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BYLAWS OF  
THE ASSOCIATION OF APARTMENT OWNERS  
OF  
KAI MAKANI

BYLAWS CHECKLIST

PROJECT NAME KAI MAKANI

REGISTRATION NO. \_\_\_\_\_  
(For Office Use Only)

Page No., Sect.

Article 3

A. Association

p. 4 3.1

1. Qualifications for membership.

p. 5 3.3

2. First meeting.

The first meeting of the Association of Apartment Owners shall be held not later than one hundred eighty days after recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request. [514A-82(a)(11)]

p. 6 3.4

3. Place of meetings.

All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors. [514A-82(a)(17)]

p. 6 3.5

4. Method of calling meetings. [514A-82(a)(2)]

p. 6 3.7

5. Notices of meetings.

Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to such meeting and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting and a standard proxy form authorized by the association, if any. [514A-82(b)(3)]

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6. Quorum of apartment owners if other than a majority. [514A-82(a)(2)]

p. 7 3.9

7. Voting: Percentage necessary to adopt binding decisions. [514A-82(a)(2)]

p. 7 3.10

8. Proxies.

p. 7 3.10(a)

a. No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. Any board of directors that intends to use association funds to distribute proxies, including the standard proxy form referred to in section 514A-82(b), shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall:

p. 7 3.10(a)

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

p. 7 3.10(a)

(B) Mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements. The statement shall not exceed one hundred words, indicating the owner's

qualifications to serve on the board and reasons for wanting to receive proxies. [514A-82(b)(4)]

- p. 8 3.10(b) b. A proxy, to be valid, must be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed name(s) and signature(s) of the person(s) giving the proxy, the apartments for which the proxy is given, and the date that the proxy is given; contain boxes wherein the owner has indicated that the proxy is given: for quorum purposes only; to the individual whose name is printed on a line next to the box; to the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage. [514A-83.2(a)]
- p. 8 3.10(c) c. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. [514A-83.2(b)]
- p. 8 3.10(d) d. No board of directors or member of the board shall use association funds to solicit proxies except for the distribution of proxies as set forth in section 514A-82(b)(4), provided that this shall not prevent an individual member of the board from soliciting proxies as an apartment owner under section 514A-82(b)(4). [514A-83 2(c)]
- not included e. 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.
- p. 8 3.10(e) f. 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. [514A-83.2(e)]
- p. 9 3.11 9. Adjournment.
- p. 9 3.12 10. Order of business.
- p. 10 3.13 11. Meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order. [514A-82(a)(16)]
- not included 12. Other provisions of 514A-82(a) and (b).
- Article 4 B. Directors
- p. 10 4.2 1. Number of directors.  
The number of persons constituting the board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than sixty-five per cent of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors. [514A-82(a)(1)(B)]
- p. 10 4.2 a. Qualifications for directors.  
All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. [514A-82(a)(12)]

- p. 10 4.2                    b.                    Not more than one representative on the board of directors from any one apartment. [514A-82(a)(12)]
- p. 10 4.2                    c.                    No resident manager shall serve on the board. [514A-82(a)(14)]
- p. 10 4.2                    d.                    Compensation, if any, [514A-82(a)(1)(E)]
- p. 10 4.1                    2.                    Power and duties of the board.
- p. 10 4.1                    a.                    Each director shall owe the association a fiduciary duty in the performance of the director's responsibilities. [514A-82.4]
- p. 10 4.1                    b.                    Whether board may engage services of manager or managing agent, or both, and specify which powers and duties granted may be delegated to either or both of them. [514A-82(a)(1)(F)]
- p. 11 4.3                    3.                    Method of electing the board.
- p. 11 4.4                    4.                    Term of office. For the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed. [514A-82(a)(1)(C)]
- p. 11 4.5                    5.                    Method of removing directors.  
At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including any provision relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen 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 in section 514A-82, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association. [514A-82(b)(1)]
- p. 12 4.6                    6.                    Board shall meet at least once a year. [514A-82(a)(15), -82(a)(15)]
- p. 12 4.7                    7.                    Directors shall not cast any proxy vote at any board meeting. [514A-82(a)(13)]
- p. 12 4.8                    8.                    A director shall not vote at any board meeting on any issue in which that director has a conflict of interest. [514A-82(a)(13)]
- p. 12 4.9                    9.                    Disclosure of a conflict prior to a vote.  
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 a board meeting, and the minutes of the meeting shall record the fact that disclosure was made. [514A-82(b)(5)]
- p. 13 4.13                    10.                    Notice of meetings to be posted.  
Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors. [514A-82(b)(9)]

- p. 12 4.10 11. All board meetings, except executive sessions, shall be open to all members of the association.
- p. 12 4.10 a. Members who are not on the board of directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of board votes otherwise.
- p. 12 4.10 b. Board, by a majority of a quorum of its members, may adjourn a board meeting and reconvene in executive session to discuss and vote on personnel matters or litigation.
- p. 12 4.10 c. The nature of any and all business to be considered in executive session shall first be announced in open session. [514A-83.1]
- p. 13 4.15 12. Minutes of meetings.  
Minutes of meetings of the board of directors and association shall include the recorded vote of each board member on all motions except motions voted on in executive session. [514A-83.4]
- p. 14 4.16 13. Directors shall not spend association's funds for their travel, directors' fees and per diem, unless owners are informed and a majority approve of these expenses. [514A-82(b)(10)]
- p. 42 10.3 14. Condominium documents.  
Associations, at their own expense, shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of Chapter 514A, HRS, with amendments. [514A-82(b)(11)]
- Article 5 C. Officers
- p. 16 5.1 1. Election and term.
- p. 16 5.2 2. An owner shall not act as an officer of an association and an employee of the managing agent employed by the association. [514A-82(b)(7)]
- p. 16 5.3 3. President: Elected from board and presides over meetings of the board and association. [514A-82(a)(3)]
- p. 17 5.4 4. Secretary: Keeps the minute book wherein resolutions shall be recorded. [514A-82(a)(4)]
- p. 17 5.5 5. Treasurer: Keeps the financial records and books of account. [514A-82(a)(5)]
- p. 17 5.6 6. Auditor: Association shall require an annual audit of the association's financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided these may be waived by a majority vote taken at an association meeting if the association is comprised of less than twenty owners. [514A-96(a)]
- Article 6 D. Management
- p. 18 6.1 1. Operation of the property. [514A-82(a)(6)]
- p. 26 7.3 2. Payment of common expenses. [514A-82(a)(6)]
- p. 25 7.2 3. Determination and collection of common charges [514A-82(a)(6)]; collection from tenants, 514A-90.5, alternatives to foreclosure proceedings. [514A-90(e)(f)]
- p. 18 6.1 4. Manner of handling and disbursement of association funds.

- not included
- p. 34 7.13
- not included
- not included
- not included
- not included
- n/a
- not included
- p. 14 4.19
- not included
- p. 26 7.4
- p. 21 6.1(q)
- a. Prohibition against commingling of the association's general operation funds with funds of other activities, such as lease rent collections, and rental operations or a managing agent's own funds. [514A-97(a)]
  - b. Lease rent collections and rental operations. [514A-97(b)]
  - c. Manner of disbursement and accounts. Association funds collected shall be:
    - (1) Deposited in a financial institution including a federal or community credit union, located in the State of Hawaii whose deposits are insured by an agency of the United States government;
    - (2) Held by a corporation authorized to do business under article 8 of chapter 412; or
    - (3) Held by the United States Treasury; or
    - (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.
  - d. Telephone transfer of association funds prohibited. [514A-97(d)]
  - e. Managing agent disbursement requirements. [514A-97(e)]
  - f. Penalty for knowingly misappropriating or embezzling association funds. [514A-97(0)]
5. Insurance.
- a. The association shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire and flood (if 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. Exterior glass may be insured at the option of the association. Coverage shall be written on the property in the name of the association. Premiums shall be common expenses. Coverage shall not prejudice the right of each owner to insure the owner's own apartment for the owner's benefit. [514A-86(a)]
  - b. The association may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the board of directors. Premiums shall be common expenses. [514A-86(b)]
  - c. Any insurance policy required by 514A-86(a) and -86(b) shall contain a provision requiring the insurance carrier to provide the board, at the inception of the policy and on each anniversary date thereof, with a written summary of the policy, in layman's terms, to be provided to each apartment owner. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates. [514A-86(c)]
6. Budgets and Reserves. The board shall prepare, adopt and distribute an annual operating budget to apartment owners based on the formula and method provided in Chapter 514A-83.6, HRS, and chapter 107, Hawaii Administrative Rules. [514A-83.6]
7. Borrowing of money for association use. [514A-82.3]

