

**Association of Apartment Owners of Maui Sunset  
Board of Directors' Special Board Meeting  
November 23, 2021, 2:00 p.m. HST  
Meeting held via Zoom**

**DIRECTORS PRESENT:** Debra Flynn, *President*; Leslie Richardson, *Vice President*; Steve Meyer, *Secretary*; Walt Smith, *Treasurer*; Perry Brassington, Ryan Bazant, *Directors*.

**OTHERS PRESENT:** Kari Davis, *General Manager*

**I. CALL TO ORDER**

The President called the Board of Directors' Special Board Meeting of the Association of Apartment Owners (AOAO) of Maui Sunset to order on Tuesday, November 23, 2021, at 2:03 p.m., HST. The meeting will be conducted according to Robert's Rules of Order. Leslie Richardson will be taking the Minutes for the meeting.

**II. ROLL CALL AND DECLARATION OF A QUORUM**

The Chair did roll call and a quorum was declared with all members in attendance with the exception of Blain Nelson.

**III. CERTIFICATION OF NOTICE OF MEETING**

Mr. Steve Meyer certified that a Notice of Meeting and Meeting Agenda were sent to all owners and directors and posted on property as required by Hawaii state law.

**IV. SECRETARY REPORT**

**Motion:** *To approve the Proxy format.*

Steve Meyer/Ryan Bazant; **No Discussion. CARRIED** unanimously.

**V. RULES & REGULATIONS REPORT**

**Motion:** *To remove counsel's recommended language around service animals from Article V, Section 2(i) from the proposed Restatement.*

Steve Meyer/Leslie Richardson; **Discussion ensued. CARRIED** unanimously.

**Motion:** *To remove counsel's recommended language in Article V, Section 2(j) related to smoking from the proposed Restatement.*

Walt Smith/Leslie Richardson; **Discussion ensued. CARRIED** unanimously.

**Motion:** *To approve the restatement of the bylaws as recommended by the Bylaw Committee in the redline version and as summarized in Exhibit A.*

Ryan Bazant; **Discussion ensued. Perry abstained. MOTION CARRIED.**

**VI. Ballot 4 BYLAW AMENDMENTS**

**Motion:** *To approve the Ballot #4 Bylaw Amendments to go to owner vote via ballot for the Annual Homeowners Meeting.*

Leslie Richardson/Perry Brassington; **Discussion ensued. CARRIED** unanimously.

**VII. Ballots for Election of Directors, Tax Resolution, Approval of Association Meeting Minutes and Standard Motions for Board business.**

**Motion:** *To approve the drafts of Ballots 1 –5 to be approved and finalized by Aloha Property Management.*

Steve Meyer/Perry Brassington. **Discussion ensued. CARRIED** unanimously.

**VIII. UNFINISHED BUSINESS**

**Motion:** *Authorize putting the revised Pool Rules on back of lap swim sign and print up cards. A permanent sign to be reviewed at a later date.*

Walt Smith/Perry Brassington; **Discussion ensued. CARRIED** unanimously.

**IX. NEW BUSINESS**

There was no new executable business.

**ADJOURNMENT:**

**Motion:** *To adjourn the meeting at 4:05 p.m. HST*

Leslie Richardson/Walt Smith; **CARRIED** unanimously.

The Board will convene in Executive Session at 4:10 p.m. (HST) to discuss a personnel matter and provide an update on the pending mediation matter.

Approved (date): \_\_\_\_\_

Initials: \_\_\_\_\_

## EXHIBIT A - Summary of bylaw restatements

1. *To remove all references to HRS Chapter §514A.*
2. *To change all references in the Bylaws to agree with how they are cited in the Hawaii Revised Statute with capitalized first letters for defined terms, e.g., Association, Managing Agent, Owner, etc.*
3. *To Edit all references from By-law or By-laws to "Bylaw" or "Bylaws" per advice of counsel.*
4. *To Edit all references from Manager or General Manager to "Resident Manager."*
5. *To change the formatting for each definition in Article I, Section 1 to be its own paragraph.*
6. *In Article I, Section 1 add the definition for "Limited Comment Elements" consistent with HRS Chapter 514B-3 to mean a portion of the common elements designated by the Declaration or by operation of section 514B-35 for the exclusive use of one or more but fewer than all of the Units.*
7. *In Article I, Section 1 under "Apartment Owner" add "or Unit" after Apartment to read "Apartment or Unit Owner"*
8. *In Article I, Section 1 under "Apartment" add "or Unit" after Apartment to read "Apartment or Unit"*
9. *In Article I, Section 3 at the end of the paragraph add: "Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent, Resident Manager, or Board on behalf of the Association or, in a proper case, by an aggrieved Unit Owner."*
10. *In Article II, Section 4 change the paragraph to read: "As used in these By-Laws, the term "Majority of Apartment Owners" shall mean the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interest. Any specified percentage of the Unit Owners means the Owners of Units to which are appurtenant such percentage of common interest. (HRS § 514B-3)"*
11. *In Article II, Section 5(a) after the sentence related to voting by secret written ballot add: "Each Unit Owner present in person or represented by proxy shall have a number of votes equal to the Unit Owner's voting percentage multiplied by the number of positions to be filled at the election.*
  - (b) Each Unit Owner shall be entitled to cumulate the votes of the Unit Owner and give all votes to one nominee or distribute the votes among any or all of the nominees.*
  - (c) The nominee or nominees receiving the highest number of votes under this section, up to*

*the total number of positions to be filled, shall be deemed elected and shall be given the longest term."*

12. In Article II, Section 6(a)(3) restate the paragraph to agree with HRS § 514B-123(e) to read as follows:

- (3) Contain boxes wherein the Owner has indicated that the proxy is given:
  - (A) For quorum purposes only;
  - (B) To the individual whose name is printed on a line next to this box;
  - (C) To the Board of Directors as a whole and that the vote is to be made on the basis of the preference of the majority of the Board Directors present at the meeting; or
  - (D) To those Directors present at the meeting with and the vote to be shared with each board member Director receiving an equal percentage.

*Provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only." (HRS § 514B-123(e)(1))*

13. In Article II, Section 6(b)(1) change the reference from thirty (30) days to *twenty-one (21) days* pursuant to HRS §514B-123(e)(1).

14. In Article II, Section 6(b)(1) Edit the last sentence to read: "The statement, *which shall not exceed one hundred (100) words be limited to black text on white paper, shall not exceed one single-sided 8 ½" x 11" page*, indicating the Owner's qualifications to serve on the Board ~~and~~ *or* reasons for wanting to receive proxies. " pursuant to HRS §514B-123(e)(1).

15. In Article II, Section 8 edit the second sentence to read: "All ~~meetings of the~~ Association *meetings* shall be held at the ~~Project~~ *address of the Condominium* or ~~such other suitable place~~ *elsewhere* within the State of Hawaii convenient to the Apartment Owners as may be ~~designated~~ *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 of Hawaii. (HRS § 514B-121(c))"*

16. In Article II, Section 8 third sentence, change reference from twenty (20) percent to twenty-five (25) percent. In addition, create new subsection (b) with the third and fourth sentence, new subsection (c) with the fifth through tenth sentence, new subsection (d) with the eleventh sentence and new subsection (e) with the twelfth sentence renumbering the bullets to agree formatting.

17. In Article II, Section 8 third sentence (i.e., new subsection (b)) add that the President may call a special meeting pursuant to HRS §514B-121(c).

18. Article II, Section 8 ninth sentence (i.e., new subsection (c) in the second paragraph) after

*"items on the agenda for such meeting" add in parens "(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 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)" pursuant to HRS §514B-121(d).*

19. *In Article II, Section 9 at end of the flush language, add "Unless otherwise provided in the Declaration or Bylaws, a 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. (HRS § 514B-125(d))"*
20. *In Article III, Section 1 edit third sentence to read: "All members of the Board of Directors shall be Unit Owners or co-Owners, vendees under an agreement of sale, a trustee of a trust which owns a Unit, or an officer of any corporate owner, partner, member, or other person authorized to act on behalf of any other legal entity which owns a Unit or in the case of fiduciary Apartment Owners, shall be the fiduciaries or officers or employees of corporate fiduciaries." pursuant to HRS §514B-107(a).*
21. *In Article III, Section 1 edit fifth sentence to read: " No tenant, Resident Manager, or employee of a condominium shall serve on its Board." pursuant to HRS §514B-107(b).*
22. *In Article III, Section 2, after fiduciary duty add: "and exercise the degree of care and loyalty as required" in the performance of the Director's responsibilities pursuant to HRS §514B-106(a).*
23. *In Article III, Section 2(s), edit to read: "(s) Except in emergency situations or with the approval of a majority of the Unit Owners, 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 Before imposing or collecting an assessment under this subparagraph subsection that has not been approved by a Majority of the Unit Owners, the Board shall adopt pass a resolution containing the 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 members with the notice of assessment. (HRS § 514B-148(e))"*
24. *In Article III, Section 2 add the following language at the end of all other flush language: "'Conflict of Interest" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. (HRS § 514B-125(g))"*

