026
605	2.105
1 06	2.026
206	2.026
306	2.026
406	2.026
506	2.026
606	2.1 05
107	2.85
207	2.85
307	2.85
407	2.85
507	2.85
607	2.956

8. Statement as to Use of Apartments. The apartments are intended to be used as residential apartments, but such apartments may be leased or rented from time to time to transients. The Association shall have the power to enact resolutions, rules and regulations, and the power to amend and repeal the same from time to time, reasonably restricting and regulating the use of the apartments and the common elements; provided, that any such resolution, rule or regulation shall be consistent with the terms of this Declaration of Condominium Property Regime, and the annexed Restated Declaration of Covenants, Conditions And Restrictions And By-Laws Of Association of Apartment Owners of Koa Lagoon, A Condominium Property Regime.

(1) The phrase "time share plan" shall have the meaning given by HAW. REV. STAT. Chapter 514E.

(2) After June 30, 1982, no time share plan can be created for or in respect of any apartment, and no apartment shall be the subject of any time share plan created after

such date.

(3) The Association shall have the right and power, to be exercised by the Board of Directors, to deny any person entry to, or the possession of, any apartment for which a time share plan has been created in violation of this section, so long as such violation shall continue.

(4) The Association may bring an action, by the Board of Directors, to obtain appropriate injunctive relief to prevent any violation of this section, or to require the observance of this section, without being required to post a bond as a condition to obtaining such injunctive relief, whether temporary, preliminary or permanent. The Association shall not be required to show in any such action that other relief is inadequate or that the damages suffered by the Association or by any apartment owner are or may be irreparable. (Prior amendment dated November 5, 1982, recorded in Liber 16694, Page 754)

8A. Certain Work Prohibited. No apartment owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of seventy-five percent of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected, being first obtained; provided that nonmaterial structural additions to the common elements, including, without limitation, the installation of solar energy devices, or additions to or alteration of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the Board of Directors of the Association and such percentage, number, or group of apartment owners as may be required by the Declaration or By-Laws. "Nonmaterial structural additions to the common

elements", as used in this section, means a structural addition to the common elements which does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any non-consenting owner of the use or enjoyment of any part of property, or directly affect any non-consenting owner. For purposes of this section, "solar energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and ready to be made operational in order to qualify as a "solar energy device".^{xi}

9. Service of Process. WILLIAM F. CROCKETT whose residence and post office address is Wailuku, County of Maui, State of Hawaii, is hereby designated as the person to receive service of process until such time as the Board of Directors for the Association be elected, at which time and thereafter process may be served upon any member of such Board of Directors.

10. Reconstruction of Improvements. In the event the building, or any of the common elements of the condominium property regime, are damaged or destroyed, the same shall be rebuilt, repaired or restored under the terms and on the conditions contained in the Restated Declaration Of Covenants, Conditions And Restrictions And By-Laws Of Association of Apartment Owners of Koa Lagoon, A Condominium Property Regime, a true copy of which is annexed hereto and made a part hereof.

11. Amendments. This Declaration of Condominium Property Regime may be amended by the affirmative vote or written consent of apartment owners holding sixty-seven percent (67%) of common interests in the condominium property regime

hereby established; provided, that any such amendment shall be consistent with the provisions of Haw. Rev. Stat., Chapters 514A and 514B,^{xii} and as the same may from time to time be amended and reenacted.

12. Annexed Second Restated and Amended Declaration Of Covenants, Conditions And Restrictions And By-Laws. The Association shall be governed by, and each apartment and the common elements thereof shall be held, used, conveyed, hypothecated, encumbered, leased, rented, repaired, reconstructed, renovated, rebuilt, improved and regulated and governed in every respect, subject to the limitations, restrictions, covenants, conditions and By-Laws contained in the Second Restated and Amended Declaration Of Covenants, Conditions And Restrictions And By-Laws Of Association of Apartment Owners of Koa Lagoon, A Condominium Property Regime, hereby adopted and made effective as of the date of the filing hereof with the Bureau of Conveyances of the State of Hawaii, a true copy of which is annexed hereto and made a part hereof, and as the same may from time to time be amended as therein provided.

13. Formation of Association of Apartment Owners. The Association of Apartment Owners of the Condominium Property Regime hereby established shall be formed and constituted as of the date of the filing of this Declaration of Condominium Property Regime with the Bureau of Conveyances of the State of Hawaii. Owner of Fee shall have and may exercise the rights, and shall be liable for the performance of the duties and obligations, of an apartment owner in respect of each apartment until Owner of Fee delivers an apartment deed for such apartment.

14. Association Registration. The Association shall register with the Real Estate Commission as provided in Section 514A-95.1, Hawaii Revised Statutes, as amended, and to comply with all requirements and impositions therein set forth. (HRS § 514A-95.1)

15. Waiver of Use of Common Elements. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment. Subject to such terms and conditions as may be specified in the By-Laws, any apartment owner may, by conveying his apartment and his common interest to the Board of Directors on behalf of all other apartment owners, exempt himself from common expenses thereafter accruing. (HRS § 514A-92)

16. Restatement of Declaration. The Association may at any time restate this Declaration, the By-Laws or other Exhibits to this Declaration to set forth all amendments thereof or to conform with Chapters 514A and 514B, Hawaii Revised Statutes, or any other statute, ordinance, rule or regulation enacted by any governmental authority. Such restated Declaration and/or By-Laws shall be approved by resolution adopted by the Board of Directors and shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners. Such document restated pursuant to this Paragraph shall identify each portion so restated and shall contain a statement that such portions have been restated solely for purposes of information and convenience, identify the statute, ordinance, rule, regulation, or prior amendment, implemented by the amendment, and that in the event of any conflict, the restated Declaration or By-Laws shall be subordinate to the cited statute, ordinance, rule, regulation, original Declaration or By-Laws and all prior amendments. It shall further state that the restated Declaration or By-laws correctly set forth without change the corresponding provisions of the Declaration or By-Laws, as amended, and that upon recordation thereof in the Bureau of Conveyances, the restated Declaration or By-Laws shall supersede the original Declaration or By-Laws and all prior amendments thereto.^{xiii}

17. Arbitration of Disputes. As, and to the extent, and in the manner, provided

for in Part VI of Chapter 514B, Hawaii Revised Statutes, as amended, at the request of any party, any dispute concerning or involving one or more apartment owners and the Association, Board of Directors, Managing Agent or one or more other apartment owners relating to the interpretation, application or enforcement of the Condominium Property Act, this Restated Declaration, the Restated By-Laws or the administrative rules and regulations adopted in accordance with the By-Laws shall be submitted to mediation and/or arbitration. The arbitration of appropriate disputes shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the Real Estate Commission and the provisions of Chapter 658 Hawaii Revised Statutes.

18. Governing Law. Notwithstanding anything to the contrary in this Restated Declaration and Restated By-laws, House Rules and/or Condominium Map, this property shall be governed by the provisions of Chapter 514B of the Hawaii Revised Statutes, as of the same shall be amended from time to time, and this Restated and Amended Declaration and the Restated and Amended Bylaws, House Rules and/or Condominium Map, shall be deemed amended to the extent necessary to conform to and be consistent with the provisions of said Chapter 514B of the Hawaii Revised Statutes, as amended from time to time. In the event of any conflict or inconsistency between the terms and provisions of this Restated and Amended Declaration, the Restated and Amended Bylaws, House Rules and/or, Condominium Map, on the hand, and the provisions of Chapter 514B of the Hawaii Revised Statutes, as the same may be amended from time to time, on the other, the provisions of Chapter 514B of the Hawaii Revised Statutes, as the same may be amended from time to time, shall supersede and displace, in whole the conflicting or inconsistent term(s) of provision(s) of this Restated and Amended Declaration, the Restated and Amended Bylaws, House Rules and/or Condominium Map, as the case may be.

19. Smoking Prohibited. Smoking is prohibited in Apartments, on lanais, all common and limited common elements and/or areas, and on the grounds.