- p. 17 5.6            8.            Audits.
- p. 17 5.6(a)            a.            Annual audit and unannounced verification of cash balance requirement. Waiver by majority vote of all apartment owners for associations comprised of less than twenty owners is permitted. [514A-96(a)]
- p. 17 5.6(b)            b.            A copy of the annual audit shall be made available to each apartment owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. Requests to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report shall be made upon all official proxy forms. If the annual audit is not completed by the date of the annual association meeting the board shall make available an unaudited year end financial statement until the audit is completed. [514A-96(b)]
- p. 25 7.2            9.            Manner of collecting common expenses, expenses, costs and fees recoverable by the association and any penalties and late charges. [514A-82(a)(7)]
- p. 20 6.1(o)            10.            Penalties, method of determining violations, enforcement of penalties. [514A-82(a)(18)]
- p. 29 7.5            11.            Priority of Liens.
- p. 29 7.5            a.            All sums assessed by the association but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except:
- (1)            Government imposed liens for taxes and assessments against the apartment; and
- (2)            All sums unpaid on any mortgage of record recorded prior to the recordation of notice of a lien by the association and costs and expenses including attorneys' fees provided in such mortgages.
- The lien of the association of apartment owners may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the association of apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or board of directors, acting on behalf of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. [514A-90(a)]
- p. 32 7.8            b.            The acquirer of title and acquirer's successors and assigns pursuant to foreclosure of the mortgage shall not be liable for the share of common expenses or assessments by the association for the apartment. The unpaid share of common expenses or assessments shall be deemed collectible from all the apartment owners including the acquirer and the acquirer's successors and assigns except, the board of an association of apartment owners may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent apartment; provided that:
- (1)            A purchaser who holds a mortgage on a delinquent apartment that was recorded prior to the filing of a notice of lien by the association of apartment owners and who acquires the delinquent apartment through a

judicial or non-judicial foreclosure proceeding, including purchasing the delinquent apartment at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and

- (2) A person who subsequently purchases the delinquent apartment from the mortgagee referred to in paragraph (1) above shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the association of apartment owners has filed a notice of lien against the delinquent apartment for the unpaid assessments for common area expenses which form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent apartment.

The amount of the special assessment assessed under subsection 514A-90(g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or non-judicial power of sale foreclosure, and for which the association of apartment owners had filed a notice of lien against the delinquent apartment pursuant to subsection 514A-90(g)(2). In no event shall the amount of the special assessment exceed the sum of \$1,800. (Act 39, SLH 2000: to be repealed on December 31, 2003) [514A-90(b)]

p. 31 7.6(a)

- c. No apartment owner shall withhold any assessments claimed by the association. Describe method of dispute notice. [514A-90(c)]

not included

- d. As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the association of apartment owners may authorize its managing agent or board of directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses, terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the association of apartment owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

p. 32 7.6(b)

- e. An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate, if unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of 514A, HRS. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed. [514A-90(d)]

p. 33 7.9

12. In a voluntary conveyance the grantee of an apartment is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the common expenses. Any grantor or grantee is entitled to a statement of the unpaid assessments. The grantee is not liable for any unpaid assessments against the grantor in excess of the amount on the statement, except as to the amount of subsequently dishonored checks received within the thirty day period immediately preceding the statement date noted in the statement. [514A-91]

p. 33 7.10

13. No apartment owner may exempt himself from liability for contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the apartment. [514A-92]

p. 5 3.2(d)

14. Designation and removal of personnel necessary for the maintenance, repair and replacement of common elements. [514A-82(a)(8)]



- p. 23 6.3 15. Association's employees shall not engage in selling or renting apartments, except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership. [514A-82(b)(8)]
- p. 24 6.4 16. Restrictions on use and maintenance of apartments and common elements. [514A-82(a)(10)]
- p. 24 6.4 17. House Rules: Method of adopting and amending administrative rules governing the details of the operation and use of the common elements. [514A-82(a)(9)]
- p. 42 10.2 18. Amendment of bylaws.
- p. 42 10.2 a. The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further 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 per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the Land Court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners committee from proposing any bylaw amendment at any annual association meeting. [514A-82(b)(2)]
- p. 10 4.2 b. The bylaws may be amended to provide that the composition of the board reflect the proportional number of apartments for a particular use as set forth in the declaration. [514A-82.15]
- p. 42 10.3/10.4 19. Documents of the association.
- p. 42 10.4(c) a. The association's most current financial statement and minutes of the board of directors' meetings, once approved, shall be available to any owner at no cost or on twenty-four hour loan, at a convenient location designated by the board of directors. [514A-83.5(a)]
- p. 43 10.4(d) b. Minutes of meetings of the board of directors and the association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the board. Minutes of meetings shall include the recorded vote of each board member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request. [514A-83.5(b)]
- p. 43 10.4(e) c. Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the association of apartment owners for the current and prior year and delinquencies of ninety days or more shall be available for examination by apartment owners at convenient hours at a place designated by the board; provided:

- (1) That the board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association or its members or both; and
- (2) That owners pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request. [514A-83.5(c)]

p. 44 10.4(f)

- d. Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists and the certificate of election for a period of thirty days following any association meeting; provided:
  - (1) That the board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and
  - (2) That the owners pay for administrative costs in excess of eight hours per year.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, owners' check-in lists and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request. [514A-S3.5(d)]

p. 44 10.4(g)

- e. 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 calendar days of receipt of the request. [514A-83.5(e)]

p. 44 10.5

- 20. Availability of project documents.  
An accurate copy of the declaration of condominium property regime, the bylaws of the association of apartment owners, the house rules, if any, the master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office. The managing agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. In the event that the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association of apartment owners, to whom this function is delegated. [514A-84.5]

p. 45 10.6

- 21. Records, examination; disposal.

p. 45 10.6(a)

- a. The managing agent or board of directors shall keep detailed, accurate records, in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. [514A-85(a)]

p. 45 10.6(b)

- b. All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors. [514A-85(b)]

p. 45 10.6(c)

- c. A managing agent employed or retained by one or more condominium associations may dispose of the records of any condominium association which are more than five years old without liability if the managing agent first provides the board of directors of the condominium association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of. [514A-85(c)]

p. 45 10.6(d)

- d. No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association. [514A-85(d)]

p. 10 3.14

- 22. Annual registration of the association of apartment owners of projects having six or more apartment units with the Real Estate Commission. Registration includes current evidence of the fidelity bond coverage (for all officers, directors, employees and managing agents who handle the association's funds), registration fee, the public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of the officers of the association, the name of the association of apartment owners' managing agent, if any, the street and the postal address of the condominium, and the name and current mailing address of a designated officer of the association of apartment owners where the officer can be contacted directly. Associations that fail to comply shall not have standing to maintain any action or proceeding in the courts of the State of Hawaii until compliance is effected. However, this shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in the State. [514A-95.1]

E. Miscellaneous

p. 20 6.1(l)

- 1. Right of access.  
The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments. [514A-82(b)(6)]

- 2. Pets.

p. 45 10.7 (a) and (b)

- a. Indicate whether or not pets are permitted.

p. 46 10.7 (b)

- b. If permitted, bylaws may:
  - (1) Include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property; [514A-82.5(a)(5)]
  - (2) Reasonably restrict or prohibit the running of pets at large in the common areas of the property; [514A-82.5(a)(6)]
  - (3) Allow each owner or tenant to keep only one pet in the apartment. [514A-82.5(a)(3)]

not included

- c. The animals shall not include those described as pests under section 150A-2, HRS, or animals prohibited from importation under sections 141-2, 150A-5 or 150A-6, HRS. [514A-82.5(a)(4)]

not included

- d. If the owner has agreed in writing to allow his tenants to keep a pet in the apartment, the tenants may keep only those types of pets which may be kept by the apartment owners. [514A-82.5(a)(1), -82.5(a)(2)]

not included

- e. Replacement of pets subsequent to prohibition.  
Any apartment owner who is keeping a pet, not prohibited in the bylaws, as of the effective date of an amendment to the bylaws which prohibits pets, may, upon the death of the pet, replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's apartment or another apartment subject to the same bylaws. [514A-82.6]

not included

- 3. Family child care home conditions and limitations where permitted. [502C]

not included

- 4. The declaration and bylaws of the condominium are subject to the laws of the State of Hawaii, including but not limited to: Chapter 514A, Hawaii Revised Statutes, (Condominium Property Regime) and the Hawaii Administrative Rules, Title 16, Chapter 107. [514A-2, 514A-99]

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BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF  
KAI MAKANI

WHEREAS, WS KAI MAKANI, INC., a Colorado corporation (the "Developer"), with its principal place of business and mailing address at 5690 DTC Boulevard, Suite 280W, Englewood, Colorado 80111, is the owner in fee simple of the land described in Exhibit "A" attached to the Declaration, defined below.