25. In Article III, Section 3(b) move the second paragraph to be subsection (c). And renumber the remaining paragraphs.
26. In Article III, Section 11, Edit the first sentence to read: "Subject to the provisions of Article II, Section 5 of these Bylaws, at any regular or special meeting of the Association duly called, any ~~one or more of the directors~~ **member** of the Board may be removed, with or without cause, by a vote of Apartment Owners and a successor ~~may then and there~~ shall be elected **for the remainder of the term to fill the vacancies thus created.**"
27. In Article III, Section 12 amend to read: " All meetings of the Board, **other than executive session**, shall be open to all Apartment Owners, and Apartment Owners who are not ~~Directors on the Board may~~ **shall be permitted to** participate in any deliberation or discussion, **other than executive session, pursuant to Owner participation rules adopted by the Board unless a majority of a quorum of the Board votes otherwise.** The Board, ~~of Directors, with the approval of~~ **by majority vote of a quorum**, may adjourn a meeting and reconvene in executive session to discuss and vote upon **matters (HRS §514B-125(a) & (c)):**
- (a) **Concerning** personnel;
  - (b) **Concerning** ~~pending or threatened~~ litigation in which the Association is or may become involved ~~or orders of business of a similar nature;~~
  - (c) **Necessary to protect the attorney-client privilege of the Association; or**
  - (d) **Necessary to protect the interest of the Association while negotiating contracts, leases, and other commercial transactions.**
28. The **general** nature of any ~~and all~~ business to be considered in executive session shall first be announced in open session. (HRS § 514B-125(c))
29. Article IV, Section 2 add at end of section: "**No two or more offices may be held by the same person as provided in Article 10 of the Association's Articles of Incorporation dated June 1, 1992.**"
30. Article IV, Section 11(b)(2) 1<sup>st</sup> ¶ 1<sup>st</sup> sentence edit to read: "Minutes of meetings of the Board of Directors ~~and the Association~~ for the current and prior year shall **either: (i) be available for examination by Apartment Owners at no cost or on twenty-four (24) hour loan at a convenient hour and convenient place designated by the Board; or (ii) be transmitted to any Apartment Owner making a request for the minutes, by the Board of Directors, Managing Agent, or the Association's representative, within fifteen (15) days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Owner, if the Owner indicated a preference at the time of the request; and provided further that the Owner shall pay a reasonable fee for administrative costs associated with handling the request. (HRS § 514B-154(a))**" The criteria related to Association meeting minutes to be moved into new bullet (3). See #32 below.
31. Article IV, Section 11(b)(2) first ¶, 2<sup>nd</sup> sentence shift to a new paragraph and edit to read: "The minutes **of meetings of the Board** shall include the recorded vote of each Board

member on all motions except those voted on in executive session. (HRS § 514B-126(a))” In addition, add the following: *“Minutes of meetings of the Board shall be approved no later than the second succeeding regular meeting. Minutes of all meetings of the Board shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within thirty (30) 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. And delete the following: ~~Copies of meeting minutes shall be provided to any Apartment Owner upon the Apartment Owner’s request provided that the Apartment Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.~~ (HRS § 514B-126(b)-(c))* The stricken language to be moved under subsection (4) as flush language.

32. Article IV, Section 11(b)(3), separate the Association meeting minutes into a new paragraph and edit to read: *“Minutes of meetings of the ~~Board of Directors and~~ Association shall be approved at the next succeeding regular meeting ~~or by the Board, within sixty (60) days after the meeting, if authorized by the Owners at an annual meeting. If approved by the Board, Owners shall be given a copy of approved minutes or notified of the availability of the minutes within thirty (30) days after approval.~~ (HRS § 514B-122(a))”*
33. Article IV, Section 11(b)(3) add paragraph that reads: *“Minutes of all meetings of the Association 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. (HRS § 514B-122(b))”* and add at the end *“An Owner shall be allowed to offer corrections to the minutes at an Association meeting. (HRS § 514B-122(c)).”*
34. Article IV, Section 11(b)(4) [formerly 11(b)(iii)] change “current and prior year” to read *“duration those records are kept by the Association”* pursuant to HRS §514B-154(b).
35. Article IV, Section 11(b)(5) [formerly 11(b)(iv)] edit subparagraph to read: *“After any Association meeting, and not earlier, Owners shall ~~also~~ be permitted to examine ~~view~~ proxies, tally sheets, ballots, apartment Owners’ check-in lists, and the certificate of election ~~for a period of thirty (30) days following any Association meeting~~ provided that:*
  - (A) *Owners shall make a request to examine the documents within thirty (30) days after the Association meeting;*
  - (B) *The Board may require Apartment Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and*
  - (C) *The apartment Owners shall pay for administrative costs in excess of eight (8) hours per year.”*

*The documents may be destroyed ninety (90) days after the Association meeting; provided that in the event of a contested election, the documents shall be retained until the contested election is resolved. ~~Proxies and ballots may be destroyed following the thirty (30) days~~*

~~period~~. . Copies of tally sheets, Apartment Owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Apartment Owner upon the Apartment Owner's request, provided that the Apartment Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS § 514B-154(c))

36. In Article IV, Section 11 add new subsection (c) with the Heading "Association Documents to be provided" and include the documents listed in HRS Chapter 514B-154.5(a)(1) – (15) and 154.5(b) – (f) as indicated below:

(c) Association Documents to be provided. Notwithstanding any other provision in the Declaration, Bylaws, or House Rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided shall be made available to any Owner and the Owner's authorized agents by the Managing Agent, Resident Manager, Board through a Board member, or the Association's representative:

- (1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of Units;
- (2) An accurate copy of the Declaration, Bylaws, House Rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;
- (3) Detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying, and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for Common Expenses;
- (4) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or elsewhere within the State as determined by the Board;
- (5) All signed and executed agreements for managing the operation of the property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments;
- (6) An accurate and current list of members of the Condominium Association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any Unit Owner or Owner's authorized agent who furnishes to the Managing Agent, Resident Manager, or the Board a duly executed and acknowledged affidavit stating that the list:
  - (A) Shall be used by the Unit Owner or Owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other Unit Owners with respect to Association matters; and

- (B) Shall not be used by the Unit Owner or Owner's authorized agent or furnished to anyone else for any other purpose;
- (7) The Association's most current financial statement, at no cost or on 24-hour loan, at a convenient location designated by the Board;
  - (8) Meeting minutes of the Association as indicated in subsection (b);
  - (9) Meeting minutes of the Board as indicated in subsection (b);
  - (10) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the duration those records are kept by the Association, and any documents regarding delinquencies of ninety days or more shall be available for examination by Unit Owners or Owners' authorized agents at convenient hours at a place designated by the Board as indicated in subsection (b);
  - (11) Proxies, tally sheets, ballots, Unit Owners' check-in lists, and the certificate of election as indicated in subsection (b);
  - (12) Copies of an Association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or HRS Chapter 514B;
  - (13) A copy of the management contract from the entity that manages the operation of the property before the organization of an Association;
  - (14) Other documents requested by a Unit Owner or Owner's authorized agent in writing; provided that the Board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph; and
  - (15) A copy of any contract, written job description, and compensation between the Association and any person or entity retained by the Association to manage the operation of the property on-site, including but not limited to the general manager, operations manager, Resident Manager or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law. (HRS § 514B-154.5(a)(1)-(15))

*Copies of the items in subsection (c) shall be provided to any Apartment Owner or Owner's authorized agent upon the Owner's or Owner's authorized agent's request; provided that the Owner or Owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request. Notwithstanding any provision in the Declaration, Bylaws, or House Rules providing for another period of time, all documents, records, and information listed under this subsection,*

*whether maintained, kept, or required to be provided, shall be provided no later than thirty (30) days after receipt of an Apartment Owner's or Owner's authorized agent's written request, unless a lesser time is provided by statute. Any documents, records, and information, whether maintained, kept, or required to be provided may be made available electronically to the Unit Owner or Owner's authorized agent if the Owner or Owner's authorized agent requests such in writing. An Association may comply by making the required documents, records, and information available to Unit Owners or Owner's authorized agents for download through an internet site, at the option of each Unit Owner or Owner's authorized agent and at no cost to the Unit Owner or Owner's authorized agent. Any fee charged to an Apartment Owner or Owner's authorized agent to obtain copies of the Association's documents, records, and information, whether maintained, kept, or required to be provided shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page. (HRS § 514B-154.5(b)-(f))*

42. Article IV, Section (12) adjust percentage affirmative vote to ~~sixty-seven~~ **five** percent (67%) pursuant to HRS §514B-133(b).

43. Article V, Section 2(h) change to read: ~~“No Apartment Owner of an Apartment shall do any work that may which could jeopardize the soundness or safety of the Property, reduce the value thereof, or impair any easement or hereditament, as reasonably determined by the Board. nor may any No Apartment Owner may make or allow add any material structure addition or alteration without in every such case first obtaining the written consent of sixty-seven percent (67%) seventy-five (75%) of the Apartment Owners, together with the consent of all Apartment Owners whose apartment or appurtenant Limited Common Elements appurtenant thereto are directly affected being first obtained, and the approval of the Board, which shall not unreasonably withhold such approval. 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 alterations 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 Bylaws. Nonmaterial additions to or alterations of the Common Elements or Units, including, without limitation, additions to or alterations of a Unit made within the unit or within a Limited Common Element appurtenant to and for the exclusive use of the unit, shall require approval only by the Board.~~

*“Nonmaterial additions and alterations” mean an addition to or alteration of the Common Elements or a Unit that does not jeopardize the soundness or safety of the Property, reduce the value thereof, impair any easement, detract from the appearance of the Project, interfere with, or deprive any nonconsenting Owner of the use or enjoyment of any part of Property, or directly affect any nonconsenting Owner. For purposes of this Section, “solar energy devices” 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 must be installed in place and ready to be made operational in order to qualify as a "solar energy device."~~ "

44. Article VI, Section 1 Change the notice requirement to Apartment Owners for a revised budget from fifteen days (15) to thirty days (30).