SECOND RESTATED AND AMENDED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND
BY-LAWS OF ASSOCIATION OF APARTMENT
OWNERS OF KOA LAGOON,
A CONDOMINIUM PROPERTY REGIME

SECOND RESTATED AND AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND BY-LAWS OF ASSOCIATION
OF APARTMENT OWNERS OF KOA LAGOON, A CONDOMINIUM
PROPERTY REGIME

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SECOND RESTATED AND AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS AND BY-LAWS OF ASSOCIATION OF
APARTMENT OWNERS OF KOA LAGOON, A CONDOMINIUM PROPERTY
REGIME

WHEREAS:

1. KOA DEVELOPMENT, INC., a Hawaii corporation, whose principal place of business and post office address is 250 Waiehu Beach Road, Wailuku, Maui, Hawaii, hereinafter called "OWNER OF FEE", is the fee simple owner of that certain parcel of land more particularly described by the foregoing Declaration of Condominium Property Regime ("DECLARATION") (to reflect the redesignation in 1988 of "Horizontal" Property Regime to "Condominium" Property Regime).

2. Owner Of Fee desires to submit such parcel of land, including the buildings and structures to be constructed thereon in accordance with the Declaration, and the floor plans thereof showing the layout, location, apartment numbers, and dimensions of the apartments ("CONDOMINIUM MAP"), to be filed simultaneously with the Bureau of Conveyances of the State of Hawaii, and all easements, rights, and appurtenances belong thereto, to a fee simple condominium property regime under and pursuant to the provisions of Haw. Rev. Stat., Chapters 514A and 514B, and as the same may from time to time be subsequently amended and reenacted ("CONDOMINIUM PROPERTY REGIME", or "PROPERTY ", as the case may be).

3. Owner Of Fee desires to impose on each of the apartments and the common elements of the condominium property regime certain uniform restrictions, covenants and conditions for the mutual benefit of all of the owners of such apartments, and desires to adopt By-Laws for the government of the Association of Apartment Owners ("ASSOCIATION").

4. The condominium property regime consists of forty-two (42) apartments and certain common elements.

5. Owner Of Fee shall execute and deliver a uniform apartment deed for each such apartment, and the several owners of such fee simple estates, who shall be the owners of the several apartments, shall constitute the Association of Apartment Owners of "KOA LAGOON", the fee simple condominium property regime hereby created.

NOW THEREFORE, Owner Of Fee hereby declares that each apartment and all of the common and limited common elements that constitute the condominium property regime be, and the same is hereby, held, and the same shall be held, used, conveyed, hypothecated, encumbered, leased, rented, repaired, reconstructed, renovated, rebuilt, improved, regulated and governed in every respect, subject to the limitations, restrictions, covenants and By-Laws herein contained, and as the same may from time to time by ["by" should be "be"; note as such – but this change would be an amendment] amended. Such limitations, restrictions, covenants and By-Laws shall run with each such apartment, and shall be binding upon all persons having or acquiring any right, title or interest therein or thereto, and shall inure to the benefit of and be binding upon each successor in interest of the Owner Of Fee. And Owner Of Fee, acting as the present Association Of Apartment Owners of the condominium property regime, does hereby approve, adopt and establish these By-Laws pursuant to Haw. Rev. Stat., Chapters 514A and 514B.

1. Statutory Basis. This condominium property regime has been established under and pursuant to Haw. Rev. Stat., Chapters 514A and 514B, and the terms used herein shall have the same meaning given by the said statute. In the event of any conflict between this document and the said statute, the said statute shall control. If

the said statute be amended or reenacted, any such amendment or reenactment shall govern and regulate this condominium property regime, without any amendment to or of the foregoing Second Restated and Amended Declaration Of Condominium Property Regime or this Second Restated and Amended Declaration Of Covenants, Conditions And Restrictions And By-Laws Of Association Of Apartment Owners Of Koa Lagoon, A Condominium Property Regime.

2. Voting Owners. There shall be one "Voting Owner" of each apartment. The voting owner, who need not be an owner, shall be designated by the owner or owners of each apartment by written notice delivered to the Board of Directors. Such designation shall be revocable at any time by written notice delivered to the Board of Directors by any owner, or by the death or judicially declared incompetence of any owner. Such powers of designation and revocation may be exercised by any guardian or legal representative of the estate of an owner, if, and in such case, the interest of such owner in such apartment is subject to administration in his estate. In the absence of any such designation, the owner or owners of an apartment shall be deemed to be the voting owners of such apartment, and, if any apartment be owned by more than one owner (and whether such owner shall hold such apartment jointly, commonly or by the entireties), any one of such owners present in person at any meeting of the Association shall be deemed to be the voting owner of such apartment, and if there be more than one of such owners present at any meeting, and if there be any dispute among them as to which of them shall be deemed to be the voting owner of such apartment, then the majority of them then present shall select a voting owner (irrespective of their relative interests inter se, to such apartment). An owner shall have the right to irrevocably designate some person or persons (natural or corporate) as the voting owner of an apartment.

2A. Proxies.

(a) A voting owner shall have the power to appoint one or more person(s) as his proxy-holder(s) to attend a particular annual or special meeting of the Association for such voting owner, to vote and act at such meeting of the Association for such voting owner, subject to such conditions, restriction or instructions, if any, as such voting owner may impose. In a case of a group of proxy-holder(s) representing the common interest of any such owner, only one person of that group may vote on behalf of that owner^{xiv}.

(b) The proxy, to be valid, shall be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and shall contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the unit or units for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the apartment. All proxy forms, at a minimum, shall contain boxes wherein the owner may indicate that the owner wishes the proxy:

- (a) To be given for quorum purposes only;
- (b) To be given to a specific individual whose name is printed next to this box;
- (c) To be given to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Board present at the meeting; or
- (d) To be given to those directors present at the meeting with the vote to be shared with each Board member receiving an equal percentage.

The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by Section 514B-150, Hawaii Revised Statutes.

A copy, facsimile telecommunication, or other reliable reproduction of the proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

No officer of a board of directors shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising his or her right as an apartment owner.

No Resident Manager, or Managing Agent shall solicit, for use by the manager or Managing Agent, any proxies from any owner nor shall the resident manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Any Board that intends to use Association funds to distribute proxies, shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days prior to its distribution of proxies; provided that if the Board receives within seven days of the posting a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all Owners either:

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

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

The statement, shall be limited to black text on white paper, shall not exceed one single-sided 8 ½" x 11" page, indicating the owners' qualifications to serve on the board or reasons for wanting to receive proxies.

The Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the board members shall precede as a unit owner under the above paragraphs as applicable.

The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by unit owners; provided that the Board may adopt rules regulating reasonable time, place and manner of such solicitations or distributions or both.^{xv}

2B. List of Members. The managing agent, resident manager, or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

- (1) Will be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters; and
- (2) Shall not be used by the owner or furnished to anyone else for any other purpose; and
- (3) A board may prohibit commercial solicitations; and

- (4) The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the board.

All membership lists are the property of the association. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this section.^{xvi}

3. Votes. Each voting owner shall have a vote at each meeting of the Association equal to the common interest appurtenant to the apartment for which he votes. The votes for all of the apartments total one hundred. The term "majority of apartment owners" or any other term or phrase used herein relating or referring to any stated fraction or percentage of the apartment owners or voting owners shall refer to the vote appurtenant to each apartment, the total of all such votes, or, as the case may be, the stated percentage or fraction of the total of all such votes.

4. Notices. Any notice permitted or required to be delivered as herein provided may be delivered either personally or by mail. If delivery is by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after the deposit of such notice with any government mail service, postage prepaid, addressed to the person entitled to such notice at his last known address on file with the Secretary of the Association. After filing a written request for notice with the Secretary of the Association, the mortgagee under any recorded mortgage or other security interest to any apartment shall have a right to any notice required to be given to an owner or voting owner of such an apartment, and the delivery of such notice, which shall be in addition to the notice required to be delivered to the owner or voting owner,

shall not be complete until notice shall have been delivered to such mortgagee. Such request for notice need not be renewed, and shall remain in effect until the same be withdrawn or the security interest in such apartment released. The Secretary shall give each voting owner written notice of each annual and special meeting of the Association. Such notice of meeting shall be delivered not less than fourteen (14) days prior to the day fixed for the assembly of such meeting. Such notice of meeting shall contain at least:

- (a) The time and the day for the assembly of such meeting.
- (b) The place for such meeting
- (c) The items on the agenda for such meeting.
- (d) A standard form of proxy, if any, authorized by the Board of Directors of the Association.