WHEREAS, the Developer intends to develop the Land and the improvements thereon as a condominium project known as "KAI MAKANI" (the "Project") in accordance with plans recorded in the State of Hawaii Bureau of Conveyances as Condominium Map No. 3849 (the "Condominium Map"); and

WHEREAS, the Developer has submitted all of its interest in the Land and all improvements thereon to a Condominium Property Regime as established by Chapter 514A, Hawaii Revised Statutes, as amended (the "Act"), by Declaration of Condominium Property Regime dated Sept. 28, 2004, recorded in the Bureau concurrently herewith (such Declaration of Condominium Property Regime, as the same may be amended from time to time, is hereinafter referred to as the "Declaration");

NOW, THEREFORE, the Developer hereby declares that the Land, and all improvements thereon are and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Declaration and to the following Bylaws of the Association of Apartment Owners of Kai Makani, as the same may be lawfully amended from time to time (the "Bylaws"), all of which are declared to be in furtherance of the plan set forth in the Declaration and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Project. These Bylaws shall constitute covenants running with the Land and shall be binding upon and inure to the benefit of the Developer, its successors and assigns, and all present and future apartment owners, mortgagees, tenants, and occupants of the apartments and any other person who may use any part of the Project.

ARTICLE I  
DEFINITIONS

1.1 Definitions. The terms used in these Bylaws shall have the meanings given to them in the Act or the Declaration, except as expressly provided otherwise below.

"apartment" refers to each condominium apartment identified in and created under the Declaration.

"apartment deed" refers to the recorded deed of an apartment from the Developer to an apartment owner.

"Association" means the Association of Apartment Owners of the Project. The name of the Association is "The Association of Apartment Owners of Kai Makani".

"board of directors" or "board" means the Board of Directors of the Association.

"common elements" means those parts of the Project designated in the Declaration as common elements, including the limited common elements.

"limited common elements" means those parts of the Project, if any, designated in the Declaration as limited common elements.

"majority of apartment owners" has the meaning given to such term in Section 3.8 of these Bylaws.

"mortgagee of an apartment" or "apartment mortgagee" means the holder of a mortgage encumbering the fee title to, or any recorded leasehold interest in, an apartment.

"Project" means and includes the Land and all improvements now or hereafter placed thereon.

"Record", "recorded" or "recordation" means to record or to be recorded in the State of Hawaii Bureau of Conveyances.

"rules and regulations" means the rules and regulations referred to in the Declaration and adopted pursuant to these Bylaws, as the same may be amended from time to time, governing the details of the operation and use of the Project, and certain details regarding the use of the apartments.

ARTICLE II  
APPLICATION AND ENFORCEMENT

2.1 Administration and Operation. The administration and operation of the Project shall be governed by the Declaration, these Bylaws, the Act and all other applicable laws.

2.2 Personal Application. All present and future owners, mortgagees, tenants and occupants of apartments and their guests and employees, and any other person who may use the Project in any manner are subject to these Bylaws, the Declaration, and the rules and regulations, as each may be amended from time to time. The acceptance of any apartment deed, conveyance, mortgage or similar instrument, or the acquisition of any interest in the Project, or the entry into or the act of occupancy of an apartment, shall constitute an agreement that the provisions of these Bylaws, the Declaration, and the rules and regulations are accepted, ratified and shall be complied with.

2.3 Compliance With Declaration, Bylaws, Rules and Regulations, Etc. Each apartment owner, such apartment owner's employees, tenants, guests, invitees, and any other persons using the Project shall comply strictly with the covenants, conditions and restrictions set forth in the Declaration, these Bylaws and the rules and regulations. Each apartment owner is fully responsible for ensuring that all employees, tenants, guests, and invitees of the apartment owner comply strictly with such covenants, conditions and restrictions, and shall be personally liable for any such non-compliance. 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 or board of directors on behalf of the Association or, in a proper case, by an aggrieved apartment owner.

2.4 Attorneys' Fees and Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- (a) Collecting any delinquent assessments against any owner's apartment;
- (b) Foreclosing any lien thereon;
- (c) Enforcing any provision of the Declaration, these Bylaws, the rules and regulations of the Real Estate Commission;

against an apartment owner, such apartment owner's employees, tenants, guests,

or invitees, shall be promptly paid on demand by such apartment owner to the Association; 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 such apartment owner as a result of the action of the Association, shall be promptly paid on demand to such apartment owner by the Association.

If any claim by an owner is substantiated in any action against the Association, any of its officers or the board of directors to enforce any provision of the Declaration, these Bylaws, the rules and regulations or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

(a) The owner first shall have demanded and allowed reasonable time for the board of directors to pursue such enforcement; or

(b) The owner demonstrated to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

2.5 Conflicts. These Bylaws are set forth to comply with the requirements of the Act. In case any of these Bylaws conflict with the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

### ARTICLE III ASSOCIATION

3.1 Qualifications For Membership. All apartment owners of the Project shall constitute the Association. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the association shall automatically cease. Notwithstanding anything to the contrary provided herein, the Developer shall be entitled to vote and act on all matters as the Association and the board of directors until such time as the first meeting of the Association. Thereafter, the Developer, as the owner of any unsold apartments, shall be entitled to vote the interest of each such apartment.

3.2 Powers of the Association. The Association shall have all of the powers with respect to the operation and regulation of the Project conferred upon

the Association by, or which may be conferred upon the association of apartment owners of a condominium project pursuant to the provisions of, the Act, including without limiting the generality of the foregoing:

- (a) The election of a board of directors.
- (b) The management, maintenance, acquisition, construction and care of the Association property. As used herein, the term "Association property" includes the common elements of the Project, property held by the Association, property commonly held by its members, property within the Project privately held by its members but which may be subject to a common maintenance assessment by the Association for such purposes as insurance, and property owned by any governmental agency or private or public utility and used for the benefit of the Association's members.
- (c) The collection of common expenses and other expenses (including, without limitation, the cost of any utility services payable to the Association by the owners of individual apartments as referenced in Section 7.1 hereof) from the owners.
- (d) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (e) The establishment of such restrictions and requirements not inconsistent with the Declaration, the Act or these Bylaws regarding the use and maintenance of the apartments and the use of the common elements.
- (f) The amendment of these Bylaws in accordance with the Declaration, Section 10.2 hereof and the Act.
- (g) Any and all powers not inconsistent with any law or the Declaration, which are reasonably incidental to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration, or are reasonably incidental to the exercise of the Association's powers as set forth in the Declaration or herein.

Nothing in this Section 3.2 shall prohibit the delegation by the Association of any of its powers in accordance with these Bylaws, as amended from time to time.

3.3 First Meeting; Annual Meetings. The first annual meeting of the Association shall be held upon the call of the Developer not later than one hundred eighty (180) days after recordation of the first apartment conveyance, provided

forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project has not been sold and recorded, at the end of one year after the first apartment conveyance, an annual meeting shall be called, provided ten percent (10%) of the apartment owners so request. Thereafter, the annual meetings of the Association shall be held within three (3) calendar months following the end of the fiscal year selected by the board, and if the annual meeting date for any year shall not be held or called within said period, then the annual meeting for such year shall be held on the first day of the fourth calendar month following the end of the fiscal year selected by the board. At such annual meetings, including the first annual meeting, the board of directors shall be elected by ballot of the apartment owners in accordance with Article IV, Section 4.3 of these Bylaws. The apartment owners may transact such other business at such meetings as may properly come before them.

3.4 Place of Meetings. All meetings of the Association shall be held at the address of the Project, or elsewhere within the State of Hawaii convenient to the apartment owners as determined by the board of directors.

3.5 Method of Calling Special Meetings. Except as otherwise provided herein, special meetings of the Association shall be held at any time upon the call of the President or of any director or upon written request signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary. Upon the receipt of such call or written request, the Secretary shall send written notice of the meeting to all apartment owners and the meeting shall be held no earlier than fourteen (14) and no later than sixty (60) days from the receipt of such call or written request, at such time, date, and place as shall be determined by the board.