Edit as follows: " If the Board should revise its budget for any current fiscal year, then the Board shall give each Apartment Owner written notice, not less than ~~fifteen~~ **thirty (30)** days before the effective date of such revised budget, of the revised amount of the total Common Expenses determined for the current fiscal year, and the proportion thereof for which his Apartment is liable. " pursuant to HRS §514B-106(c).

45. Article X, Section 13 change the percentage from sixty-five percent (65%) to sixty-seven percent (67%) as required by HRS §514B-108(e).

46. Article X, Section 14 add "**Mediation may occur in accordance with the provisions of Chapter 514B. (HRS §514B-161)**"

## EXHIBIT B – Final Draft with All Restatements

### ARTICLE I

#### INTRODUCTORY PROVISIONS

SECTION 1. Definitions. The terms used herein shall have the meanings given to them in said Chapter 514B of the Hawaii Revised Statutes (HRS), except as expressly otherwise provided herein.

"Common Elements" means those elements designated in the Declaration as common elements and limited common elements.

"Limited Common Elements" shall mean a portion of the common elements designated by the Declaration or by operation of HRS Chapter 514B-35 for the exclusive use of one or more but fewer than all of the Units. (HRS §514B-3)

"Property" shall include the land, the buildings, and all other improvements thereon (including the Apartments and the Common Elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith.

"Condominium" shall mean the Condominium Property Regime (to reflect the redesignation in 1988 of "horizontal" to "condominium" property regime) established by the Declaration.

"Rules and Regulations" refers to the Rules and Regulations or House Rules for the conduct of occupants of the buildings adopted by the Board of Directors as hereafter provided.

"Apartment or Unit Owner" means a person owning severally or as a co-tenant an Apartment or Unit and the common interest appertaining thereto, to the extent of such interest so owned.

"Apartment or Unit" as used herein has the same meaning and definition as contained in said HRS Chapter 514B.

The term "Association" means (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners of Maui Sunset.

SECTION 2. Conflicts. These Bylaws are set forth to comply with the requirements of Chapter 514B, Hawaii Revised Statutes, as amended. In case any of these Bylaws conflict with the provisions of said HRS Chapter 514B or of the Declaration, the provisions of said HRS Chapter 514B or of the Declaration, as the case may be, shall control.

SECTION 3. Application. All present and future Apartment Owners, mortgagees, tenants, and occupants of Apartments and their employees, and any other persons who may use the Condominium in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations. The acceptance of an Apartment Deed or the act of occupancy of an Apartment shall constitute an agreement that these Bylaws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent, Resident Manager, or Board on behalf of the Association or, in a proper case, by an aggrieved Unit Owner. (HRS §514B-112(c))

## ARTICLE II

### ASSOCIATION OF OWNERS

SECTION 1. Voting. Each Apartment Owner shall be entitled to that fraction of the total vote of the Apartment Owners which equals the percentage of the common interest appurtenant to such Apartment as set forth in the Declaration; provided, however, that votes allocated to any area which constitutes a Common Element under Hawaii Revised Statute (HRS) Chapter 514B shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any Apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such Apartment in such capacity. The vote for any Apartment owned of record by two (2) or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each such Apartment Owner shall be entitled to only a share of such vote in proportion to his share of ownership in such Apartment. (HRS §514B-123(b))

SECTION 2. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Apartment Owners having fifty percent (50%) of the total authorized votes of all Apartment Owners shall constitute a quorum at all meetings of the Association.

SECTION 3. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding upon all Apartment Owners for all purposes except where in the Declaration or these Bylaws or by law, a higher percentage vote is required.

SECTION 4. Majority of the Apartment Owners. As used in these Bylaws, the term "Majority of the Apartment Owners" shall mean the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interest. Any specified percentage of the Unit Owners means the Owners of Units to which are appurtenant such percentage of common interest. (HRS §514B-3)

SECTION 5. Cumulative Voting.

(a) If more than two (2) positions on the Board of Directors are to be filled, then such election shall be determined by cumulative voting. Voting for the Board shall be by secret written ballot. Each Unit Owner present in person or represented by proxy shall have a number of votes equal to the Unit Owner's voting percentage multiplied by the number of positions to be filled at the election.

(b) Each Unit Owner shall be entitled to cumulate the votes of the Unit Owner and give all of the votes to one nominee or distribute the votes among any or all of the nominees.

(c) The nominee or nominees receiving the highest number of votes under this section, up to the total number of positions to be filled, shall be deemed elected and shall be given the longest term. (HRS §514B-124.5(a)-(c))

(d) Unless the entire governing Board is removed from office by the vote of Association members, an individual governing Board member shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal is greater than the quotient arrived at

by dividing the total number of votes that may be cast under cumulative voting procedures by a divider equal to one (1) plus the authorized number of governing Board members.

SECTION 6. Proxies and Pledges.

(a) Requirements. The authority given by any Owner to another person to represent him at meetings of the Association must be in writing, and to be valid must:

(1) Be delivered to the Secretary of the Association or Managing Agent, if any, no later than 4:30 PM on the second business day prior to the date of the meeting to which it pertains;

(2) Contain at least the name of the Association, the date of the meeting of the Association, the printed names and signatures of the persons giving the proxy, and the Apartments for which the proxy is given, and the date that the proxy is given; and

(3) Contain boxes wherein the Owner has indicated that the proxy is given:

(A) For quorum purposes only;

(B) To the individual whose name is printed on a line next to this box;

(C) To the Board as a whole and that the vote is to be made on the basis of the preference of the majority of the Directors present at the meeting; or

(D) To those Directors present at the meeting with the vote to be shared with each Director receiving an equal percentage.

Provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) is checked, the proxy shall be counted for quorum purposes only.

(HRS §514B-123(e)(1))

(b) Limitations On Proxy Votes.

(1) If the Board of Directors intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 5 above, it shall post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one (21) days prior to its distribution of proxies; provided, that if the Board receives within seven (7) days of the posted notice a request by an 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 the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statement; 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, which shall be limited to black text on white paper, shall not exceed one single-sided 8 ½" x 11" page, indicating the Owner's qualifications to serve on the Board or reasons for wanting to receive proxies. (HRS §514B-123(i)(1))

(2) A Managing Agent or Resident Manager employed by the Association shall not solicit any proxies for his use nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(3) Neither the Board of Directors nor a member of the Board shall use Association funds to solicit proxies except for the distribution of proxies as set forth above in Section 6(b)(i); provided that this shall not prevent an individual member of the Board from soliciting proxies as an Apartment Owner under Section 6 (b)(i).

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

(c) Facsimile Proxies. A copy, facsimile, telecommunication, or other reliable reproduction of a 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.

(d) Termination. Proxies 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 with respect to which the proxy has been issued.

(e) The proxy form prepared by the Association also shall contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report.

(f) The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the Common Elements by Apartment Owners; provided the Board of Directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations.

Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only as designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

SECTION 7. 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 any Apartment shall have a right to any notice required to be given to such Apartment Owner, and the delivery of such notice, which shall be in addition to the notice required to be delivered to the Apartment 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.

SECTION 8. Meetings of the Association.

(a) There shall be an annual meeting of the Association within three (3) months following the end of the fiscal year established for the Association at such reasonable time and place

within the State of Hawaii as the Board shall designate by written notice delivered to each Apartment Owner not less than thirty (30) days prior to the date fixed for such meeting. 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 of Hawaii. (HRS §514B-121(f))

(b) Special meetings of the Association may be called, from time to time, by at least twenty-five percent (25%) of the Apartment Owners, the President or by a majority of the Board, pursuant to a written notice prepared and signed by the persons calling such special meeting, and delivered to each Apartment Owner not less than fourteen (14) days prior to the date fixed for such meeting. The persons calling such special meeting shall fix, and such special meeting shall be held at, a reasonable time and place within the State of Hawaii. (HRS §514B-121(c))

(c) Notices of meeting shall be delivered by the Resident Manager, or Managing Agent or the Secretary, as the Board shall determine. Developer shall call the first meeting of the Association. 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 at any meeting of the Association, upon the affirmative vote of a majority of the Apartment Owners present at any such meeting.

Notices of Association meetings, whether annual or special, shall contain at least: The date and time of such meeting, the place of such meeting, the items on the agenda for such meeting (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 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) and a standard proxy form authorized by the Association, if any. Every notice of special meeting shall state the business to be conducted at such meeting; at such special meeting only the business stated in such notice shall be considered or acted upon. (HRS §514B-121(d))

(d) In the absence of a quorum at any meeting of the Association, a majority of the Apartment 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.

(e) Notwithstanding anything herein to the contrary, the following actions shall only be taken by the Association upon affirmative vote of more than fifty percent (50%) of the voting power of the Association.