5. Meetings Of Association Of Apartment Owners.

- (a) There shall be an annual meeting of the Association within three months

following the end of the fiscal year established for the Association at the Property, or elsewhere within the State of Hawaii as determined by the Board of Directors. The Board of Directors shall fix the time and day for each annual meeting of the Association. Voting owners representing a majority of the apartment owners shall constitute a quorum at any meeting of the Association.

Unless expressly otherwise herein provided, any action may be taken or ratified, any resolution enacted, any administrative rules and regulations governing the details of the operation and use of the common elements or the apartments adopted or amended, and any director removed, at any meeting of the Association, upon the affirmative vote of a majority of the voting owners present at any such meeting. Only the items of business on the agenda for an annual or special meeting, as set forth in the notice for that meeting, shall be considered or acted upon at that

meeting. In the absence of a quorum at any meeting of the Association, a majority of the voting owners present may, without providing for further notice of meeting, adjourn such meeting from time to time in order to secure the presence of a quorum. Each meeting of the Association shall be conducted in accordance with the most recent edition of Robert's Rules Of Order. (HRS § 514A-82(a)(16))

(b) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed by not less than twenty-five percent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition.

(c) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

(1) Hand-delivered;

(2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or

(3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

(d) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. (e) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State.^{xvii}

6. Board of Directors. At each annual meeting of the Association the voting owners shall elect a Board of Directors for the forthcoming year. The Board of Directors shall consist of five (5) persons, all of whom shall either be owners or voting owners of any apartment, the spouse of an owner or voting owner, or an officer of a corporate owner of an apartment, or a general partner of an apartment owned by a partnership, or a purchaser of an apartment under an agreement of sale. There shall not be more than one representative on the Board of Directors from any one apartment. (HRS § 514A-82(a)(1-2)) No resident manager of the Association shall serve on the Board of Directors. (HRS § 514A-82(a)(14)) Each member of the Board of Directors shall owe the Association a fiduciary duty in the performance of the director's responsibilities. (HRS § 514A-82.4) At any annual meeting of the Association, or any special meeting of the Association for which the notice shall state the election of a director or

directors as business to be conducted at such special meeting, any voting owner may nominate from the floor one or more persons for election as a director. If one director is to be elected at such meeting, the nominee who receives the highest number of votes shall be elected. If two or more directors are to be elected at such meeting, the directors shall be elected as follows: (a) each voting owner shall have a number of votes equal to the common interest appurtenant to the apartment for which he votes multiplied by the number of directors to be elected at such meeting; (b) when voting each voting owner shall be entitled to cumulate his votes and to give all thereof to one nominee or to distribute his votes in such manner as the voting owner shall determine among any or all of the nominees; (c) the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at such meeting, shall thereby be elected directors. At the first annual meeting following the approval and recording of the amendment containing this language, three (3) directors shall be elected for a period of two (2) years; and two (2) directors shall be elected for a period of one (1) year. Thereafter, the term for directors shall be two (2) years or until their successors be elected.^{xviii} Any vacancy in the Board of Directors shall be filled by the remaining members thereof.

At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed by a vote of the apartment owners and a successor may then and there be elected to fill the vacancy thus created. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or managing agent signed by not less than twenty-five

percent (25%) of the apartment owners as shown in the Association's record of ownership; and provided further that if the Secretary or managing agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the By-Laws. (HRS § 514A-82(b)(1))

Meetings of the Board of Directors shall be called, held and conducted in accordance with the most current edition of Robert's Rules of Order (HRS § 514A- 82 (a) (16)). The Board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

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

A director shall not vote at any board meeting on any issue in which he has a conflict of interest. A director shall not cast any proxy vote at any Board

meeting. (HRS § 514A-82(a)(13)) A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. (HRS § 514A-82(b)(5))

All meetings of the Board of Directors shall be open to all owners, and owners who are not directors may participate in any deliberation or discussion unless a majority of a quorum of the Board votes otherwise. The Board of Directors, with the approval of a majority of a quorum, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or pending or threatened litigation or orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. (HRS § 514A-83.1)

The Association at its expense shall provide all Board members with a current copy of the Association's Declaration, By-Laws, house rules, and, annually, a copy of the Hawaii Condominium Property Act with amendments. (HRS § 514A-82(b)(11))

A manager for the Association shall not be a member of the Board of Directors, nor shall any officer or employee of a Managing Agent for the Association be a member of the Board of Directors.

7.1 Officers. The principal officers of the Association shall be a President, Secretary and a Treasurer. The Board of Directors may appoint an assistant

treasurer, an assistant secretary, and such other subordinate officers as in the discretion of the Board of Directors may be necessary. An owner shall not act as an officer of an Association and an employee of the managing agent employed by the Association. (HRS § 514A-82(b)(7))

7.2 Appointment of Officers. The Board of Directors shall each year elect a President from its members who shall preside over meetings of the voting owners and the Board of Directors. The Board of Directors shall each year also elect a Secretary and a Treasurer, who need not be members of the Board of Directors or owners or voting owners of apartments. In the event of the temporary absence or incapacity of the President the Board of Directors shall appoint the Secretary or the Treasurer to act for him as acting President.

7.3 Removal Of Officers. Each officer shall hold office for one year following his appointment, at the pleasure of the Board of Directors, and until his successor is qualified. Upon the affirmative vote of a majority of the members of the Board of Directors any officer may be removed, with or without cause.

7.4 President. The President shall exercise general supervision and direction of the business and affairs of the Association. The President shall also have the powers and duties customarily incidental to such office, and such other powers and duties as may be given to him elsewhere in these By-Laws or as may be assigned to him by the Board of Directors.

7.5 Secretary. The Secretary shall keep the list of voting owners and the

minutes of all meetings of the voting owners and of the Board of Directors of the Association. The Secretary shall determine whether a voting owner is present at meetings of the voting owners. The Secretary shall record all votes upon resolutions voted upon at meetings of the voting owners and at meetings of the directors. The Secretary shall keep the minute book for the Association, wherein all resolutions shall be recorded, and such other books and records of the Association as the Board of Directors shall direct. The Secretary shall also have the powers and duties customarily incidental to such office, and such other powers and duties as may be given to him elsewhere in these By-Laws or as may be assigned to him by the President or the Board of Directors.

7.6 Treasurer. The Treasurer shall be responsible for the money and funds of the Association, and he shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all money of the Association in the name of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall also have the powers and duties customarily incidental to such office, and such other powers and duties as may be given to him elsewhere in these By-Laws or as may be assigned to him by the President or the Board of Directors.

8. Committees. The Board of Directors shall have the power to create, by resolution or resolutions enacted by a majority of the entire Board of Directors, such standing and ad hoc committee or committees which may have and exercise such power or powers of the Board of Directors provided by statute, the Restated Declaration of Condominium Property

Regime, or these By-Laws, with respect to the management of the business and affairs of the Association, or the administration of the common elements of the property, as the Board of Directors shall from time to time deem necessary. Each such committee shall include not less than one member of the Board of Directors, and may include such number of apartment owners or voting owners, as the case may be, as the Board of Directors shall provide by resolution. Such a committee may be established to investigate and to report to the Board of Directors with respect to a particular problem, in which case such committee shall not exercise any power or powers of the Board of Directors, and such committee need not include one member of the Board of Directors. No such committee shall have the power to fill any vacant directorship, or the power to appoint or remove any person from any of the principal or subordinate offices of the Association. Each such committee shall have such name as shall be stated in the enabling resolution enacted by the Board of Directors.

9. Indemnification. The Association shall indemnify every director, officer or employee, or any former director, officer or employee (hereinafter called "indemnatee"), and their respective heirs, executors and administrators, against reasonable costs and expenses, including judgments, fines, penalties, amounts paid in settlement and attorney's fees (hereinafter called "expenses"), incurred in connection with any civil or criminal action, suit or administrative proceeding to which an indemnatee shall be made a party by reason of his being or having been a director, officer or employee of the Association, except however, in relation to those expenses attributable to such portion or portions of the matters involved as to which it shall be adjudged in such proceeding that he has been guilty of gross negligence or criminal misconduct in the performance of his duties to the Association. In the event of a settlement, indemnification shall be provided only as to the matters covered by the settlement as to which the Association is advised by its counsel that the indemnatee was not guilty of gross negligence

or criminal misconduct in the performance of his duties to the Association. The foregoing right of indemnification shall be in addition to any rights provided by law.