3.6 [RESERVED]

3.7 Notice of Meetings. Written notice of all Association meetings, whether annual or special, shall be given to each apartment owner at least fourteen (14) days but not more than ninety (90) days prior to the meeting, in any of the following ways: (a) by delivering it personally to the apartment owner, or (b) if the apartment owner resides in the Project, by leaving it at such apartment owner's apartment in the Project, or (c) by mailing it, postage prepaid, addressed to the apartment owner at the address of such owner as it appears on the Association's record of ownership. The written notice of meeting shall contain at least: the date, time and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the Association, if any. Upon notice being given in accordance with the provisions of this section, the failure of any member of the Association to receive actual notice of any meeting shall not in any way

invalidate the meeting or proceedings thereat. The presence of an apartment owner or apartment mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner or apartment mortgagee unless such owner or apartment mortgagee shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions thereof.

3.8 Quorum. At all meetings of the Association, the presence in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners present in person or by proxy at any meeting of the Association at which a quorum is present shall be binding upon all apartment owners for all purposes, except as otherwise provided in the Declaration or in these Bylaws. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests of the Project, and any other specified percentage of apartment owners means the owners of apartments to which are appurtenant such specified percentage of the common interests.

3.9 Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment pursuant to the Declaration. Votes may be cast in person or by proxy by the apartment owners. A personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote for any apartment owned or controlled by him in such capacity, provided that prior to such meeting he shall first present evidence satisfactory to the board of directors that he owns or controls such apartment in such capacity. The vote for any apartment owned by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and, in case of protest, the entire vote allocated to such apartment shall not be counted.

### 3.10 Proxies and Pledges.

(a) No resident manager or managing agent shall solicit, for use by the resident manager or managing agent, any proxies from any apartment owner, nor shall the resident manager or managing agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the board of directors who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or re-election of board members at any Association meeting unless the proxy form specifically authorizes the board member to vote for the election or re-election of board members and the board of directors first posts notice of its intent to solicit proxies in prominent locations

within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the board of directors receives within seven (7) days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the board of directors shall mail to all owners either:

- (i) A proxy form containing either the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or
- (ii) A proxy form containing no names, by accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board of directors and reasons for wanting to receive proxies.

(b) The authority given by the apartment owner to another person to represent him at meetings of the Association shall be in writing. A proxy, to be valid, must: (a) be delivered to the Secretary or the managing agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (b) contain at least the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, and the date that the proxy is given; (c) contain boxes wherein the owner has indicated that the proxy is given: (i) for quorum purposes only; (ii) to the individual whose name is printed on a line next to this box; (iii) to the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or (iv) to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

(c) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the applicable apartment.

(d) No officer of the board of directors shall use Association funds to solicit proxies; provided that this shall not prevent any officer from exercising his right as an apartment owner under Section 514A-82(b)(4) of the Act.

(e) Voting rights transferred or pledged by mortgage, deed of trust



or agreement of sale of any apartment or interest therein, a copy of which is filed with the board of directors, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the board of directors. Nothing in subsections (b), (c) or (d) or this Section 3.10 shall affect the holder of any proxy under a first mortgage of record or under an agreement of sale of any apartment or interest therein. Any one of two or more persons owning any apartment may give or revoke a proxy for the entire vote of such apartment. No proxy may be given by a co-owner or co-owners for only a share of an apartment's vote. Any proxy given by a co-owner or co-owners of an apartment may be exercised to cast the entire vote for such apartment in the absence of protest by another co-owner or the holder of a proxy from another co-owner, and, in case of such protest, the entire vote allocated to such apartment shall not be counted.

3.11 Adjournment of Meetings. Any meeting of the Association may from time to time be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by a majority of the apartment owners present, without any further notice other than the announcement at such meeting. If a quorum is present upon reconvening such adjourned meeting, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

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

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting (unless waived by vote of a majority of the Association members present at such meeting);
- (d) Reports of officers;
- (e) Report of board of directors;
- (f) Reports of committees;
- (g) Election of members of the board of directors (when so required);

- (h) Unfinished business; and
- (i) New business.

3.13 Conduct of Association Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order.

3.14 Registration of Association. The Association shall comply with the requirements of Section 514A-95.1 of the Act.

#### ARTICLE IV BOARD OF DIRECTORS

4.1 Powers and Duties. The affairs of the Association, except as otherwise provided by the Act, the Declaration, or these Bylaws, shall be conducted and managed by a board of directors. Each director shall owe the Association a fiduciary duty in the performance of the director's responsibilities. Pursuant to Section 6.2 of these Bylaws, the board may employ a responsible corporate managing agent with such powers and duties of the board as shall be delegated by the board.

#### 4.2 Number; Qualification and Compensation.

(a) The board of directors shall initially be constituted of five (5) persons. This number may be changed from time to time by vote of the Association provided that the number of directors shall at no time be less than 5. Each director shall be an owner, co-owner, vendee under an agreement of sale, or an officer of any corporate owner of an apartment or, in the case of fiduciary owners, the fiduciary or officers of corporate fiduciaries. The partners in a general partnership, the general partners of a limited partnership and the members of a limited liability company shall be deemed to be the owners of an apartment for this purpose.

(b) There shall be no more than one representative on the board of directors from any one apartment.

(c) No resident manager of the Project shall serve on the board of directors.

(d) No member of the board of directors shall receive any compensation from the Association for acting as such, but may be reimbursed for

actual expenses incurred in the course of acting as such director.

4.3 Method of Electing the Board. Election of directors shall be by cumulative voting by secret ballot at each annual meeting of the apartment owners and any special meeting called for that purpose. Anything contained herein to the contrary notwithstanding, at the first election of directors, and thereafter for so long as a majority of the voting power of the apartment owners is held by the Developer, no less than twenty percent (20%) of the directors shall be elected solely by the vote of apartment owners other than the Developer.

4.4 Term of Office. At the first annual meeting of the apartment owners, and at each special meeting to elect a new board following an administrative merger as provided in Section 3.6 of these Bylaws, the term of office of the two (2) members of the board receiving the greatest number of votes shall be fixed at three (3) years, the term of office of the two (2) members of the board receiving the third and fourth greatest numbers of votes shall be fixed at two (2) years, and the term of office of the member of the board receiving the next greatest number of votes shall be fixed at one (1) year. In the event that the number of directors increases as the result of an administrative merger, the initial terms of the four (4) members of the board receiving the four (4) greatest numbers of votes shall be as provided in this Section (that is, three (3) years for the two members with the greatest number of votes, and two (2) years for the two members with the third and fourth greatest numbers of votes), and all remaining members shall have initial terms of one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the board shall be elected to serve for a term of two (2) years. Each member of the board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the apartment owners.

4.5 Removal of Directors. At any regular or special meeting of apartment owners, any one or more of the members of the board of directors may be removed with or without cause by the apartment owners and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that a director elected solely by the votes of apartment owners other than the Developer, pursuant to Section 4.3 of these Bylaws, may be removed from office prior to the expiration of his term only by the vote of apartment owners other than the Developer; and provided, further, that an individual director shall not be removed (unless the entire board is removed) if owners having sufficient votes to elect one director by cumulative voting present at such meeting shall vote against his removal. A member of the board of directors whose removal is proposed by the apartment owners shall be given an opportunity to be heard at the meeting. If such removal and replacement is to occur at a

special 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; provided that if the Secretary or managing agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date and place for the special meeting and to send out notices for the special meeting in accordance with the requirements for notice contained herein. Except as otherwise provided in the Act, such meeting for the removal from office and replacement of directors shall be scheduled, noticed and conducted in accordance with these Bylaws. In addition, if any director shall fail to attend four (4) consecutive meetings of the board for any reason, the board, by a vote of a majority of the other members, may remove him and select a replacement to serve his unexpired term.

4.6 Annual Meetings. The board of directors shall meet at least once a year. Each annual meeting of the board of directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting the board shall elect the officers of the Association for the ensuing year. The first meeting of the first elected board shall be held at the place of and immediately following the first annual meeting of the Association as provided in Section 3.3 of these Bylaws.

4.7 Proxy Vote. Unless permitted by law, a director shall not cast any proxy vote at any board meeting.

4.8 Conflict of Interest. Unless permitted by law, a director shall not vote at any board meeting on any issue in which the director has a conflict of interest. If there is any disagreement as to whether or not there exists a conflict of interest, the determination of whether a conflict of interest exists as to a particular director or directors shall be made by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties.