- (1) Election and removal of Board members subject to the provisions of Article II, Section 5 hereof.
- (2) Annexing any property to the Condominium Property Regime.
- (3) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the Association for a term longer than one (1) year with the following exceptions:

- (i) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.
  - (ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.
  - (iii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.
- (4) Borrowing money on behalf of the Association where the total outstanding amount of such loans exceeds five percent (5%) of the budget of the Association for the current fiscal year.
- (5) Increase any annual budget by more than twenty percent (20%) over the prior year's annual budget.

SECTION 9. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll Call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers.
- (e) Reports of Board.
- (f) Reports of Committees.
- (g) Election of inspectors of election (when so required).
- (h) Election of members of the Board (when so required).
- (i) Unfinished Business.
- (j) New Business.

All meetings of the Association shall be conducted in accordance with the most recent edition of Robert's Rules of Order, or such other accepted rules for the conduct of meetings. Unless otherwise provided in the Declaration or Bylaws, a 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. (HRS §514B-125(d))

## ARTICLE III

### BOARD OF DIRECTORS

SECTION 1. Classes, Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of two (2) classes: voting and nonvoting. The voting class of the Board of Directors shall be composed of seven (7) persons, unless not less than sixty-five percent (65%) of all Apartment Owners vote by mail ballot, or at a special or annual meeting to reduce the number of Directors. All members of the Board of Directors shall be Unit Owners or co-owners, vendees under an agreement of sale, a trustee of a trust which owns a Unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a Unit. There shall not be more than one representative on the Board of Directors from any one (1) Unit. No tenant, Resident Manager, or employee of a Condominium shall serve on the Board of Directors. The nonvoting class of the Board of Directors shall be composed of one (1) person, who shall be a Hawaii resident, and who shall be an Owner of an Apartment as the status of ownership is described above in this Section 1. (HRS §514B-107(a)-(b))

SECTION 2. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law or by the Declaration or by these Bylaws may not be delegated to the Board by the Apartment Owners. Each member of the Board of Directors shall owe the Association a fiduciary duty and exercise a degree of care and loyalty as required in the performance of the director's responsibilities. (HRS §514B-106(a)) Such powers and duties of the Board shall include, but shall not be limited to 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 and in the operation, care, upkeep, security, and maintenance of the Common Elements.

(i) Subject to the requirements of Article II, Section 8(d) of these Bylaws, 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 Apartment 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

(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 these Bylaws, the Declaration, and any administrative Rules and Regulations duly enacted for the use of the Apartments or Common Elements.

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

(1) The Board notifies the Owner in writing of:

(A) The identity and location of the personalty, and

(B) The Board's intent to so sell, store, donate, or dispose of the personalty.

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

(2) If the identity or address of the Owner is unknown, the Board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

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

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

(o) The Board 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 replacement reserves of the Association as of the date of the budget.

(4) The estimated replacement reserves the Association will require to maintain the Common Elements based on a reserve study performed by the Association. A general explanation of how the estimated replacement reserves are computed. and

(5) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

(6) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study prepared pursuant to paragraph (o)(4) above.

(p) 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 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 plan.

(q) 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 Common Elements. 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 Common Element for which capital expenditures or major maintenance will exceed \$10,000. Parts of the Common Element for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(r) The Association nor Apartment Owners, Directors, Officers, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(s) Except in emergency situations or with the approval of a Majority of the Unit Owners, 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. Before imposing or collecting an assessment under this subsection that has not been approved by a Majority of the Unit Owners, the Board shall adopt a resolution containing the 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 members with the notice of assessment. (HRS §514B-148(e))

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

(u) "Cash flow plan" means a minimum twenty (20) year projection of the Association's future income and expense requirements to fund fully its replacement reserves requirements each year during the twenty (20) year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty (20) year period, except in an emergency.

(v) "Emergency situation" means any extraordinary expense:

(1) Required by an order of a Court;

(2) Necessary to repair or maintain any part of the Common Element where a threat to personal safety is discovered;

(3) Necessary to repair any part of the Common Element that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;

(4) 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 the annual operating budget; or

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

(w) "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 (1) year.

(x) "Replacement reserves" means funds for the upkeep, repair, or replacement of the Common Elements.

The Apartment Owners may, except as otherwise provided by law, by resolution prospectively restrict any of the powers of the Board; provided that the enactment of such resolution by the Apartment Owners shall not, in any event, impair the validity of any contract or obligation previously entered upon by the Board, or under the authority of the Board, or of any transfer of property, or any interest in property, previously made by the Board or under the authority of the Board.

The Board 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 have the power to convey, transfer, mortgage or encumber any of the Common Elements of the Condominium.

A Director shall not cast any proxy vote at any Board meeting. A Director may not vote at any meeting on any issue in which he has a conflict of interest. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. "Conflict of Interest" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. (HRS §514B-125(g))

### SECTION 3. Managing Agent and Resident Manager.

(a) Except as herein otherwise provided with respect to the initial Managing Agent, the Board shall all times employ a responsible Hawaii Corporation as Managing Agent to manage and control the Property, subject at all times to direction by the Board, with such administrative functions

and powers as shall be delegated to said Managing agent by the Board. The Board of the initial Managing Agent may also employ a Manager. The compensation of the Managing Agent and of the Manager shall be such as shall be specified from time to time by the Board. The initial Managing Agent may be employed on behalf of the Association by the Developer for a term not to exceed one (1) year at a reasonable compensatory rate determined by the Developer.

(b) The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Condominium, (ii) maintenance, repair, replacement and restoration of the Common Elements and any additions or alteration thereto, (iii) purchase, maintenance and replacement of any equipment, (iv) provide for service of all utilities to the buildings and the various Apartments, (v) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Condominium, (vi) enter into contracts with others for the furnishing of such services as it deems proper for the Condominium, (vii) preparation of a proposed budget and schedule of assessments, (viii) collection of all assessments and payment of all bills., (ix) purchase such insurance as is contemplated by these Bylaws, (x) custody and control of all funds and maintenance of books and records and preparation of financial reports.

(c) The Board or Managing Agent, under direction of the Board, shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements 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 Rules and Regulations or, in any event, to any member who furnishes to the Managing Agent or the Board of Directors an affidavit stating that the list will be used by the Apartment Owners personally and only for the purpose of soliciting votes or proxies or providing information to other Apartment Owners with respect to Association matters and that the list will not be used or furnished to any other person for any other purpose.

(d) The Board may in its discretion limit any of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent. However, in no event shall any Resident Manager or Managing Agent solicit, for use by such Resident Manager or Managing Agent, any proxies from any Apartment Owner of the Association of Apartment Owners which employs him, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(e) Upon written request and at the cost of any Apartment Owners the Managing Agent shall deliver a certified statement of the status of the account of such Apartment Owner each month to the mortgagee of such Apartment Owner.

(f) The appointment and terms of compensation of the Managing Agent (other than the initial Managing Agent) shall be submitted to the Apartment Owners at every annual meeting for approval by a Majority of the Apartment Owners. Any contract therefore shall be subject to such approval, and, until first approved by the Apartment Owners, may be terminated by either the Board or the Managing Agent upon thirty (30) days' written notice thereof to the other, and any contract failing such approval shall terminate thirty (30) days thereafter, and the Board shall give prompt written notice thereof to the Managing Agent and appoint a qualified successor subject to such approval by the Apartment Owners.

(g) The Managing agent subject to the direction of the Board, may represent the Apartment Owners or any two or more Apartment Owners similarly situated, as a class, in any action, suit, or other proceeding concerning the Apartment Owners, the Common Elements, or one or more Apartments.

SECTION 4. Election and Term of Office.

(a) Election of members of the voting class of the Board of Directors shall be conducted such that at the first annual meeting of the Association, three (3) Directors shall be elected for the term of three (3) years, three (3) Directors shall be elected for the term of two (2) years, and three (3) Directors shall be elected for the term of one (1) year. At the expiration of the initial term of office of each member of the voting class of the Board of Directors, his successor shall be elected to serve a term of three (3) years. Each member of the voting class of the Board of Directors shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners in case of delay in the election of a successor.

(b) If at any time no member of the voting class of the Board of Directors shall be a resident of the State of Hawaii, then a majority of the members of the voting class of the Board of Directors immediately shall appoint an Apartment Owner to the nonvoting class of the Board of Directors. Such member of the nonvoting class of the Board of Directors shall hold office until an Apartment Owner, who is a Hawaii resident, shall be elected or appointed as a member of the voting class of the Board of Directors.

SECTION 5. Vacancies. Vacancies in the Board shall be filled by vote of a majority of the remaining members at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board for the remainder of the term of the member whose vacancy he filled and until a successor shall be elected at the next annual meeting of the Association. Death, incapacity or resignation of any Director, or his continuous absence from the State of Hawaii for more than six (6) months, or his ceasing to be an Apartment Owners, shall cause his office to become vacant.

SECTION 6. Meetings of Board of Directors. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by rules which the Board shall adopt and from time to time amend, but at least one (1) such meeting shall be held during each calendar quarter of each year. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to the meeting. Special meetings of the Board may be called by the President on seven (7) days' notice to each member of the Board, given personally or by mail, telephone or telegraph, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least three (3) members of the Board. 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. All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order.