10. Powers Of Board of Directors. The affairs of the Association shall be administered by the Board of Directors, through the President, Secretary, Treasurer and Manager or Managing Agent, if any, for and on behalf of the apartment owners. The Board of Directors shall meet at least once during each fiscal year, and the Board of Directors shall hold such additional meetings during each fiscal year as may be necessary or convenient for the administration of the affairs of the Association. Whenever practicable, notice of all Board meetings shall be posted by the managing agent or a member of the Board in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors. (HRS § 514A-82(b)(9))

The Board of Directors shall have such powers reasonably necessary or convenient for the administration of the affairs of the Association and may do all such acts and things, except such acts and things as by law, the foregoing Restated Declaration, or these By-Laws are expressly reserved to the voting owners or to the apartment owners, and shall have the power to enter upon such contract or contracts, for and on behalf of the Association, as may be necessary to exercise such power. Such powers of the Board of Directors shall include, without limitation, the following:

- (a) To operate, care for and maintain the common elements.
- (b) To determine the common expenses required for the administration of the affairs of the Association, and for the operation, care, upkeep, security and maintenance of the common elements.

- (c) To collect the common expenses from the apartment owners.
- (d) To employ, supervise and dismiss the personnel necessary for the maintenance, care and operation of the common elements and for the administration of the affairs of the Association.
- (e) To establish and maintain reasonable reserves and sinking funds for the future repair, maintenance and replacement of the common elements, and for general administrative and operating expenses.
- (f) To obtain such utility service (if not separately metered or charged) as may be necessary for the apartments, and such utility service as may be necessary for the common elements.
- (g) To purchase apartments at foreclosure or other judicial sale in the name of the Association.
- (h) To obtain and pay the premiums for insurance in the amount of the full replacement value of the Property which shall insure the Property against loss or damage by fire and such other insurable perils as shall appear to be reasonably necessary, and such other insurance as may be required in the course of the administration of the affairs of the Association on and in the operation, care, upkeep, security and maintenance of the common elements.
- (i) To borrow money on behalf of the Association to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the project, or the making of any additions, alterations, and

improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the project; provided that owners representing fifty percent (50%) of the common interest and apartments give written consent to such borrowing, having been first notified of the purpose and use of the funds. (HRS § 5 14A-82.3)

(j) To deposit and withdraw funds of the Association with and from banks and like institutions.

(k) To establish a fiscal year for the Association.

(l) To enforce the provisions of this Second Restated and Amended Declaration of Covenants, Conditions And Restrictions And By-Laws of Association Of Apartment Owners, the foregoing Second Restated and Amended Declaration of Condominium Property Regime, and any Administrative Rules and Regulations duly enacted for the use of the apartments or common elements.

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

(n) Upon the approval of the Owners of seventy-five percent (75 %) of the common interests appurtenant to the Apartments, to change the use of the common elements. (HRS § 514A-13(d) (1))

(o) To lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the Board of Directors; provided that unless the approval of the Owners of seventy-five percent (75%) of the common interest appurtenant to the Apartments is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice. (HRS § 514A-13(d)(2))

(p) To lease or otherwise use for the benefit of the Association those common elements not falling within subparagraph (o) above, upon obtaining: (A) the approval of the Owners of seventy-five percent (75%) of the common interests appurtenant to the Apartments, including all directly affected Owners and all Owners of Apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on Apartments with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees. (HRS § 514A-13(d)(3))

The voting owners may, except as otherwise provided by law, by resolution prospectively restrict any of the powers of the Board of Directors; provided that the enactment of such a resolution by the voting owners shall not, in any event, impair the validity of any contract

or obligation previously entered upon by the Board of Directors, or under the authority of the Board of Directors, or of any transfer of property, or any interest in property, previously made by the Board of Directors or under the authority of the Board of Directors.

The Board of Directors shall not, in any event, have the power to conduct a business for profit on behalf of the apartment owners or any of them; nor shall the Board of Directors have the power to convey, transfer, mortgage or encumber any of the common elements of the Property.

11. Manager. The Board of Directors shall have the power to engage a Manager or Managing Agent (who may be a corporate person). The Board of Directors shall have the power to delegate to such Manager or Managing Agent, subject to such restriction or restrictions as the voting owners may from time to time impose on the exercise of such powers by the Board of Directors, the following powers of the Board of Directors:

- (a) To operate, maintain and care for the common elements.
- (b) To collect the common expenses from the apartment owners.
- (c) To employ, supervise and dismiss personnel necessary for the maintenance, care and operation of the common elements and for the administration of the affairs of the Association.
- (d) To obtain such utility service (if not separately metered or charged) as may be necessary for the apartments, and such utility service as may be necessary for the common elements.

The Manager or Managing Agent shall not have the power to enter upon or execute any contract or to assume any liability on behalf of the Board of Directors, or of the Association, in an amount in excess of FIVE THOUSAND DOLLARS (\$5,000.00), pursuant to any power delegated by the Board of Directors. Any power or powers delegated to the Manager or Managing Agent by the Board of Directors may be prospectively revoked by the Board of Directors without notice to the Manager or Managing Agent or to any third person.

11A. Administrative Provisions.

(a) The Board of Directors or managing agent will maintain or cause to be maintained accurate and complete books of account and other financial records in accordance with recognized accounting practices. The records shall include, without limiting the generality of the foregoing, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration and replacement of the common elements and any other expenses incurred, all vouchers authorizing payment of such expenses and monthly statements showing the total current delinquent amount of unpaid assessments for common expenses. All records and the vouchers authorizing the payments and statements affecting the common elements of the project shall be kept at the project or at such other convenient place within n the State of Hawaii as the Board shall designate as required by HRS Ch. 514B.^{xx}

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

the Board of Directors.

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

(iii) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by owners at convenient hours at a place designated by the Board; provided:

1. That the Board may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both; and
2. That owners pay for administrative costs in excess of eight (8) hours per year.
3. Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

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

1. That the Board may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

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

Proxies and ballots may be destroyed following the thirty day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(v) Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

(c) No employee of the Association shall engage in selling or renting apartments in the project except Association owned apartments, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the owners. ^{xxi}(i) The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

(1) The estimated revenues and operating expenses of the Association;

- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association;
- (5) A general explanation of how the estimated replacement reserves are computed; and
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

(ii) The Association shall assess the apartment owners to fund a minimum of fifty percent (50%) of the estimated replacement reserves or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the Association's plan, except:

- (1) The Association may fund the estimated replacement reserves in increments after January 1, 1993 and prior to January 1, 2000; and
- (2) The Association may fund in increments, over three years, estimated replacement reserves which have been substantially depleted by an emergency.

(iii) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital

expenditure or major maintenance required for each part of the project. The estimated replacement reserves shall include:

(1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(2) Separate, designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(iv) No Association or director, officer, managing agent, or employee who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(v) The Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the apartment owners with the notice of assessment.

(vi) The requirements of this Section 11A.(d) shall override any other requirements in the Declaration, these By-Laws, or any other Association document relating

to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of :

- (1) any provisions relating to the repair and maintenance of property,
- (2) any requirements in the Declaration, these By-Laws, or any other Association documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or
- (3) any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(vii) Subject to the procedures of Section 20A. and any rules adopted by the Hawaii Real Estate Commission, in the event the Board of Directors fails to comply with this Section 11A.(d), any apartment owner may enforce compliance by the Board. In any proceeding to enforce compliance, if the Board has not prepared an annual operating budget and reserve study, the Board shall have the burden of proving it has complied with this Section 11A(d).

(viii) As used in this Section 11A(d) :

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

"Emergency situation" means any of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or

maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered;

(3) An extraordinary expense necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;

(4) An extraordinary expense necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

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

"Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the Property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain.^{xxii}

(d) (i) Minutes of meetings of the Board of Directors and the Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

(ii) Minutes of meetings of the Board of Directors and the Association

shall be approved at the next succeeding meeting; provided that for Board of Directors meetings, no later than the second succeeding meeting.