4.9 Disclosure of Conflict. 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.

4.10 Board Meetings. All meetings of the board of directors shall be conducted in accordance with the most current edition of Robert's Rules of Order. All meetings of the board of directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the board of directors may participate in any deliberation or discussion of the board of

directors unless a majority of a quorum of the board of directors votes otherwise. The board of directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session. Minutes of an executive session may, in the discretion of the board, be taken or not; but if they are taken they shall be maintained in a confidential file (consistently with maintaining the attorney-client privilege as to all legal matters).

4.11 Regular Meetings. Regular meetings of the board of directors may be held at the address of the Project, or elsewhere within the State of Hawaii and at such time as shall be determined from time to time by the board of directors. Unless the board of directors determines otherwise, meetings shall be held quarterly; provided, however, that at least two (2) regular meetings, in addition to the annual meeting of the board, shall be held during each fiscal year. Notice of the time and place for each regular meeting of the board of directors shall be given to each member of the board of directors in writing at least ten (10) business days prior to the day named for such meeting.

4.12 Special Meetings. Special meetings of the board of directors may be called by the President or any one director on ten (10) business days written notice to each member of the board of directors, which notice shall state the time, place and purpose of the meeting.

4.13 Notice of Board Meetings. Whenever practicable, notice of all board meetings shall be posted by the resident manager 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. If posting is not practicable, notice of board meetings shall be given to the owners by the resident manager or the board at least seventy-two (72) hours prior to the meeting in such manner as the board deems appropriate under the circumstances.

4.14 Waiver of Notice. Any member of the board of directors may at any time waive notice of any meeting of the board and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the board of directors at any meeting of the board of directors shall constitute a waiver of notice by him of the time and place thereof. If all the members of the board of directors are present at any meeting of the board, no notice shall be required, and any business may be transacted at such meeting.

4.15 Minutes of Meetings. The minutes of meetings of the board of

directors shall include the recorded vote of each member of the board of directors on all motions except motions voted on in executive session.

4.16 Travel Expenses. Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless the owners are informed and a majority of the apartment owners approve of these expenses.

Members of the board may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget 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 of Hawaii, all other travel expenses incurred under this subsection 4.16 of these Bylaws shall be subject to the requirements of subsection 14.16.

4.17 Decisions of Board of Directors. At all meetings of the board of directors, a majority of the members thereof shall constitute a quorum of the transaction of business. The vote or written consent of a majority of directors present at a meeting at which a quorum of directors is present shall constitute the decision of the board. If at any meeting of the board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. Following such adjournment, at any reconvened 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.

4.18 Vacancies. Vacancies in the board of directors caused by any reason other than the removal of a member thereof by a vote of the apartment owners shall be filled by a vote of a majority of the remaining members at a special meeting of the board at which a majority of the remaining members are present called 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. Each person so elected shall hold office until the next annual meeting of the Association, at which time a successor director shall be elected by the apartment owners. Any successor director elected by the apartment owners in the foregoing manner shall serve for the remaining unexpired term in respect of which the vacancy occurred.

4.19 Liability and Indemnity of the Board of Directors and Officers. The members of the board of directors and the officers of the Association shall not be liable to the Association or any of the apartment owners for any mistake of

judgment or otherwise except for their own gross negligence or willful misconduct. The Association may, upon request of any director or officer, obtain and maintain, as a common expense, a policy of directors' and officers' liability insurance covering the directors and officers of the Association and shall indemnify each director and officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for 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 of having been such director or officer, or my reason of any part or future action taken, authorized or approved by him or any omission to act as such director or officer, whether or not he continues to be such director or officer at the time of the incurring or imposition of such costs, expenses or liabilities, but not including such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such director or officer. The foregoing right of indemnification shall not be exclusive of other rights which any director or officer may have and shall inure to the benefit of the heirs and personal representatives of each director and officer.

4.20 Fidelity Bonds. A managing agent employed or retained by the board of directors shall provide evidence of a fidelity bond in an amount not less than the minimum amount required by law. In addition, the board of directors shall obtain annually, as a common expense, a fidelity bond or bonds, in an amount not less than the minimum amount required by law, to cover all officers, directors, employees and managing agents of the Association who handle the Association's funds. To the extent reasonably obtainable, the bonds shall: (a) provide that the bonds may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to the board and all apartment mortgagees and every other person in interest who shall have in writing requested such notice, and (b) contain a waiver of defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

4.21 Inspection By Directors; Copies of Documents. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. This right of inspection by a director includes the right to make extracts and copies of documents.

4.22 Telephone Meetings. Any other provision of these Bylaws

notwithstanding, and if permitted by applicable law, at any regular or special meeting of the board at which at least one (1) board member is physically present, whether held in open or executive session, any member of the board not physically present may participate in such meeting by telephone for purposes of constituting a quorum and for all other purposes, and the board may carry on all business within the board's authority as if all members participating by telephone were physically present at such meeting; provided, however, that all persons authorized to participate in and actually participating in such meeting (including members of the Association who are not on the board and who may participate pursuant to Section 514A-83.1(a) of the Act) are at all times during such meeting able to hear and, when appropriate, be heard by all other participants.

4.23 Action By Directors Without Meeting. Any action required or permitted to be taken at any meeting of the directors or of a committee of the directors may be taken without a meeting if all of the directors or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the directors' meetings or committee meetings as the case may be and shall have the same effect as a unanimous vote.

## ARTICLE V OFFICERS

5.1 Election and Term of Office. The officers of the Association shall be the President, the Secretary and the Treasurer, all of whom shall be elected by and from among the board of directors. The board of directors may designate and elect such other officers as in its judgment may be necessary. The officers of the Association shall be elected annually by the board of directors and shall hold office at the pleasure of the board of directors.

5.2 Restriction on Qualification. An owner shall not act both as an officer of the Association and as an employee of the managing agent employed by the Association, if any.

5.3 President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the board of directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the apartment owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association. In absence



of, or disability of or refusal to perform the duties of the President, the Secretary shall perform all of the duties of the President.

5.4 Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the board of directors. He shall see that all notices are given in accordance with these Bylaws. He shall have charge of such books and papers of the Association as the board of directors may direct. He shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. Duties of the Secretary may be delegated to and performed by the managing agent.

5.5 Treasurer. The Treasurer shall keep the financial records and books of account of the Association showing all receipts and disbursements, and shall be responsible for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as shall be designated by the board of directors. He shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to and performed by the managing agent or any outside accounting organization.

#### 5.6 Audits.

(a) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant; provided that if the Association at any time consists of less than twenty (20) owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an Association meeting.

(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 owner may indicate that the owner wishes to obtain a copy of the annual audit report. The board shall not be required to submit a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the board shall make available:

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

(ii) The annual audit to all 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 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.

5.7 Removal of Officers. Upon the affirmative vote of a majority of the members of the board of directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose.

5.8 Compensation of Officers. No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer.

5.9 Agreements, Contracts, Deeds, Checks and Other Instruments. All agreements, contracts certificates, deeds, leases, checks and other instruments of the Association, including any amendments to these Bylaws, shall be signed by the President and one other officer of the Association, or such other person or persons as may be designated by the board of directors, provided that no officer, though he may hold more than one office, shall sign any instrument in more than one capacity.

## ARTICLE VI MANAGEMENT

6.1 Management and Operation of the Project. The board of directors shall at all times manage and operate the Project, including the common elements of the Project, and shall have the powers and duties necessary or proper therefor, and may do all acts and things except such as by law, the Declaration or these Bylaws may not be delegated to the board of directors by the apartment owners. Such powers and duties of the board of directors shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep, replacement, repair and maintenance of the common elements and limited common elements as provided in the Declaration;

(b) Preparation annually of a budget of the common expenses required for the affairs of the Association (including, without limitation, the

operation and maintenance of the Project) and determination of the amounts of monthly and special assessments;

(c) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the apartment owners;

(d) Purchasing and maintaining of insurance pursuant to the Declaration and these Bylaws;

(e) Adoption and amendment of the rules and regulations, and enforcement of the rules and regulations, applicable provisions of the Declaration, these Bylaws and the Act;

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(g) Rebuilding, repairing and restoring the Project in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty or as a result of eminent domain proceedings;

(h) Procuring legal and accounting services necessary or proper for the administration and operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws, and rules and regulations and any other material documents or decisions affecting the Project; provided that the board shall not institute any legal or arbitration proceedings against the Developer without the prior unanimous approval of the apartment owners;