SECTION 7. Quorum of Board of Directors. At all meetings of the Board, a majority of the total number of members of the voting class of the Board of Directors as established by these Bylaws shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the voting class of the Board of Directors present at a meeting at which a quorum is present shall constitute a decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

SECTION 8. Fidelity Bonds. The Board shall obtain adequate fidelity bonds for all Officers and employees of the Condominium handling or responsible for Condominium funds. The premiums on such bonds shall constitute a common expense.

SECTION 9. Compensation. No member of the Board shall receive any compensation from the Condominium for acting as such. Directors shall not expend Association funds for their travel, Directors' fees, and per diem, unless Apartment Owners are informed, and a majority approve of these expenses. Directors may expend Association funds, which shall not be deemed to be compensation to 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 include 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, all other travel expenses incurred under this subsection shall be subject to the requirements of this Section 9.

SECTION 10. Liability and Indemnity of the Board of Directors and Officers. The members of the Board and Officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise, except for their own individual negligence or willful misconduct. The Association shall indemnify each Director and Officer of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation, or inquiry hereafter made, instituted, or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director or Officer, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such Director or Officer, whether or not he continues to be such Director or Officer at the time of the incurring or imposition of such costs, expenses or liabilities except such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer. As to whether or not a Director or Officer was liable by reason of negligence or willful misconduct toward the Association in the performance of his duties as such Director or Officer, in the absence of such final adjudication of the existence of such liability, the Board and each Director and Officer may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board. The foregoing right of indemnification shall not be exclusive of other rights to which any such Director or Officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators, and assigns of each such Director and Officer.

SECTION 11. Removal of Directors. Subject to the provisions of Article II, Section 5 of these Bylaws, at any regular or special meeting of the Association duly called, any member of the Board may be removed, with or without cause, by a vote of Apartment Owners and a successor shall be elected for the remainder of the term to fill the vacancies thus created. Any Director whose removal has been proposed by the Apartment Owners shall be given an opportunity to be heard at such meeting. If such removal 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 Bylaws. Except as otherwise provided herein, such meeting for the removal from office of Directors shall be scheduled, noticed, and conducted in accordance with these Bylaws. (HRS §514B-106(f))

SECTION 12. Open and Executive Board Meetings. All meetings of the Board, other than executive session, shall be open to all Apartment Owners, and Apartment Owners who are not on the Board shall be permitted to participate in any deliberation or discussion, other than executive session, pursuant to Owner participation rules adopted by the Board. The Board, by majority vote, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters (HRS §514B-125(a) & (c)):

- (a) Concerning personnel;
- (b) Concerning litigation in which the Association is or may become involved;
- (c) Necessary to protect the attorney-client privilege of the Association; or
- (d) Necessary to protect the interest of the Association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session. (HRS §514B-125(c))

SECTION 13. Provision of Project Documents. The Association at its expense shall provide all Board members with a current copy of the Association's Declaration, Bylaws, Rules and Regulations (House Rules), and, annually, a copy of the Hawaii Condominium Property Act with amendments.

## ARTICLE IV

### OFFICERS

SECTION 1. Designation. The principal Officers of the Condominium shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other Officers as in its judgment may be necessary. The President and Vice President shall, but no other Officers need be, members of the Board.

SECTION 2. Election of Officers. The Officers of the Condominium shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board. An Apartment Owner shall not act as an Officer of the Association and an employee of the Association or Managing Agent. No two or more offices may be held by the same person as provided in Article 10 of the Association's Articles of Incorporation dated June 1, 1992.

SECTION 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any Officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board, called for such purpose.

SECTION 4. President. The President shall be the chief executive officer of the Condominium. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are incident to the office of President of a stock corporation organized under the laws of the State of Hawaii, including but not limited to the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

SECTION 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board or by the President.

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the laws of the State of Hawaii.

SECTION 7. Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements of the Association, and for the preparation of all required financial data. He shall be responsible for the deposit of all monies and other valuable effects in such depositories as may from time to time be designated by the Board, and he shall, in general, perform all the duties incident to the office of Treasurer of a stock corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent.

SECTION 8. Auditor. The Association shall elect annually a certified public accountant or accounting firm as auditor, who shall not be an Officer or own any interest in any Apartment, to audit

the books and financial records of the Association as required by law or as directed additionally by the Board.

(a) The Association shall conduct an annual audit of the Association financial accounts and no less than one (1) annual unannounced verification of the Association's cash balance by a public accountant.

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

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

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

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

SECTION 9. Execution of Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Condominium shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board.

SECTION 10. Compensation of Officers. No Officer shall receive any compensation from the Condominium for acting as such.

SECTION 11. Location and Inspection of Books and Records.

(a) Location and Financial Records. 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 the State of Hawaii as the Board shall designate.

(b) Inspection of Financial Records and Minutes.

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

(2) Minutes of meetings of the Board of Directors for the current and prior year shall either: (i) be available for examination by Apartment Owners at no cost or on twenty-four (24) hour loan at a convenient hour and convenient place designated by the Board; or (ii) be transmitted to any Apartment Owner making a request for the minutes, by the Board of Directors, Managing Agent or the Association's representative, within fifteen (15) days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Owner, if the Owner indicated a preference at the time of the request; and provided further that the Owner shall pay a reasonable fee for administrative costs associated with handling the request. (HRS §514B-154(a))

The minutes of meetings of the Board shall include the recorded vote of each Board member on all motions except those voted on in executive session. (HRS §514B-126(a)) Minutes of meetings of the Board shall be approved no later than the second succeeding regular meeting. Minutes of all meetings of the Board shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within thirty (30) 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. (HRS §514B-126(b)-(c))

(3) Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) days after the meeting, if authorized by the Owners at an annual meeting. If approved by the Board, Owners shall be given copy of the approved minutes or notified of the availability of the minutes within thirty (30) days after approval. (HRS §514B-122(a))

Minutes of all meetings of the Association 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. (HRS §514B-122(b)) An Owner shall be allowed to offer corrections to the minutes at an Association meeting. (HRS §514B-122(c))

(4) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledger, check ledgers, insurance policies, contracts, and invoices of the Association for the duration those records are kept by the Association and delinquencies of ninety (90) days or more shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board; provided that:

(A) The Board may require Apartment Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both; and

(B) Apartment Owners shall pay for administrative costs in excess of eight (8) hours per year.

Copies of these items shall be provided to any Apartment Owner upon the Apartment Owner's request, provided that the Apartment Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS §514B-154(b))

(5) After any Association meeting, and not earlier, Owners shall be permitted to examine proxies, tally sheets, ballots, Apartment Owners' check-in lists, and the certificate of election provided that:

(A) Owners shall make a request to examine the documents within thirty (30) days after the Association meeting;

(B) The Board may require Apartment Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

(C) The Apartment Owners shall pay for administrative costs in excess of eight (8) hours per year.

The documents may be destroyed ninety (90) days after the Association meeting; provided that in the event of a contested election, the documents shall be retained until the contested election is resolved. Copies of tally sheets, Apartment Owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Apartment Owner upon the Apartment Owner's request, provided that the Apartment Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS §514B-154(c))

(6) 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) Association Documents to be provided. Notwithstanding any other provision in the Declaration, Bylaws, or House Rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided shall be made available to any Owner and the Owner's authorized agents by the Managing Agent, Resident Manager, Board through a Board member, or the Association's representative:

(1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of Units;

(2) An accurate copy of the Declaration, Bylaws, House Rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;

(3) Detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying, and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for Common Expenses;

(4) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or elsewhere within the State as determined by the Board;

(5) All signed and executed agreements for managing the operation of the Property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments;

(6) An accurate and current list of members of the Condominium Association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any Unit Owner or Owner's authorized agent who furnishes to the Managing Agent, Resident Manager, or the Board a duly executed and acknowledged affidavit stating that the list:

(A) Shall be used by the Unit Owner or Owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other Unit Owners with respect to Association matters; and

(B) Shall not be used by the Unit Owner or Owner's authorized agent or furnished to anyone else for any other purpose;

(7) The Association's most current financial statement, at no cost or on 24-hour loan, at a convenient location designated by the Board;

(8) Meeting minutes of the Association as indicated in subsection (b);

(9) Meeting minutes of the Board as indicated in subsection (b);

(10) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the duration those records are kept by the Association, and any documents regarding delinquencies of ninety (90) days or more shall be available for examination by Unit Owners or Owners' authorized agents at convenient hours at a place designated by the Board as indicated in subsection (b);

(11) Proxies, tally sheets, ballots, Unit Owners' check-in lists, and the certificate of election as indicated in subsection (b);

(12) Copies of an Association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or HRS Chapter 514B;

(13) A copy of the management contract from the entity that manages the operation of the Property before the organization of an Association;

(14) Other documents requested by a Unit Owner or Owner's authorized agent in writing; provided that the Board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph; and

(15) A copy of any contract, written job description, and compensation between the Association and any person or entity retained by the Association to manage the operation of the Property on-site, including but not limited to the general manager, operations manager, Resident Manager or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence

address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law. (HRS §514B-154.5(a)(1)-(15))

Copies of the items in subsection (c) shall be provided to any Apartment Owner or Owner's authorized agent upon the Owner's or Owner's authorized agent's request; provided that the Owner or Owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request. Notwithstanding any provision in the Declaration, Bylaws, or House Rules providing for another period of time, all documents, records, and information listed under this subsection, whether maintained, kept, or required to be provided, shall be provided no later than thirty (30) days after receipt of an Apartment Owner's or Owner's authorized agent's written request, unless a lesser time is provided by statute. Any documents, records, and information, whether maintained, kept, or required to be provided may be made available electronically to the Unit Owner or Owner's authorized agent if the Owner or Owner's authorized agent requests such in writing. An Association may comply by making the required documents, records, and information available to Unit Owners or Owners' authorized agents for download through an internet site, at the option of each Unit Owner or Owner's authorized agent and at no cost to the Unit Owner or Owner's authorized agent. Any fee charged to an Apartment Owner or Owner's authorized agent to obtain copies of the Association's documents, records, and information, whether maintained, kept, or required to be provided shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page. (HRS §514B-154.5(b)-(f))

SECTION 12. Prohibited Acts of Association Employees. 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 Apartment Owners. (HRS §514B-133(b))

## ARTICLE V

### REPAIR AND MAINTENANCE AND USE

#### SECTION 1. Repair and Maintenance

(a) Every Apartment Owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his Apartment, the omission of which would adversely affect any Common Element or any other Apartment, and shall be responsible for all loss and damage caused by his failure to do so.