(iii) Minutes of all meetings shall be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.^{xxiii}

(e) Members of the Board of Directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii all other travel expenses incurred under this subsection shall be subject to the requirements of Section 6.^{xxiv}

12. Collection Of Common Expenses. "Common Expenses" shall mean all costs, expenses, fees and charges incurred by the Association, or which the Board of Directors expect the Association will incur, for the administration of the affairs of the Association and for the operation, care, repair and maintenance of the common elements, and for any premiums for insurance against loss or damage by fire and such other perils to the Property as the Board of Directors shall deem to be

reasonably necessary, and any premium for general liability insurance as hereafter provided, and for any utility service (if not separately metered or charged) as may be necessary for the apartments, and for the common elements, and for the maintenance of any reasonable reserve or sinking fund for the future repair, maintenance or replacement of the common elements, for general administrative and operation expenses of the Association, and all costs, expenses, fees and charges called "common expenses" by Haw. Rev. Stat., Chapter 514B, as amended or reenacted, or by the foregoing Restated Declaration.

Not less than sixty (60) days before the beginning of each fiscal year established for the Association, the Board of Directors shall prepare and adopt a budget for the next fiscal year and shall determine the amount of the total common expenses for the next fiscal year as provided in Section 11A ^{xxv} (which shall include the amount of any deficit in the common expenses for the current fiscal year or for any prior fiscal year). The total amount of such common expenses for the next fiscal year, as approved by the Board of Directors, shall be assessed against, charged to, and as provided by law shall (together with any interest) constitute a lien upon, each apartment on the first day of such fiscal year in proportion to the common interest appurtenant to each apartment. The share of such common expenses for each apartment shall be paid in quarterly installments, which shall be due and payable on the first day of the first month of each quarter of each fiscal year established for the Association. (If the Board of Directors should change the fiscal year established for the Association, or if the estimate of the common expenses for any fiscal year should

appear to be incorrect, the Board of Directors, subject to the provisions of Section 11A., shall have the power to revise its budget as of the first day of the next quarter of the current fiscal year) Not less than thirty (30) days before the beginning of each fiscal year established for the Association, the Board of Directors shall notify each apartment owner of the amount of the total common expenses determined for the next fiscal year, and the proportion thereof for which his apartment will be liable. (If the Board of Directors should revise its budget for any current fiscal year, then the Board of Directors shall give each apartment owner written notice, not less than thirty (30) days^{xxvi} before the effective date of such revised budget, of the revised amount of the total common expenses determined for the remaining part of the current fiscal year, and the proportion thereof for which his apartment is liable. If the Board of Directors increases the current budget, then the amount of such increase for which each apartment is liable shall be assessed against, charged to, and as provided by law shall (together with any interest) constitute a lien upon, each apartment on the effective date of such revised budget.) In the event of any default in the payment of any assessment for common expenses, the unpaid amount of such assessment shall bear interest at the rate of twelve percent (12%) per year from and after fifteen (15) days following the date on which the same came due.

13. Special Assessments. The voting owners shall have the power, by the affirmative vote of sixty-seven percent (67%) of them, to levy a special assessment against the apartments which shall be apportioned among the apartments in proportion to the common interest appurtenant to each apartment, and which

(together with interest) shall constitute a lien upon each such apartment as provided by law, to fund the renovation, reconstruction, or alteration of the common elements, or of some substantial portion thereof, or the construction of some addition to the common elements, or to fund the purchase of an apartment or to satisfy any extraordinary expense or liability of the Association. Such special assessment shall be due and payable at such time or times as such voting owners shall provide. In the event of any default in the payment of any portion of such special assessment, the unpaid amount of such special assessment shall bear interest at the rate of twelve percent (12%) per year from and after fifteen (15) days following the date on which the same came due. The Board of Directors shall, within thirty (30) days after the enactment by such voting owners of the resolution authorizing such special assessment, notify each apartment owner of the amount of the special assessment for which his apartment is liable and the date or dates at which the same will be due.

14. Liability Of Apartment Owners. Each apartment owner or owners shall be personally liable (and if there be more than one owner of any apartment, they shall be jointly and severally liable) for the full amount of any special assessment or assessment for common expenses against his apartment, irrespective of the date or dates on which such assessments, or portions thereof, be due. The Board of Directors shall have the right to enforce such personal liability of each apartment owner by an action for a money judgment for the unpaid amount of any such assessment; provided, that no such action shall be filed until fifteen (15) days after the date on which the unpaid amount came due. Any such action shall

be brought in the name of the Association. Any judgment rendered in any such action shall include a sum for reasonable attorney's fees in such amount as the court may adjudge against such owner in default. Upon full satisfaction of any such judgment, the Board of Directors, through the President, Secretary or Treasurer, shall execute and deliver to the judgment debtor an appropriate document to evidence such satisfaction.

If the Association should as provided by law foreclose its lien upon an apartment for any unpaid assessment for common expenses or for any unpaid special assessment, while the foreclosure proceeding is pending, and until title to the apartment has vested in a purchaser following the foreclosure sale of the apartment:

(i) the owner of the apartment shall continue to be personally liable for the full amount of any additional special assessment or additional assessment for common expenses chargeable to the apartment; and (ii) the owner of the apartment shall be obligated to pay the Association a reasonable rental for the continued right to the use and possession of the apartment, which rentals shall be applied by the Association to discharge any accrued and unpaid assessment for common expenses, or any accrued and unpaid special assessment, which constitutes a lien upon the apartment.

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

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

(2) The amount of any penalty, late fee, lien filing fee, and

any other charge included in the assessment;

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

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

(5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

An apartment owner who pays the Association the full amount claimed by the Association for any accrued and unpaid assessment for common expenses may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 17 of the Declaration, provided that an apartment owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the apartment owner fails to keep all assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment

owner pays all assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed.^{xxvii}

In addition to the collection procedures outlined above in this paragraph 14, where an apartment is owner-occupied, the Association may authorize its Managing Agent or Board of Directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses, terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received. Before the Board of Directors or Managing Agent may take the actions permitted under subsection (e), the Board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the Association or by the written consent of a majority of the apartment owners.^{xxviii}

15. Certificates Of Payment. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether any common expense or special assessment is due and payable for a particular apartment, and, if so, the amount of any such delinquent common expense or special assessment, and the date the same came due. Any such certificate signed by an officer of the Association shall be binding and conclusive upon the Association and may be relied upon by any person as an accurate statement of the facts shown therein.

16. Transfer Of Ownership Of Apartment. The Secretary shall maintain at the Property a list of the names and addresses of the apartment owners, a list of the names and addresses of the voting owners, and a list of the names and addresses of each apartment purchaser under an agreement of sale. The Secretary shall not register any change in the ownership of any apartment until he has been furnished with a certified copy of a recorded (with the Bureau of Conveyances of the State of Hawaii) instrument to evidence such transfer. The Secretary shall not register any change in the designation of a voting owner until he has been furnished with an appropriate notice thereof, and, if a voting owner has been irrevocably designated, the name of such irrevocably designated voting owner shall not be removed from such list without his written consent or release. The Association, each apartment owner and voting owner, the Board of Directors, President, Secretary, Treasurer and Manager or Managing Agent, shall have a right to rely upon such lists and shall have a right to regard any person whose name appears on such list as the owner or voting owner, as the case may be, of the apartment specified.

17. Collection of Rent from Tenant or Rental Agent. If the owner of an apartment rents or leases the apartment and is in default for thirty days or more in the payment of the apartment's share of the common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment or rental agent renting the apartment, an amount sufficient to pay all sums due from the apartment owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

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

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

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

(3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.^{xxix}

18. Failure To Determine Common Expenses. Any failure by the Board of Directors to determine the common expenses for any ensuing fiscal year, or the failure of the Board of Directors to notify any or all of the apartment owners of the amount of such common expenses, shall not be deemed to be a waiver or release of any apartment or of any owner of any obligation or liability for such common expenses. In such event, the last determination of the Board of Directors as to the total amount of such common expenses shall continue, from year to year, and until the Board of Directors make such determination and each apartment and apartment owner shall continue to be liable for the share of such common expenses charged to each apartment.

19. Waivers. The failure of the Board of Directors to require, in any one or more instances, a strict performance of or compliance with any of the limitations, restrictions or covenants herein contained by any apartment owner, or to exercise any right or option herein contained, or to serve or receive any notice, or to institute any action, shall not be construed as a waiver or relinquishment of such limitation, restriction, covenant, right, option or right to serve or receive notice, but the same shall continue and remain in full force and effect. Nor shall the

receipt by the Board of Directors, or any of its agents, of any payment from any apartment owner be construed as such a waiver.