(i) Purchasing, leasing or otherwise procuring any other materials, equipment, supplies, furniture, labor and services, making repairs and structural alterations, and paying all taxes and assessments and other common expenses which the board is required to procure, make or pay pursuant to the Declaration, these Bylaws, or by law or which in its opinion shall be necessary or proper for the operation of the Project or the enforcement of the Declaration or these Bylaws, provided that if any such materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the particular actions or negligence of the owners of a particular apartment, the cost thereof shall be specially assessed to the owners of such apartment;

(j) Maintenance and repair of any apartment if such maintenance or repair is necessary, in the discretion of the board, to protect the common elements or any other apartment or to maintain the neat and orderly appearance of

the Project and the owner or owners of the apartment shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the board to the owner or owners; provided that the board shall levy a special assessment against such apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(k) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof which may in the opinion of the board constitute a lien against the Project or against the common elements rather than merely against the interest therein of particular owners. If the acts or omissions of one or more owners shall be the cause of the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the board by reason of such lien;

(l) Access to each apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for emergency repair of any apartment or the limited common elements appurtenant thereto necessary to prevent damage to the common elements or to another apartment, provided that the costs of such repair to any apartment shall be chargeable to the owners of such apartment and the board shall assess a special assessment on the owners of such apartment for the cost of such repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

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

(n) Employment, designation, supervision and dismissal of personnel necessary for the maintenance, repair, replacement and restoration of the common elements;

(o) Establishment of such penalties and fines and any interest thereon as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the rules and regulations, including penalties and fines and any interest thereon for failure or refusal to pay to the Association on demand all costs, expenses, common expenses and assessments (special or otherwise) required to be paid hereunder; provided such penalties and fines are not inconsistent with applicable laws or the provisions of these Bylaws.

(p) Subject to the affirmative vote or written consent of at least

sixty-five percent (65%) of the apartment owners, the board may purchase, lease or otherwise acquire any apartment in the name of the board of directors on behalf of all apartment owners;

(q) Subject to any approval requirements and spending limitations contained herein or in the Declaration, the board may authorize the borrowing of money 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;

(r) If the board so chooses, conducting (or directing another responsible party to conduct) a background check on applicants applying for employment as a security guard or manager or for a position which would allow such employees access to the keys of or entry into the apartments or access to Association funds, provided such employee applicant signs an authorization to conduct such background check;

(s) Dispose of personalty abandoned in or on the common elements of the Project in any one of the following ways:

- (i) Sell the personalty in a commercially reasonable manner;
- (ii) Store such personalty at the expense of its owner;
- (iii) Donate such personalty to a charitable organization; or
- (iv) Otherwise dispose of such personalty, provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(A) The Board notifies the owner in writing of:

- (1) The identity and location of the personalty; and
- (2) The Board's intent to 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

- (B) 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 newspaper of general circulation within the County of Maui.

The proceeds of any sale or disposition of personalty as set forth above shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty (30) days, after which any proceeds not claimed shall become the property of the Association;

- (t) Expending Association funds for necessary travel and per diem on behalf of the board members, provided that all apartment owners are informed in advance and the expenses are approved by a majority of the apartment owners;

- (u) Custody and control of all funds of the Association, maintenance or full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

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

- (w) Reviewing, on at least a quarterly basis:

- (i) a current reconciliation of the Association's operating accounts;

- (ii) a current reconciliation of the Association's reserve accounts;

- (iii) the current year's actual reserve revenues and expenses compared to the current year's budget;

- (iv) the latest account statements prepared by the financial institute(s) where the Association has its operating and

reserve accounts;

(v) an income and expense statement for the Association's operating and reserve accounts; and

(x) Performing such other functions as shall be provided by the Declaration.

6.2 Employment of Managing Agent. The board of directors may (but shall not be required to) employ a responsible corporate managing agent duly registered with the Real Estate Commission of the State of Hawaii, subject at all times to direction by the board with such powers and duties of the board as shall be delegated by the board. The compensation of the resident manager and/or managing agent shall be specified by the board. Notwithstanding the foregoing, the Developer shall have the right to select the initial managing agent for the Project, subject, however, to the provisions of Section 514A-84 of the Act. The managing agent shall at all times comply with all of the requirements of the Act.

The managing agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration of the common elements and any additions or alteration thereto, (c) the purchase (or leasing), maintenance and replacement of any equipment, (d) provisions for service of all utilities to the common elements and the various apartments, (e) employment, supervision and dismissal of a resident manager and such other personnel as it deems necessary for the maintenance and operation of the Project, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments (h) collection of all assessments and payment of all bills, (i) purchase of such insurance and fidelity bonds as is contemplated by these Bylaws, (j) custody and control of all Association funds, (k) maintenance of books and records on a cash basis and (l) preparation of financial reports and registration of the Association with the Hawaii Real Estate Commission. The board of directors may in its discretion limit any of the powers herein granted to the managing agent or grant additional powers to the managing agent.

6.3 Renting or Selling of Apartments By Association Employees. An employee of the Association shall not engage in renting or selling apartments in the Project except for the apartments owned by the Association, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the apartment owners.

6.4 Rules and Regulations. The Developer shall initially adopt, and the board of directors shall thereafter adopt and amend, such rules and regulations as the Developer or the board of directors, as the case may be, may deem necessary or desirable governing the details of the operations and use of the common elements and certain details of the use of the apartments, including, without limitation, such operation and use of the apartments and the limited common elements as may affect the operation and use of the common elements. Such rules shall be binding upon the apartment owners, and all invitees, guests, employees and tenants of the apartment owners and all occupants of the apartments, and shall be enforceable by the resident manager and the managing agent on behalf of the board. Any amendment of the rules and regulations shall require the prior written approval of the Developer, as long as Developer or any affiliate of Developer shall own any apartment in the Project or shall have any interest in, or any proposed or ongoing development project on, any of the property described in Exhibit "D" of the Declaration.

6.5 Abatement and Enjoinment of Violations By Apartment Owners. The violation of any of the rules and regulations, the breach of any of these Bylaws or the breach of any provision of the Declaration shall give the board the rights 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 summarily to abate any structure, thing or condition that may exist therein in violation of the rules and regulations, these Bylaws or the Declaration, and the board shall not thereby be guilty of any trespass or be or become liable for any damage to the apartment or any common elements caused by such entry, all costs of repairing any such damage being the sole responsibility of the defaulting owner; provided, however, that notwithstanding the foregoing, the board shall have such right of entry (by force, if necessary, or otherwise) only in the instance where such violation or breach threatens an immediate, substantial and undeniable threat to life, limb or property of any apartment owner, member of his family, tenant, guest or invitee; or

(b) To enjoin, abate or remedy, by appropriate legal proceedings, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be paid by the defaulting apartment owner on demand.

## ARTICLE VII COMMON EXPENSES

7.1 Common Expenses Defined. Common expenses means and includes all sums designated in the Declaration or in these Bylaws as common expenses, all



sums incurred by or on behalf of the board of directors in the conduct and management of the affairs of the Association pursuant to the Declaration and these Bylaws, such amounts as the board of directors deems proper to maintain an adequate reserve fund for the operation and maintenance of the Project, including, without limitation, anticipated needs for working capital, capital improvements, and for replacements, repairs and contingencies, and such amounts as the board of directors deems proper to make up any deficit in the common expense assessments for any prior year. Without limiting the generality of the foregoing, common expenses shall include all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner), assessments, insurance (including fire and other casualty and liability insurance), costs of repair, reinstatement, rebuilding and replacement of the common elements, costs of yard and other similar services, wages, accounting and legal fees, management fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements and the cost of all utility services (including water, electricity, gas, sewer, refuse collection, garbage disposal, telephone and any similar services) unless (a) billed by the utility company or provider directly to each owner, (b) separately metered or check metered, or (c) the cost incurred by the Association can be attributed separately to each individual apartment, in which case the amounts shall be charged to each apartment and shall be payable to the Association by the owner of such apartment. The interest of any apartment owner in the reserves of the Association may not (except upon the termination of the Condominium Property Regime established by the Declaration) be withdrawn or assigned separately, but shall be deemed to be transferred automatically with each transfer of the apartment, whether or not mentioned or described expressly in the transfer document.