(b) All repairs of internal installations within each Apartment such as water, light, gas, power, sewage, telephone, air conditioning, sanitation, doors, windows, lamps, and all other fixtures and accessories belonging to such Apartment, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Apartment shall be at the Apartment Owner's expense.

(c) Every Apartment Owner shall reimburse the Managing Agent for any expenditures incurred in repairing or replacing any Common Elements or furniture, furnishings, and equipment thereof damaged or lost through the fault of such Apartment Owner or any person using the Project under him, and shall give prompt notice to the Resident Manager or the Managing Agent of any such damage, loss, or other defect when discovered.

(d) Each Apartment Owner shall be responsible for the care and maintenance of any lanai which is included in his Apartment. No Apartment Owner may, however, paint or otherwise decorate his respective lanai without the prior approval of the same by the Board of Directors. It is intended that the exterior of the building shall present a uniform appearance, and to affect that end the Apartment Owner hereby agree that the Board may require the painting of each lanai and regulate the type and color or paint to be used. The Board is authorized to contract for the painting of all the Apartment lanais and to make payment therefor out of the maintenance fund.

#### SECTION 2. Use.

(a) No Apartment Owner or occupant of an Apartment shall post any advertisement, bill, poster, or other sign on or about the Condominium, even if not visible outside of the Condominium, except as authorized by the Board.

(b) All Apartment Owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants, including without prejudice to the generality of the foregoing, noises caused by any child residing or visiting in Apartments.

(c) No Apartment Owner or occupant shall permit any child residing or visiting with him to loiter or play in the corridors, elevators, stairways, or lobbies of the Project.

(d) No garments, rugs, or other objects shall be hung from the lanais, windows, or facades of the Condominium; nor shall they be dusted or shaken from the lanais or windows or cleaned by beating or sweeping on the grounds of the Condominium.

(e) No garbage, refuse, or trash of any kind shall be thrown, placed, or kept on any Common Element other than the disposal facilities provided for such purposes.

(f) No Apartment Owner or occupant, except as otherwise permitted by the Declaration, shall install any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of either building or protruding through the walls, windows, or roof thereof.

(g) Nothing shall be allowed, done, or kept in any Apartment or Common Element which will overload or impair the floors, walls, or roofs of either building, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

(h) No Apartment Owner shall do any work that may jeopardize the soundness or safety of the Property, reduce the value thereof, or impair any easement, as reasonably determined by the Board. No Apartment Owner may make or allow any material addition or alteration, without first obtaining the written consent of sixty-seven percent (67%) of the Apartment Owners, the consent of all Apartment Owners whose Units or appurtenant Limited Common Elements are directly affected, and the approval of the Board, which shall not unreasonably withhold such approval. Nonmaterial additions to or alterations of the Common Elements or Units, including, without limitation, additions to or alterations of a Unit made within the Unit or within a Limited Common Element appurtenant to and for the exclusive use of the Unit, shall require approval only by the Board, which shall not unreasonably withhold the approval.

“Nonmaterial additions and alterations,” means an addition to or alteration of the Common Elements or a Unit that does not jeopardize the soundness or safety of the Property, reduce the value thereof, impair any easement, detract from the appearance of the Project, interfere with, or deprive any nonconsenting Owner of the use or enjoyment of any part of Property, or directly affect any nonconsenting Owner.

(i) No livestock, poultry, rabbits, or other animals whatsoever shall be allowed or kept in any part of the project at any time. Provided, however, any occupant keeping a pet in an Apartment on the effective date of this subparagraph (i) may (A) upon the death of the pet replace the animal with another and continue to do so for as long as the occupant continues to reside in the Apartment or another project apartment, (B) only be kept by the occupants in their respective Apartments, and (C) not be kept, bred or used therein for any commercial purpose nor allowed on any Common Elements whatsoever, except in transit when carried (or on a leash). Any pet causing a nuisance or unreasonable disturbance to any project occupant shall be permanently removed from the project promptly upon notice given by the Resident Manager or the Board of Directors. All pets must be registered with the Resident Manager (prior amendment dated March 3, 2003, recorded in Document No. 2003-039007)

## ARTICLE VI

### COMMON EXPENSES, SPECIAL ASSESSMENTS, APARTMENT EXPENSES AND TAXES

SECTION 1. Common Expenses. "Common Expenses" shall mean all costs, expenses, fees and charges incurred by the Association, or which the Board expects the Association will incur, for the administration of the affairs of the Association and for the operation, care and maintenance of the Common Elements, and for any premiums for insurance against loss or damaged by fire and such other perils to the Condominium as the Board shall deem to be reasonably necessary, 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, and all costs, expenses, fees and charges called Common Expenses by said Chapter 514, as amended or reenacted, or by the Declaration.

Pursuant to and in compliance with Article III, Section 2(o) of these Bylaws, not less than sixty (60) days before the beginning of each fiscal year established for the Association, the Board 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 (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, 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 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 shall have the power to revise its budget as of the first day of the next quarter of the current fiscal year. The Board shall, not less than forty-five (45) days before the beginning of each fiscal year established for the Association, 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 should revise its budget for any current fiscal year, then the Board shall give each Apartment Owner written notice, not less than thirty (30) days before the effective date of such revised budget, of the revised amount of the total Common Expenses determined for the current fiscal year, and the proportion thereof for which his Apartment is liable. If the Board 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 in the rate of twelve percent (12%) per year from and after fifteen (15) days following the date on which the same came due. (HRS §514B-106(c))

SECTION 2. Special Assessments. The Association shall have the power, by the affirmative vote of two-thirds of the Apartment Owners, 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 the Association 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 shall, within fifteen (15) days after the enactment by the Association of the resolution authorizing such special assessment, notify each Apartment Owner of the amount of the special assessment for which his Apartment will be liable and the date or dates at which the same will be due.

SECTION 3. Liability of Apartment Owners. Each Apartment Owner shall be personally liable (and if there be more than one (1) Owner of any Apartment, they shall be jointly and severally liable) for the full amount of all real property taxes and any special assessment or assessment for Common Expenses against his Apartment, irrespective of the date or dates on which such assessments, or portions thereof, shall be due. The Board 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 such assessments; 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 judgement rendered in any such action shall include a sum for reasonable attorney's fees in such amount as the court may adjudge against such Apartment Owner in default. Upon full satisfaction of any such judgment, the Board, through the President, Secretary or Treasurer, shall execute and deliver to the judgment debtor an appropriate document to evidence such satisfaction.

SECTION 4. Payment as Agent. The Board will pay or cause to be paid, on behalf of the Apartment Owners, all Common Expenses. The Board, on behalf of all Apartment Owners, will maintain or cause to be maintained separate books of account of Common Expenses in accordance with recognized accounting practices. The Board will annually render or cause to be rendered a statement to each Apartment Owner of all receipts and disbursements during the preceding year, which statement shall be certified by an independent certified public accountant. Each Apartment Owner, as principal, shall be liable for and shall pay his share, determined as aforesaid, of all Common Expenses and the Board shall be responsible, as agent for each Apartment Owner, only to transmit the payments made by the Apartment Owner to third persons to whom such payments must be made by the Apartment Owner. The Board or Managing Agent collecting the Common Expenses shall not be liable for payment of said Common Expenses as a principal but only as the agent of all Apartment Owners to transmit said payments to third persons to whom such payments must be made by the Owner.

SECTION 5. Taxes and Assessments. Each Apartment Owner shall be obligated to have the real property taxes for his Apartment and its appurtenant interest in the Common Elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now and are or may hereafter be assessed separately by law on each Apartment and the common interest in the Common Elements appertaining thereto or the personal property or any other interest of the Apartment Owner. Each Apartment Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the

Condominium or any part of the Common Elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien against the Condominium or any part of the Common Elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall constitute a lien upon each Apartment.

SECTION 6. Assessment Disputes.

(a) 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 Apartment Owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing herein shall limit the rights of an Apartment Owner to the protection of all fair debt collection procedures mandated under federal and state law.