20. Administrative Rules And Regulations For The Use Of Common Elements. The voting owners, by the vote of a majority of them present at any meeting for which the notice of meeting shall have stated that the adoption or amendment of administrative rules and regulations will be considered, shall have the power to adopt, and from time to time amend, administrative rules and regulations governing the conduct of meetings of the voting owners, the details of the operation and use of the common elements, and such rules and regulations with respect to the use of the apartments as may be deemed necessary for the common welfare. The Board of Directors shall have the power to fine any apartment owner an amount not to exceed TWO HUNDRED FIFTY DOLLARS (\$ 250.00) for any willful violation of any of such rules and regulations by any occupant of his apartment. Any fine so imposed shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses. The Board of Directors shall impose such fines in its sound and sole discretion. The Board of Directors shall have the right to refuse to impose any such fine, even though such a violation be established, in its discretion, and for good cause. If the violation of any such rule or regulation can be abated by the entry into the apartment in which, or as to which, such violation exists, the Board of Directors shall have the power to enter such apartment and abate such violation; the Board of Directors can delegate to any of its agents and to the manager or managing agent the power to make such entry by a general prospective delegation of power. If the Board of Directors shall incur any expense in the abatement of such violation, the full amount of such expense shall be a lien against such apartment with like effect, and to the same extent, as any assessment for common expenses.

After the second such willful violation of a rule or regulation by any occupant of an apartment in any calendar year, the Board of Directors shall have the power to require that the owner of such

apartment give a bond, naming the Board of Directors as obligees on behalf of the Association, with a corporate surety licensed to do a surety business in the State of Hawaii as surety, to continue for a term not to exceed three (3) years, in a principal amount, to be determined by the Board of Directors, equal to a judgment for damages, costs and expenses the Association and any aggrieved apartment owner might reasonably expect to obtain against such apartment owner in an action for damages or injunctive relief, or both, brought under Haw. Rev. Stat. Section 514A-88, for any past violations and the next violation of such rule or regulation, conditioned upon the entry of such a judgment. The Board of Directors shall give such apartment owner notice of the bond required, and such bond shall be delivered to the Manager or Managing Agent by such apartment owner within fifteen (15) days after the delivery of such notice. If such apartment owner should fail to give such bond, then there shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses, in the principal amount of the required bond, and such lien may be foreclosed, as provided by Haw. Rev. Stat. Section 514B-146, at any time after the failure of such apartment owner to give such bond. (The right to foreclose such lien shall not be conditioned upon the entry of a judgment under Haw. Rev. Stat. Section 514A-88.) In the event of the foreclosure of such lien, the proceeds received in satisfaction of such lien shall be distributed or applied in the same manner as the proceeds of a money judgment obtained under Haw. Rev. Stat. Section 514A-88 would have been distributed or applied had such a judgment been entered for any violations of such rule or regulation.

20A. Attorney's Fees and Expenses of Enforcement.

(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

(1) Collecting any delinquent assessments against any owner's apartment;

(2) Foreclosing any lien thereon; or

Enforcing any provision of the Declaration, By-Laws, administrative rules and regulations, and Chapters 514A and B, as applicable, Haw. Rev. Stat.; or the rules of the real estate commission; against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Property shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.

(b) If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, By-Laws, administrative rules and regulations, or Chapters 514A and B, as applicable, Haw. Rev. Stat., then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

(1) The owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or,

(2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Restated Declaration, these By-Laws, administrative rules and regulations, or Chapters 514A and B, as applicable, Haw. Rev. Stat., then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court or prior to filing the action in a higher court the

owner has first submitted the claim to mediation, or to arbitration under Section 17 of the Restated Declaration, and made a good faith effort to resolve the dispute under any of those procedures.^{xxx}

21. Addition To And Alteration Of Apartment. No owner shall undertake any addition to, or alteration of, his apartment without first obtaining the written consent of the Board of Directors or, failing to obtain such consent, the consent of a majority of the voting owners present at any meeting. An owner who seeks such consent shall first file with the Board of Directors a copy of the proposed alteration or addition. Such consent shall not be required for the redecoration, repainting or any aesthetic change in any apartment. The cost of any such addition to, alteration or repainting of, an apartment shall not be charged to the Association. The Board of Directors shall have the right to require that an addition to, or alteration of, an apartment shall not be commenced until after the contractor performing the work obtains a construction performance and payment bond for the work as provided under Section 26.

21A. Prohibition on Animals. No animals (including pets of any kind) are permitted in any part of the Project at any time. Provided, however, any animal being kept in an owner's apartment on the effective date of this paragraph 21A. may only be kept by the apartment owner and/or occupant in their apartment and shall not be kept, bred or used therein for any commercial, profit making, or money generating purpose, nor allowed on any common elements except when leaving the apartment to take the animal to or from the Project premises; provided, however, that if an apartment owner or occupant shall not act in compliance with this paragraph 21A. with respect to their animal or if any such animal causes a nuisance or unreasonable disturbance to any other occupant of the Project, (as determined by the Board in its sole discretion), the animal shall be permanently removed from the

apartment and the Project within five (5) days after receiving notice from the Board of Directors or Managing Agent that the animal must be removed. (Prior amendment dated June 22, 2000 and recorded as Document No. 2000-088824).

Notwithstanding any other provision to the contrary herein, visually impaired persons may keep and/or use guide dogs as defined in Chapter 515, Hawaii Revised Statutes, hearing impaired persons may keep and/or use signal dogs as defined in Chapter 515, Hawaii Revised Statutes, and physically impaired persons may keep and/or use service animals as defined in Chapter 515, Hawaii Revised Statutes, in Apartments and may use such dogs/animals as reasonably necessary to enjoy the Project.^{xxxi}

22. Liability Insurance. The Board of Directors shall obtain and pay the premium for a policy or policies of general liability insurance in which the limits of liability shall be not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for injury to any one person, ONE MILLION DOLLARS (\$1,000,000.00) for injury to more than one person in any one accident or occurrence, and FIFTY THOUSAND DOLLARS (\$50,000.00) against claims for property damage. Such policy or policies shall cover liability incurred in respect of the common elements of the Property and any sidewalks and sidewalk areas adjacent to the Property. Such policy or policies shall insure each apartment owner, each member of the Board of Directors, their agents and the agents of the Association, the Manager or Managing Agent employed by the Board of Directors, and the agents of such Manager or Managing Agent. (prior amendment dated December 12, 1984 and recorded in Liber 18351, Page 492) The premiums for such insurance shall be a common expense.

23. Casualty Insurance. The Board of Directors shall obtain and pay the premiums for a policy or policies of insurance against the loss or damage of the Property by fire, and such other insurable perils as the Board of Directors shall deem to be reasonably

necessary, in the full replacement value of the Property. Unless the voting owners provide otherwise, such insurance shall be issued in the name of the Board of Directors, as trustees for the apartment owners, and their respective mortgagees, if any, as their respective interest shall appear, in proportion to the common interests appurtenant to the apartments owned by each of them. The premiums for such insurance shall be a common expense. The voting owners, by the vote of a majority of them present, shall have the power to designate any bank or trust company licensed to do business within the State of Hawaii, and the power to revoke any such designation previously made, as the insurance trustee to receive any proceeds of insurance payable under such insurance. Any such designation, or revocation, shall be effective upon the acceptance thereof by the issuing insurer. The insurer shall fairly apportion any such insurance proceeds between the common elements and each apartment damaged or destroyed in proportion to the relative loss suffered by the common elements and each apartment. The insurance trustee shall permit the Board of Directors to use that portion of such insurance proceeds paid for the loss suffered by the common elements for the repair and reconstruction of the common elements. The insurance trustee shall permit the Board of Directors to use that portion of such insurance proceeds paid for the loss suffered by any apartment for the repair and reconstruction of such apartment.

All such policy or policies of insurance shall contain waivers of subrogation and waivers of any defense based upon co-insurance or of invalidity arising from any acts of any insured and shall provide that such policy or policies shall not be canceled or substantially modified on not less than ten (10) days prior written notice to the Board of Directors and every holder of a mortgage of record of an apartment. Each apartment owner shall, upon the request of the Board of Directors execute such document or instrument reasonably required by any such insurer to effect such waiver of subrogation or any defense based upon co-insurance or of invalidity arising from any act of any insured. Owners of apartments shall not be prohibited from

obtaining, at their individual expense, such casualty insurance in respect of their individual apartments as they may each obtain for their individual benefit; provided, that each such individual policy shall contain a waiver of subrogation; provided further, that the liability of the insurer under the policy or policies of casualty insurance obtained by the Board of Directors shall not be affected or diminished as a result of such additional insurance obtained by an apartment owner.