7.2 Method of Determining and Collecting Common Expenses. Except as otherwise provided in the Declaration or these Bylaws, each apartment owner shall be liable for and pay a share of the common expenses, in proportion to the common interest appurtenant to his apartment. Assessments of common expenses shall be payable in monthly installments on the first day of each month, or at such other times as shall be determined by the board of directors. The Developer shall fix the rate of the assessments of common expenses until such rate shall be redetermined by the board of directors. The board of directors shall annually fix the rate of assessments of common expenses and shall notify each apartment owner in writing of the amount of the assessments applicable to such owner's apartment not less than thirty (30) days in advance of the beginning of such annual assessment period. The board of directors may from time to time during any year increase the assessment rate or impose a special assessment,

provided the board of directors shall notify each apartment owner in writing of such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. Any portion of an owner's assessments used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the owners to the Association and shall be credited by the Association upon its books as paid-in-surplus.

If, at the end of any year, there should be any excess unspent funds collected by assessments, the same shall be used or applied by the board, in its sole discretion, (i) to pay common expenses in the following year; or (ii) to be placed in the replacement reserves.

The Developer may assume all the actual common expenses of the Project by stating in the Disclosure Abstract required by Section 514A-61 of the Act that the apartment owner shall not be obligated for the payment of his share of the common expenses until such time the Developer files an amended Disclosure Abstract with the Real Estate Commission in accordance with Section 514A-15(b) of the Act. If the Developer elects to assume the actual common expenses of the Project as aforesaid, then, notwithstanding any other provisions in these Bylaws to the contrary, the Developer shall have no obligation to pay for any replacement reserves or any other reserve amounts with respect to or attributable to the period during which the Developer assumes the actual common expenses of the Project.

7.3 Payment as Agent. The board will pay or cause to be paid, on behalf of the owners, all common expenses. Each owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these Bylaws, of all common expenses, and the board shall be responsible, as agent for each owner, only to transmit the payments made by the owner to third persons to whom such payments must be made by the owner. The board may require the managing agent to assist in its duties hereunder. The board or the managing agent collecting the common expenses shall not be liable for payment of such common expenses as principal but only as the agent of all owners to transmit said payments to third persons to whom such payments must be made by the owners.

7.4 Budget and Reserves. Subject to the Act and any further regulations adopted by the Real Estate Commission of the State of Hawaii:

(a) The board of directors shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

- (i) The estimated revenues and operating expenses of the Association;
- (ii) Information as to whether the budget has been prepared on a cash or accrual basis;
- (iii) The total replacement reserves of the Association as of the date of the budget;
- (iv) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association;
- (v) A general explanation of how the estimated replacement reserves are computed; and
- (vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

(b) The Association shall assess the apartment owners to fund a minimum amount of all the estimated replacement reserves as required by law. For each fiscal year the Association shall collect the full amount required to fund the estimated replacement reserves for that fiscal year except that a longer period of time may be permitted to the extent that the Real Estate Commission of the State of Hawaii shall adopt rules to permit an existing association to fund its estimated replacement reserves in increments.

(c) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the Project. The estimated replacement reserves shall include:

- (i) 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

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

(d) Neither the Association nor any apartment owner, director, officer, 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.

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

(f) The requirements of this Section 7.4 shall override any requirements in the Declaration, these Bylaws, or any of the Association's other documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

(i) Any provisions relating to the repair and maintenance of the Project;

(ii) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(g) Subject to the procedures of Section 534A-94 of the Act and any rules adopted by the Real Estate Commission of the State of Hawaii, any apartment owner may enforce the board's compliance with this Section 7.4 in the event the board fails to so comply. In the event the board has not prepared an annual operating budget and reserve study as required in this Section 7.4, the board shall have the burden of proving it has complied with this Section 7.4 in any proceeding to enforce such compliance.

(h) As used in this section:

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

"Emergency situation" means any extraordinary expenses;

- (i) Required by an order of a court.
- (ii) Necessary to repair or maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered.
- (iii) Necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the board of directors in preparing and distributing the annual operating budget;
- (iv) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (v) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.

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

"Replacement reserves" means funds for the upkeep, repair or replacement of those parts of the Project including, but not limited to roofs, walls, decks, paving and equipment that the Association is obligated to maintain.

7.5 Default in Payment of Assessments. Each monthly (or other periodic) assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the owner against whom the same is assessed and, in the case of an apartment owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment not paid within ten (10) days after the due date thereof shall accrue interest at the rate of twelve percent (12%) per annum from such due date until paid and shall be subject to the assessment of such late charge or fine as may be from time to time determined by the board of directors. All unpaid amounts of such assessments (or any other assessments provided for in the Declaration or these Bylaws) against any apartment or apartment owner shall constitute a lien on such apartment or such owner's apartment prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such apartment (which by law have priority over the Association's lien), and (ii) liens of any bona fide mortgage which was recorded prior to the recording of a notice of a lien by the Association. Such lien for an unpaid assessment may be foreclosed by an action brought by the Association or by its managing agent on

behalf of the Association, as provided by the Act in like manner as the foreclosure of a mortgage of real property, provided that ten (10) days prior written notice of intention to foreclose such lien shall be mailed by registered mail, postage prepaid, to the owner of the apartment to be foreclosed upon. In any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. Subject to the approval requirements of Section 6.1(p) of these Bylaws, the Association or the managing agent, acting on behalf of the Association, shall be entitled to bid on such apartment at the foreclosure sale and to acquire, hold, lease, mortgage and convey such apartment. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing such assessments.

In the event of a default or defaults in payment of any such assessment or assessments, and in addition to any other remedies the board of directors may have, the board of directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce such assessment obligation. Each such action must be authorized by a majority of the board at a regular or special board meeting, and any such suit may be instituted by the board or the managing agent (if so authorized by the board in writing), on behalf of the Association. Any judgment rendered in favor of the Association in any such action shall include reasonable attorneys' fees and costs. Upon full satisfaction of any such judgment, the board shall authorize any two (2) members thereof or officers of the Association, acting in the name of the board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the board or the managing agent may give a notice to the defaulting apartment owner stating the date and amount of the delinquency. If the delinquent amount is not paid within ten (10) days after delivery or mailing of such notice, the board or the managing agent may record a notice of lien against the apartment of such delinquent apartment owner. Any such notice of lien shall be signed and acknowledged by any two (2) or more members of the board or officers of the Association, the attorney for the Association, or the managing agent. Irrespective of whether or not such a notice of lien is recorded, the board shall have all remedies provided in these Bylaws, the Declaration and the Act on account of the occurrence of any such default. Each default shall constitute a separate basis for a notice of lien, but a single notice of lien may be filed with respect to more than one default.

A certificate executed and acknowledged or made under penalty of perjury by any two (2) members of the board or officers of the Association or the managing agent shall be conclusive upon the Association and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee or service charge, in an amount fixed from time to time by the board. If any notice of lien is filed as aforesaid and thereafter the board receives payment in full of the amount claimed to be due and owing (including accrued interest, late fees and any costs of enforcement and/or attorneys' fees) then upon demand of the apartment owner and payment of a reasonable fee, the board, acting by any two (2) members of the board or officers of the Association or the managing agent, shall execute, acknowledge and deliver to the owner a release of lien, stating the date of the original notice of lien, the date, the filing data of the notice of lien and that the lien is fully satisfied, released and discharged.

#### 7.6 Assessment Disputes.

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

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

(ii) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

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

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

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

(vi) That payment in full of the assessment does not prevent the apartment owner from contesting the assessment or receiving a refund of amounts owed.

Nothing in these Bylaws 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 the 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 Section 10.8 of these Bylaws or part VII of the Act, whichever is applicable, 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 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 owed.

7.7 Waiver. The failure of the board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the owner hereunder or to exercise any right or option herein contained or to serve any notice or to institute any action or summary proceeding shall not be construed as a waiver or a relinquishment for the future, of such covenant, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the board of any sum paid by the owner hereunder, with or without knowledge by the board of the breach of any covenant hereof, shall not be deemed a waiver of such breach; and no waiver, express or implied, by the board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the board of directors.

7.8 Liability of Acquirer of Title on Foreclosure For Unpaid Common Expenses. Where the apartment mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure



on the mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer, his successors, and assigns.

7.9 Joint and Several Liability of Grantor and Grantee For Unpaid Common Expenses. In a voluntary conveyance the grantee under an apartment deed covering an apartment is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantor or grantee is entitled to a statement from the managing agent or board of directors setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the 30-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the apartment conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

7.10 Waiver of Use of Common Elements; Abandonment of Apartment; Conveyance to Board of Directors. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment. Any apartment owner may, by conveying his apartment and his common interest to the board of directors on behalf of all other apartment owners, exempt himself from common expenses thereafter accruing.