(b) An Apartment Owner who pays the Association in full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Apartment Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VI of the Act; provided that an Apartment Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Apartment Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Apartment Owner pays all Association assessments within thirty (30) days of the date of suspension, the Apartment Owner may ask the arbitrator to recommence the arbitration proceedings. If the Apartment Owner fails to pay all Association assessments by the end of the thirty (30) 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 owned.

SECTION 7. Attorneys' Fees and Expenses of Enforcement.

(a) All costs and expenses including reasonable attorneys' fees, incurred by or on behalf of the Association for (i) collecting any delinquent assessments against any Apartment; (ii) foreclosing any lien thereon; or (iii) enforcing any provision of the Declaration, Bylaws, House Rules and HRS Chapter 514B 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 Bylaws, House Rules, or HRS Chapter 514B, then all reasonable and necessary expenses, costs and attorneys' fees incurred by an Owner shall be awarded to such Owners; provided that no such award shall be made in any derivative action unless: (i) the Owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or (ii) the Owner demonstrates to the satisfaction of the Court that a demand for enforcement made to the Board of Directors would have been fruitless.

(c) 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 Declaration Bylaws, House Rules, or HRS Chapter 514B, 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 subpart D of HRS Chapter 514B, and made good faith effort to resolve the dispute under any of those procedures.

## ARTICLE VII

### INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsement, for as nearly as practicable to one hundred percent (100%) of the insurance replacement cost without deduction for depreciation, covering the Apartments and fixtures therein and the buildings and their fixtures and building service equipment and the Common Elements and, whether or not part of the Common Elements, all exterior and interior walls, exterior glass, floor, and ceilings against loss or damage by fire and such other hazards (including flood insurance under the provisions of the Federal Flood Disaster Protection Act of 1973 if the property is located in an identified flood hazard area as designated by the Federal Department of Housing and Urban Development) sufficient to provide for the repair or replacement thereof in the event of such loss or damages, in the name of the Board as insured as trustee for each of the Apartment Owners in proportion to their respective common interests in the Common Elements. Such policy:

(a) shall contain no provision limiting or prohibiting other insurance by an Apartment Owner, such right being provided by statutes, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any such other insurance;

(b) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board, or if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or any Apartment Owner or tenant, or by reason of any act or neglect of the Board or such Apartment Owner or tenant;

(c) shall provide that the Policy may not be cancelled (whether or not requested by the Board) except by giving to the Board and to the Apartment Owner and/or mortgagee who shall have requested such notice of the insurer in writing addressed to him at the premises, thirty (30) days' written notice of such cancellation;

(d) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against any Apartment Owner;

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

(f) shall provide that any loss shall be adjusted with the Board and the mortgagee of any Apartment directly affected by the loss;

(g) shall contain a standard mortgage clause which:

(1) shall name the holder of any mortgage affecting any Apartment whose name shall have been furnished to the Board;

(2) shall provide that the insurance as to the interest of the mortgage shall not be invalidated by any act or neglect of the Board or any Apartment Owner or tenant;

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

(4) shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate trustee selected by the Board who shall be a bank or trust company doing business on Maui, herein referred to as the "Insurance Trustee;"

(5) shall provide that any reference to a mortgagee in the Policy shall include all mortgagee on any Apartment, in order of preference; and

(h) shall provide for payment of the proceeds to the Insurance Trustee;

(i) shall contain a provision requiring the insurer, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the policy. The summary shall include the type of policy, a description of the coverage and limits thereof, amount of annual premium, and renewal dates. The Board shall provide this information to each Apartment Owner, pursuant to the provisions of Section 4 of this Article VII.

SECTION 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Liability Policy") of Public Liability Insurance to insure the Board, the Developer, each Apartment Owner, and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the Property or activities thereon or elevators therein or contractors of construction work under a Comprehensive General Liability form to include (1) Water Damage Legal Liability and (2) Fire Damage Legal Liability. Said Liability Policy shall be for such limits as the Board may decide.

Such Liability Policy:

(a) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board, or by any breach of warranty or condition caused by any Apartment Owner, or by any act or neglect of such Apartment Owner or tenant; and

(b) shall provide that the Liability Policy may not be cancelled (whether or not requested by the Board) except by giving to the Board and to each Apartment Owner and any mortgagee,

who shall have requested such notice of the insurer in writing, thirty (30) days written notice of such cancellation.

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

SECTION 4. Miscellaneous Insurance Provisions. The Board shall review not less frequently than annually the adequacy of its insurance program and shall report in writing the Board's conclusions and action taken on such review to each Apartment Owner, and to the holder of any mortgage on any Apartment who shall have requested a copy of such report. At the request of any mortgagee of any Apartment, the Board shall furnish to such mortgagee a copy of the Policy described in Section 1 of this Article and of any other insurance policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Board shall be available for inspection by any Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Apartment Owners to insure such Apartment and the contents thereof for their own benefit at their own expense.

SECTION 5. Damage and Destruction. If the buildings are damaged by fire or other casualty which is insured against and said damage is limited to a single Apartment, the insurance proceeds shall be used by the Insurance Trustee for payment of the contractor employed by the Board to rebuild or repair such Apartment including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If such damage extends to two (2) or more Apartments or extends to any part of the Limited Common Elements or to the Common Elements:

(a) The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Apartments so damaged, as well as the Common Elements, in accordance with plans and specifications therefore, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in an Apartment directly affected thereby; provided that in the event said modified plan eliminates any Apartment and such Apartment is not reconstructed the Insurance Trustee shall pay to the affected Apartment Owner the portion of said insurance proceeds allocable to said Apartment (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such Common Elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Apartment Owners in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Apartment shall be specially assessed against such Apartment and said special assessment shall constitute a lien upon each such Apartment.

(b) The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

(1) The work shall be in charge of an architect or engineer (who may be an employee of the Board).

(2) Each request for payment shall be made on seven (7) days prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Insurance Trustee the sum requested does not exceed the value of the work done to the date of such certificate.

(3) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.

(4) The fees and expenses of the Insurance Trustee as determined by the Board and the Insurance Trustee shall be paid by the Association as Common Expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Insurance Trustee.

(5) Such other conditions not inconsistent with the foregoing as the Insurance Trustee may reasonably request.

(c) Upon the completion of the work and payment in full therefore, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Insurance Trustee shall be paid or credited to the Apartment Owners (or to the holder of any mortgage on an Apartment if there be a mortgage) in proportion to their respective common interests.

(d) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage, or destruction against any Apartment Owner. To the extent that any loss, damage, or destruction to the property of any Apartment Owner or lessee is covered by insurance procured by such Apartment Owner, such Apartment Owner shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Apartment Owner, or the Association. All policies of insurance referred to in this Paragraph (d) shall contain appropriate waivers of subrogation.

SECTION 6. Definition of Mortgagee. For the purposes of this ARTICLE VII, the terms "mortgagee", or "mortgagee of any Apartment", or "mortgagee on any Apartment", or "mortgagee of record of any interest in any Apartment", as those terms or terms of similar import are used herein, shall be deemed to mean and include but not be limited to, any mortgagee of the Property, to the extent that the lien of its mortgage has not been fully released as to the Apartment or Apartments referenced or affected.

## ARTICLE VIII

### MORTGAGES

SECTION 1. Notice to Board of Directors. An Apartment Owner who mortgages his interest in an Apartment shall notify the Board of the name and address of his mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the note and mortgage with the Board; the Board shall maintain such information in a book entitled "Mortgages of Apartment."

SECTION 2. Notice of Unpaid Common Expenses. The Board, whenever so requested in writing by a purchaser or mortgagee of an interest in an Apartment, shall promptly report any then unpaid assessments for Common Expenses due from the Apartment Owner involved.

SECTION 3. Notice of Default. The Board, when giving notice to an Apartment Owner of a default in paying Common Expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such Apartment or interest therein whose name and address has theretofore been furnished to the Board.

SECTION 4. Examination of Books. Each Apartment Owner and each mortgagee shall be permitted to examine the books of account of the Condominium at reasonable times, on business days, but not more often than once a month.

SECTION 5. Mortgage Protection. Notwithstanding all other provisions hereto:

(a) The liens created hereunder upon any Apartment and its appurtenant interests in the Common Elements shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage under such interests made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Apartment if falling due after the date of such foreclosure sale.

(b) No amendment to this Section 5 shall affect the rights of the holder of any such mortgage filed in the Bureau of Conveyances of the State of Hawaii prior to the filing of such Apartment who does not join in the execution thereof.

## ARTICLE IX

### CONDEMNATION

SECTION 1. Condemnation. In the event of a taking by eminent domain of part or all of the Common Elements, all compensation payable for or on account of such taking shall be payable to a condemnation trustee, who shall be a bank or trust company doing business on Maui designated by the Board. The Board shall arrange for the repair and restoration of the buildings and improvements in accordance with the design thereof immediately prior to such taking or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance, with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in an Apartment directly affected thereby. In the event of a taking in which any Apartment is eliminated or not restored, the condemnation trustee shall disburse the portion of the proceeds of such award allocable to said Apartment less the proportionate share of said Apartment in the cost of debris removal, to the affected Apartment Owner in satisfaction of his interest in said Apartment. The condemnation trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the cost thereof the Board is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose the Board shall levy a special assessment on the Apartment Owners in proportion to their common interests. In the event sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, or in the event all the buildings and improvements are so taken, such excess proceeds or said proceeds, as the case may be, shall be divided between the Apartment Owners in accordance with their interests in the Common Elements.