All such policy or policies of insurance shall provide that at the inception of each policy, and on each anniversary date thereof, the insurer shall furnish the Board of Directors of the Association with a written summary of the policy in layman's terms, including without limitation a description of the policy, the coverage provided by the policy and the limits thereof, the amount of the annual premium, and the renewal dates, and the insurer shall also furnish the Board of Directors of the Association with a certificate that all of such policy or policies of insurance satisfy all of the requirements for insurance herein provided. The Board of Directors of the Association shall forthwith deliver copies of the insurer's insurance summary and certificate to each apartment owner.

Any proceeds of insurance paid for any damage or destruction suffered by the Property, or any part thereof, shall be held by the Board of Directors or by the insurance trustee free of any claim by any apartment owner, or his creditors, the holder of any lien upon any apartment, or the creditors of the Board of Directors or of the Association, or of any receiver, assignee or trustee in bankruptcy for any such creditor, and the same shall be held free of any action by any such creditor or on behalf of any such creditor and free of any writ of execution, attachment or garnishment obtained by any such creditor or on behalf of any such creditor, and free of any action to foreclose any lien upon any apartment, until the portions of the Property so damaged or destroyed be reconstructed (and such proceeds of insurance may be used to pay for such reconstruction), or the voting owners determine that the same should not be reconstructed, as the case may be.

23A. Apartment Casualty Insurance. The Board of Directors may require apartment owners to obtain reasonable types and levels of insurance. The liability of an apartment owner shall include but not be limited to the deductible of the owner whose apartment was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

If the apartment owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the apartment owner. In no event is the association or board liable to any person either with regard to the failure of a apartment owner to purchase insurance or a decision by the board not to purchase the insurance for the owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

24. Repair And Reconstruction Of Common Elements. The Board of Directors shall be responsible for the repair, rehabilitation and reconstruction of the common elements. The Board of Directors shall have the power to expend from the funds of the Association set aside for such purpose and from any proceeds of insurance available to the Board of Directors for the repair and reconstruction of the common elements such amounts as may be necessary for the repair or rehabilitation of the common elements. If such funds and proceeds of insurance should not be sufficient, the voting owners shall have the power to, and may levy a special assessment, as hereinbefore provided, to make up any deficiency for the repair and rehabilitation of the common elements. Any such repair or rehabilitation of the common elements shall be in accordance with the original plans and specifications therefor, to the extent practicable.

If any of the common elements should suffer substantial damage or destruction as the result of any casualty, the Board of Directors shall call and hold a special meeting of the voting owners within ninety (90) days after such damage or destruction shall have occurred. The Board of Directors shall, before the assembly of such special meeting, obtain not less than two (2) firm bids from two or more responsible building contractors for the reconstruction of the common elements so damaged or destroyed, in accordance with the original plans and specifications therefor, to the extent practicable. At such special meeting the voting owners shall determine whether the common elements so damaged or destroyed should be reconstructed. If the cost of such reconstruction (as reflected by the lowest bid obtained therefor) does not exceed the aggregate amount of the proceeds of insurance available to the Board of Directors for the repair and reconstruction of the common elements, and the funds of the Association set aside for such purpose, if any, by more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), then, upon obtaining the affirmative vote of a majority of the voting owners present, the Board of Directors shall proceed to reconstruct such damaged or destroyed common elements with such insurance proceeds, the funds of the Association, and to the extent necessary, from funds raised by special assessment as hereinbefore provided. If the cost of such reconstruction (as reflected by the lowest bid obtained therefor) exceeds such proceeds of insurance, and the funds of the Association set aside for such purpose, if any, by more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), then, upon obtaining the affirmative vote of not less than sixty-seven percent (67%) of the voting owners, the Board of Directors shall proceed to reconstruct such damaged or destroyed common elements with such insurance proceeds, the funds of the Association, and, to the extent necessary, from funds raised by special assessment as hereinbefore provided. If the Board of Directors should fail to obtain the necessary vote of the voting owners at such special meeting, and shall therefor lack the power to reconstruct such damaged or destroyed common elements, then, and in such event, the estates of the apartment owners in the property subject to this condominium property regime

shall be subject to partition as provided by Haw. Rev. Stat., Section 514A-21, or from time to time amended or reenacted.

25. Repair And Reconstruction Of Apartments. Each apartment owner shall be responsible for the repair, rehabilitation and reconstruction of the parts of his apartment (exclusive of the common elements that enclose each apartment). Any such repair, rehabilitation or reconstruction shall be in accordance with the original plans and specifications therefor to the extent practicable, and shall be subject to the approval of the Board of Directors.

If an apartment should suffer any damage or destruction as the result of any casualty, the apartment owner shall immediately cause the part of his apartment so damaged or destroyed to be reconstructed in accordance with the original plans and specifications therefor, to the extent practicable, and, in such event, if any common element has been damaged or destroyed by the same casualty, the Board of Directors shall arrange for and coordinate such repair and reconstruction of such apartment, in conjunction with the reconstruction of the damaged or destroyed common element, for and on behalf of such apartment owner. The Board of Directors shall have the power to, and shall, expend from that portion of any proceeds of insurance held by the Board of Directors, or by the insurance trustee, and paid for the loss suffered by such apartment, for the repair and reconstruction of such apartment. If in such event such proceeds of insurance should not be sufficient to complete the reconstruction of such apartment, the apartment owner shall be obliged to pay the Board of Directors the full amount of such deficiency upon the completion of such reconstruction. If such apartment owner should fail to pay the amount of such deficiency, then

there shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses, and such lien may be foreclosed, as provided by Haw. Rev. Stat. Sec. 514B-146, at any time after the failure of such apartment owner to make such payment.

If any apartment should suffer any damage or destruction as the result of any casualty, and if, in such event, any common element has been damaged or destroyed by the same casualty, and if the Board of Directors should fail to obtain the necessary vote of the voting owners to authorize the reconstruction of such damaged or destroyed common element, and shall therefor lack the power to reconstruct such damaged or destroyed common element, then, and in such event, such apartment owner shall not be obliged to cause his apartment so damaged or destroyed to be reconstructed.

26. Performance and Payment Bond. Before undertaking or permitting the repair, rehabilitation or reconstruction of any common element, or any part of any apartment, and if the total cost thereof exceeds TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00^{xxxii}), the Board of Directors shall cause the contractor performing the work to obtain a bond, with a surety company licensed to do business in the State of Hawaii as surety, in a principal amount equal to one hundred percent (100%) of the cost of such construction, guaranteeing the full and faithful performance of such construction contract and the full payment of all subcontractors, laborers, and materialmen, engaged in the work, and naming each apartment owner, their respective mortgagees, if any, and the Koa Lagoon Association Of Apartment Owners, as obligees.

27. Abatement Of Common Expenses. If, as a result of the damage or

destruction of some portion of the common elements by fire or other casualty, an apartment be rendered uninhabitable, then the common expense for which such apartment be liable shall abate from the time such damage or destruction shall have occurred until such damage or destruction be repaired or reconstructed, or the voting owners determine that such damage or destruction shall not be reconstructed, as the case may be; and the common expense for which such apartment would normally be liable shall be deemed to be common expenses for which all of the other apartments shall be liable in accordance with their relative common interests. The liability of such apartment for special assessments shall not abate; nor shall the liability of such apartment, or the owner thereof, to pay real property taxes assessed against the apartment by the State of Hawaii or the County of Maui abate.

28. Clearing Debris. After the common elements shall have suffered substantial damage or destruction and after the voting owners have determined that the common elements so damaged or destroyed should not be reconstructed, but either before or after the initiation of an action to partition the Property, the Board of Directors shall be entitled to expend from the proceeds of any insurance in respect of such damage or destruction such amount as may be necessary to remove from the land any building, structure or improvement damaged or destroyed and not economically reparable, and the removal of all debris resulting from such damage or destruction, and the restoration of the Property to a good and orderly condition and even grade. The Board of Directors shall have the power to contract for the removal of such damaged or destroyed building and debris and the restoration of the Property. If, in such event, such proceeds of insurance should not be sufficient to pay for such removal and the restoration of the Property, the voting owners shall have the power to levy a

special assessment to make up such deficiency.