SECTION 2. Definition of Mortgagee. For the purposes of this ARTICLE IX, the term "mortgagee of record of any interest in an Apartment directly affected thereby", or terms of similar import, shall be deemed to mean and include, but not be limited to, any mortgagee of the Property, to the extent that the lien of its mortgage has not been fully released as to the Apartment or Apartments referenced or affected.

## ARTICLE X

### GENERAL PROVISIONS

SECTION 1. Rules and Regulations. The Board shall have the right from time to time, to establish and amend such uniform Rules and Regulations as the Board may deem necessary or advisable for the management and control of the Apartments and the Common Elements, and the Apartment Owner's rights shall be in all respects subject to the appropriate Rules and Regulations which shall be taken to be a part hereof; and each Apartment Owner shall obey all such Rules and Regulations as the same shall exist from time to time, and shall see that the same are faithfully observed by his invitees, guests, employees and tenants; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the Apartments.

SECTION 2. Abatement and Enjoyment of Violations by Apartment Owners and Suspension of Privileges. The violation of any rule and regulation adopted by the Board, or the breach of any By-Law contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws:

(a) to enter the Apartment in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or

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

(c) If any Owner, his family, guests, tenants, licensees or invitees shall be in breach of the Declaration, the Rules and Regulations or the Bylaws including but not limited to the failure of such Owner to pay any assessment on or before ninety (90) days after the date due, subject to the limitations hereinafter in this subparagraph (c) set forth, the Association may suspend the right of such Owner (and his family, guests, tenants, licensees and invitees) to occupy his Apartment and/or the Common Elements, the right of such Owner to participate in any vote or other determination provided for herein or serve on the Board, to exercise other rights of such Owner provided to him herein and/or may suspend utility and other services to his Apartment. If such suspension of privileges is based on the failure of an Owner to pay Assessments or other amounts due hereunder when due the above suspensions may thereafter, until cured, be made by the Board at any time by notice to the Owner. Said notice shall be in writing and shall be given to the address of the Owner as shown on the Association's books by mailing notice for delivery by certified or registered mail. The suspended privileges of an Owner shall be reinstated automatically as of five (5) days after such time as the Owner shall have paid to the Association, in cash or by cashier's or certified check, all amounts past due as of the date of such reinstatement. If such suspension of privileges and/or services is based on any act or omission other than the failure of an Owner to pay assessments or any other amounts due hereunder when due, no such suspension shall be made except after a meeting of the Board of Directors of the Association at which a quorum of the Board is present, duly called and held in the same manner as provided in the Bylaws for the noticing, calling and holding of a meeting of the Board. Written notice of such meeting stating the purpose thereof, including the reasons for the suspension sought shall be given to the Owner whose privileges are being sought to be suspended at least

fifteen (15) days prior to the holding of such meeting. Such notice shall be given to the address of the Owner as shown on the Association's books by mailing of notice for delivery by certified or registered mail. Such Owner shall be entitled to appear at such meeting and present his case as to why his privileges and/or services should not be suspended. The decision as to whether such privileges and/or services should be suspended shall be made by a majority of the members of the Board present at such meeting.

SECTION 3. Maintenance and Repair of Apartments. All maintenance of and repairs to any Apartment (other than maintenance of and repairs to any Common Elements contained therein, and not necessitated by the negligence, misuse, or neglect of the Apartment Owner) shall be made by the Apartment Owner.

SECTION 4. Maintenance and Repair of Common Elements. All maintenance, repairs, and replacements to the Common Elements, whether located inside or outside of the Apartments, shall be made by the Board, and be charged to all the Apartment Owners as a common expense, unless necessitated by the negligence, misuse, or neglect of an Apartment Owner, in which case such expense shall be charged to such Apartment Owner.

SECTION 5. Additions or Alterations by Board. Whenever in the judgment of the Board the Common Elements shall require additions or alterations costing less than three thousand dollars (\$3,000.00), the Board may proceed with such additions or alterations and shall assess all Apartment Owners for the cost thereof as a common expense. Any additions or alterations costing in excess of three thousand dollars (\$3,000.00) may be made by the Board only after obtaining approval of at least two thirds of the Apartment Owners. If such approval shall be obtained, the cost thereof shall constitute part of the Common Expenses.

SECTION 6. Additions or Alterations by Apartment Owners. No Apartment Owner shall make any addition or alterations in or to his Apartment which may affect the Common Elements or change the exterior appearance of the buildings, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by an Apartment Owner for approval of a proposed addition or alteration in such Apartment within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition or alteration.

SECTION 7. Right of Access. An Apartment Owner shall grant a right of access to his Apartment to the Resident Manager and/or the Managing Agent and/or any other person authorized by the Board, the Resident Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Apartment and threatening another Apartment or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Apartment or elsewhere in the buildings, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Apartment Owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the Apartment Owner is present at the time or not.

SECTION 8. Notices. All notices hereunder shall be sent by registered or certified mail to the Board c/o the Managing Agent, or if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time by notice in writing to all Apartment Owners and to all mortgagees of Apartments. All notices to any Apartment Owner shall be

sent by registered or certified mail to the building or to such other address as may have been designated by him from time to time, in writing, to the Board. All notices to mortgagees of Apartments shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

SECTION 9. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws, or the intent of any provisions thereof.

SECTION 10. Gender. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

SECTION 11. Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

SECTION 12. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform Condominium complex whereby the Apartment Owners shall carry out and pay for the operation and maintenance of the Condominium as a mutually beneficial and efficient establishment.

SECTION 13. Amendment. These Bylaws may be amended at any time by the vote or written consent of sixty-seven percent (67%) of all Apartment Owners; provided that any proposed Bylaws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer Apartment Owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of ownership. The proposed Bylaws, rationale, and ballots for voting on any proposed By-Law shall be mailed by the Board of Directors to the Apartment Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed By-Law shall not be less than sixty-seven percent (67%) of all Apartment Owners; provided that the vote or written consent must be obtained within three hundred sixty-five (365) days after mailing. In the event that the By-Law is duly adopted, then the Board shall cause the By-Law amendment to be recorded in the Bureau of Conveyances of the State of Hawaii. The volunteer Apartment Owners' committee shall be precluded from submitting a petition for a proposed By-Law which is substantially similar to that which has been previously mailed to the Owners within one (1) year after the original petition was submitted to the Board. The foregoing shall not preclude any Apartment Owner or voluntary Apartment Owners committee from proposing any By-Law amendment at any annual Association meeting. (HRS §514B-108(e))

SECTION 14. Arbitration. At the request of any party, any dispute concerning or involving one or more Apartment Owners and the Association or the Board, Managing Agent or one or more other Apartment Owners relating to the interpretation, application or enforcement of the Act or the Declaration of Horizontal Property Regime, these Bylaws or any House Rules adopted in accordance with these Bylaws shall be submitted to arbitration in accordance with Part VI of Chapter 514B, all the terms of which are incorporated herein by this reference.

Mediation may occur in accordance with the provisions of HRS Chapter 514B. (HRS §514B-161)

SECTION 15. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one (1) provision shall not affect the validity or enforceability of any other provision hereof.

SECTION 16. Incorporation of Association. All the rights, powers, obligations, and duties of the Apartment Owners imposed hereunder, or the Declaration may be exercised and enforced by a nonprofit membership corporation formed by the Apartment Owners under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the affirmative vote or written consent of not less than seventy-five percent (75%) of the Apartment Owners. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth in these Bylaws or the Declaration, and the articles of incorporation and Bylaws of such corporation shall be subordinated thereto and controlled thereby. Any action taken by such corporation in violation of any or all of the terms, covenants, or conditions contained in these Bylaws, or the Declaration shall be void and of no effect.

SECTION 17. Adoption of Chapter 514B, Hawaii Revised Statutes. Chapter 514B, Hawaii Revised Statutes, is adopted and shall be applicable to and govern the Property. The Declaration, Bylaws, House Rules and Condominium Map and other constituent documents of the Association are amended to achieve any result permitted by Chapter 514B, Hawaii Revised Statutes.

CERTIFICATE OF ADOPTION

A number of the foregoing By-Law provisions have been restated by resolution of the Board of Directors dated \_\_\_\_\_, 20\_\_, pursuant to Hawaii Revised Statutes Chapter §514B-109. Each restated Bylaws followed by the date and recording information of a prior amendment adopted by the Association Owners or where appropriate by a citation to the pertinent sections(s) of the statute enacted by governmental authority. These Bylaws have been restated solely for the purposes of information and convenience. The restated Bylaws correctly set forth without change the corresponding provisions of the Bylaws and supersede the original Bylaws and all prior amendments thereto. However, in the event of any conflict, the restated Bylaws shall be subordinate to the cited statute or to the original language of the Bylaws as they may have been amended.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

ASSOCIATION OF APARTMENT  
OWNERS OF MAUI SUNSET

By \_\_\_\_\_

Print

Name:

Its President

By \_\_\_\_\_

Print

Name:

Its Secretary