29. Eminent Domain. If any authority exercising the power of eminent domain should condemn the entire property submitted to the condominium property regime, some part or parts thereof, or any right, easement, privilege, or appurtenance belonging or appertaining thereto, then the entire award attributable to the condemnation of the property submitted to the condominium property regime (whether for land, buildings, improvements, a right, easement, privilege or appurtenance), any money paid by the condemning authority for the interruption of any business conducted on the property, and any money paid for any damage resulting from such condemnation, or any money paid by any condemning authority to settle any such threatened condemnation (collectively referred to as "CONDEMNATION PROCEEDS"), shall be paid to the Board of Directors and shall be divided and distributed as follows:

(1) any of such condemnation proceeds fairly attributable to an apartment shall be distributed to the owner thereof; (2) any of such condemnation proceeds which cannot be fairly attributed to an apartment, and any of such condemnation proceeds attributable to the common elements of the condominium property regime, shall be divided and distributed to the apartment owners in proportion to the common interest appertaining to the apartments owned by each of them.

The Board of Directors, for the Association and for and on behalf of each apartment owner, shall have the right to contest any issue involved in such condemnation proceedings. Each apartment owner hereby irrevocably appoints the Board of Directors of the Association as his attorney-in-fact to represent him in the negotiation of any settlement of a threatened condemnation action, and to appear for him in any such condemnation proceeding.

The apartment owners understand that it would be impracticable, and not in their best collective interest, to permit any of them to individually negotiate a separate settlement of a threatened condemnation action or to appear individually in any such condemnation proceeding. The apartment owners therefore irrevocably surrender to the Board of Directors of Association any right which they may individually hold to negotiate a separate settlement of a threatened condemnation action or to appear individually in any such condemnation action. The Board of Directors shall approve a proposed settlement of a threatened condemnation action upon obtaining the affirmative vote in favor of the proposed settlement by a majority of the voting owners.

30. Apartment Purchased By Board Of Directors. The voting owners shall have the power to levy a special assessment to fund the purchase of an apartment authorized by the voting owners. The Board of Directors shall have the power to borrow money from an established financial institution, on the credit of the Association, to fund the purchase of an apartment authorized by the voting owners, and, if such funds be borrowed, the Board of Directors shall have the power to mortgage such apartment to secure such loan. Any apartment purchased by the Board of Directors shall be held in the name of the Board of Directors, as trustees for the owners in accordance with the relative common interests of their respective apartments.

31. Audit.

(a) Any apartment owner or voting owner may at any reasonable hour, upon reasonable notice, and at his expense, audit or inspect or have his agents audit or inspect, the books and records of the Board of Directors or of the Manager or Managing Agent.

(b) The Association shall conduct an annual audit of the Association financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant.

(c) The Board of Directors shall make available a copy of the annual audit to each owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report. The Board shall not be required to submit a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

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

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

(d) If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

32. Miscellaneous. The headings and marginal notations of this document are for convenience only, and, if there be any conflict, the text shall control. The use of any gender shall include all genders. Whenever any words are used herein in the singular, they shall be construed as though they were also used in the plural in all cases where they would so

apply, and vice versa.

33. Construction. The provisions of this document shall be basically construed to effect the creation of a uniform plan for the development and operation of a fee simple condominium property regime, and shall be construed with reference to Haw. Rev. Stat. Chapters 514A and B, as applicable, and as the same may from time to time be amended or reenacted, any decision of the Supreme Court of Hawaii interpreting such statute, and any published decision of any court interpreting a similar statute, and with reference to the foregoing Restated Declaration.

34. Amendment. This document may be amended at any time by the vote or written consent of sixty- seven percent (67%) of all owners; provided that any proposed bylaws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board of Directors to the owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty- seven percent (67%) of all owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the bylaw is duly adopted, then the Board shall cause the bylaw amendment to be recorded in the Bureau of Conveyances of the State of Hawaii. The volunteer owners' committee shall be precluded from submitting a petition for a proposed

bylaw which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the Board. The foregoing shall not preclude any owner or voluntary owners committee from proposing any bylaw amendment at any annual Association meeting.^{xxxiii}

35. Owners May Incorporate. All of the rights, powers, obligations, and duties of the apartment owners imposed hereunder may be exercised and enforced by a nonprofit, membership corporation, formed under the applicable laws for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the apartment owners. The formation of said corporation shall in no way alter the terms, covenants, and conditions set forth herein and the articles and bylaws 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 terms, covenants, or conditions contained herein shall be void and of no effect.^{xxxiv}

ⁱ The new language refers to the recorded amendments required to be included in the restated document per HRS Ch. 514B.

ⁱⁱ The new language refers to the recorded amendments required to be included in the restated document per HRS Ch. 514B.

ⁱⁱⁱ The deleted referenced sections are redundant and duplicative of the recorded restatement.

^{iv} The new citation refers to HRS Ch. 514B provisions concerning restating governing documents.

^v The deleted referenced sections are redundant and duplicative of the recorded restatement.

^{vi} The deleted referenced sections are redundant and duplicative of the recorded restatement.

^{vii} The new language refers to the recorded Restatement and the new title of the Second Restatement required by HRS Ch. 514B. The new language refers to the recorded Restatement and the new title of the Second Restatement required by HRS Ch. 514B.

^{viii} Per HRS Ch. 514B some provisions of said Chapter retroactively apply to the Association.

^{ix} Per HRS Ch. 514B some provisions of said Chapter retroactively apply to the Association. The citation to HRS Ch. 514B has been added to various paragraphs throughout the Second Restatements

^x This paragraph is restated per HRS Sec. 514B-104.

^{xi} This definition has been revised to comply with HRS Sec. 514B-140(c)

^{xii} Per HRS Ch. 514B some provisions of said Chapter retroactively apply to the Association

^{xiii} This paragraph is restated per HRS Sec. 514B-109.

^{xiv} The Association amended the By-Laws per that Certification of Amendment, etc. recorded in Doc. No. 2003-258895.

^{xv} The new Section applies HRS Section 514B-123 which is retroactive and may be adopted by the Board without an owner vote.

^{xvi} The new Section applies HRS Section 514B-123 which is retroactive and may be adopted by the Board without an owner vote.

^{xvii} The new Section applies HRS Section 514B-121 which is retroactive and may be adopted by the Board without an owner vote.

^{xviii} The Association amended the By-Laws per that Certification of Amendments, etc., recorded in Doc. No. 2002-151144.

^{xix} The Association amended the By-Laws per that Certification of Amendment, etc. recorded in Doc. No. 2003-258895.

^{xx} The new Section applies in general HRS Sections 514B-152 & 153 which is retroactive and may be adopted by the Board without an owner vote.

^{xxi} The new Section applies HRS Section 514B-133 which is retroactive and may be adopted by the Board without an owner vote.

^{xxii} The new Section applies HRS Section 514B-133 which is retroactive and may be adopted by the Board without an owner vote.

^{xxiii} The new Section applies HRS Section 514B-122 which is retroactive and may be adopted by the Board without an owner vote

^{xxiv} The new Section applies HRS Section 514B-107 which is retroactive and may be adopted by the Board without an owner vote.

^{xxv} This Section applies HRS Section 514B-148 which is retroactive and may be adopted by the Board without an owner vote.

^{xxvi} This Section applies HRS Section 514B-148 which is retroactive and may be adopted by the Board without an owner vote.

^{xxvii} This Section applies HRS Section 514B-148 which is retroactive and may be adopted by the Board without an owner vote.

^{xxviii} This Section applies HRS Section 514B-146 which is retroactive and may be adopted by the Board without an owner vote.

^{xxix} This new paragraph applies HRS Section 514B-146 (e) & (f) which is retroactive and may be adopted by the Board without an owner vote.

^{xxx} This new paragraph applies HRS Section 514B-145 which is retroactive and may be adopted by the Board without an owner vote.

^{xxxi} This deletion applies HRS Section 514B-157 which is retroactive and may be adopted by the Board without an owner vote.

^{xxxii} This Section has been restated to conform to Federal and State of Hawaii Fair Housing Acts.

^{xxxiii} The Association amended the By-Laws per that Certification of Amendment, etc. recorded in Doc. No. 2003-258895.

^{xxxiv} This new language applies HRS Section 514B-110 which is retroactive and may be adopted by the Board without an owner vote.