7.11 Taxes and Assessments. Each owner of an apartment shall be obligated to have the real property taxes for such apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner. Each owner shall execute such documents and take such action as may be reasonably specified by the board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each owner shall be obligated to pay to the board his proportionate share of any assessment by the board for any portion of taxes or assessments, if any, assessed against the entire Project 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 on the entire Project or any part of the common elements, the board may pay such taxes or assessments as part of the common expenses. Such assessments by the board are secured by the lien created by Section 7.5 hereof.

7.12 Utility Expenses. The cost of utility services to any apartment which are separately metered or check metered, or billed or charged for on a per-apartment basis, shall be payable by the owner of such apartment, payable directly to the utility company if a separate bill is rendered, or otherwise added to his share of common expenses. For all utility expenses not separately metered or check metered, or billed or charged for on a per-apartment basis, the board shall allocate a share of such utility expenses to each apartment, based upon the apartment's appurtenant undivided percentage interest in the common elements.

7.13 Collection From Tenant. If an owner at any time rents or leases his apartment and defaults for a period of thirty (30) days or more in the payment of the owner's share of the common expenses, the board may, so long as such default continues, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the owner occupying the apartment the rent due or becoming due from such lessee to the owner up to an amount sufficient to pay all sums due from the owner, including interest and costs of enforcement if any; and any such payment of such rent to the board by the lessee shall be a full and sufficient discharge of such lessee as between such lessee and the owner to the extent of the amount so paid; but no such demand or acceptance of rent from any lessee shall be deemed to be a consent to or approval of any lease by the owner or a release or discharge of any of the obligations of the owner hereunder remaining unpaid or unperformed or any acknowledgment of surrender of any rights or duties hereunder. If the board makes any such demand upon the lessee, the lessee shall not have the right to question the right of the board to make such demand, but shall be obligated to make such payments to the board as demanded by the board with the effect as aforesaid; provided that the board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

7.14 Severance of Utilities. The board shall also have the right to sever or interrupt utility services to a delinquent apartment as provided in the Declaration.

ARTICLE VIII  
MAINTENANCE, REPAIR, ALTERATION AND USE

8.1 Maintenance and Repair of Apartments and Limited Common Elements. Maintenance and repair of apartments and limited common elements shall be performed as provided in the Declaration.

8.2 Maintenance and Repair of Common Elements. Except as otherwise provided herein or in the Declaration, all maintenance, repairs and replacements of the common elements shall be made only by or at the direction of the board and be charged to all the owners as a common expense provided that the costs of maintenance, repairs replacements necessitated by the negligence, misuse or neglect of an identified apartment owner or costs which the Declaration provided shall be charged to one or more (but not all) of the owners, shall be charged to each such apartment owner as a special assessment constituting a lien on each such owner's apartment in accordance with Section 7.5 of Article VII hereof.

8.3 Alterations and Additions to Apartments and Limited Common Elements.

(a) Subject to the provisions of the Declaration and the Act, and except as otherwise provided herein, no owner of an apartment shall, without the prior written approval of the board, make any structural alterations in or additions to his apartment or make any alterations in (including painting, awnings, windows, lanais, porches and screens) or additions to the exterior of his apartment or to the building containing the apartment or to the common elements.

(b) An owner may make non-structural alterations and additions solely within his apartment, or solely at the owner's sole cost and expense, provided that such alterations or additions do not affect any other apartment or other common elements or change the exterior or appearance of the Project, and provided, further, that any building permit required for such alterations or additions is first duly obtained and filed with the board and the proposed alteration or addition will not adversely affect the insurance rating for the apartment's building or the Project's insurance rating or premiums.

(c) No apartment owner shall, without the prior written approval of the board, install any wiring for electrical or telephone installations, television antenna, machines or air-conditioning units, or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of any building of the Project or protruding through the walls, windows or roofs thereof.

(d) No apartment owner shall, without the prior written approval of the board, make any structural modifications, changes, additions or alterations to his porch or lanai or add any awnings, sunscreens, louvers, exhaust vents, wind baffles, or drains. However, this restriction shall not apply to any standard lanai enclosure systems or other standard lanai improvements (including any standard sunscreens) which shall have been pre-approved by the Developer or the board.

(e) Owners may not, without the prior written approval of the board, apply any substance, material or process to the exterior or interior surfaces of the apartment's windows which may alter the exterior color, appearance or reflectivity of the windows. Any drapes or other interior window coverings shall not have reflective surfaces visible through the windows from the exterior.

#### 8.4 Alteration of the Project.

(a) Except as otherwise provided herein or in the Declaration in connection with certain limited common elements, additions, alterations, repairs or improvements to the common elements of the Project may be made only by or at the direction of the board of directors.

(b) Subject to the provisions of the Declaration and the Act, and except as otherwise provided herein or in the Declaration in connection with certain limited common elements, no owner may, without the prior written approval of the board (i) make any alteration, additions, repair or improvement to his apartment which may affect the common elements, or change the exterior appearance of the Project, or (ii) make any alteration, addition, repair or improvement to any of the common elements, including any attic above his apartment or any other common elements within, encompassing or adjacent to his apartment.

(c) Whenever in the judgment of the board, the common or limited common elements shall require additions, alterations, repairs or improvements with a total cost of less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), the board may proceed with such additions, alterations, repairs or improvements and shall assess the cost thereof as a common expense. Any additions, alterations, repairs or improvements costing in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) may be made by the board only after obtaining approval of a majority of apartment owners; except that such approval shall not be required for any additions, alterations, repairs or improvements required by law or in the event of an emergency threatening immediate and substantial damage to person or property. If such approval shall be obtained, the cost thereof shall constitute part of the common expense.

(d) Except as otherwise provided herein or in the Declaration, restoration or replacement of the Project or any building or other facility or construction or structural alteration or addition to any such structure different in any material respect from the Condominium Map, shall be undertaken by the Association or any apartment owner only pursuant to an amendment of the Declaration, duly executed by or pursuant to the affirmative vote or written consent of seventy-five percent (75%) of the apartment owners and accompanied by the written consent of the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefore first approved in writing by the board and promptly upon completion of such restoration, replacement or construction, the Association shall duly record such amendment together with a complete set of floor plans reflecting such alteration certified by a registered architect or professional engineer to accurately depict the layout, location, apartment numbers and dimensions of the apartments as built. Notwithstanding any provision in the Declaration or these Bylaws to the contrary, but expressly subject to the provisions of Section 8.3 above and Section 8.6 below, any alterations or additions solely within an apartment shall require the written consent thereto, and the written approval of the apartment owner's plans therefor, by the holders of liens affecting such apartment (if the lien holders require such approval) and any other apartment owner thereby directly affected, and such alterations or additions may be undertaken by recording an amendment to the Declaration and Condominium Map; provided, however, that upon obtaining such consents as are necessary, such amendment shall be executed and recorded by the board without the further consent or approval of any other apartment owner, and all costs and expenses of drafting and recording such amendment shall be borne by the owner of the altered apartment or limited common element.

8.5 Exemptions For Persons With Disabilities. Notwithstanding anything to the contrary contained in these Bylaws, the Declaration or the rules and regulations, owners with disabilities shall be permitted to make reasonable modifications to their apartments and/or common elements, at their expense (including the cost of obtaining any bonds required by the Declaration, these Bylaws or the Act), if such modifications are necessary to enable them to use and enjoy their apartments and/or the common elements, as the case may be, provided that any owner with a disability desiring to make such modifications shall make such request, in writing, to the board of directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications. The board of directors shall not unreasonably withhold or delay their consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the board's receipt thereof, or within forty-five (45) days of the board's receipt of additional information reasonably required in order to consider such

request, whichever shall last occur and the approval of the Developer's architect shall be required as provided in the Declaration. Nothing contained in this Section 8.5 shall exempt an owner from making all amendments to these Bylaws, the Declaration or the Condominium Map necessitated by any changes permitted under this section.

8.6 Certain Work Prohibited. Anything herein to the contrary notwithstanding, no apartment owner shall do any work which could jeopardize the soundness or safety of the Project, reduce the value thereof, impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any basement or cellar without in every such case the consent of seventy-five percent (75%) of the apartment owners being first obtained, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected; provided that nonmaterial structural additions to the common elements (as defined in Section 514A-89 of the Act), 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 and such percentage, number, or group of apartment owners as may be required by the Declaration or these Bylaws, and by the Developer's architect as required by the Declaration.

8.7 Use.

(a) Each apartment in the Project shall be used only for the purposes set forth in the Declaration.

(b) All common elements of the Project shall be used only for their respective purposes as designed and as set forth in the Declaration, subject to:

(i) The right of the board, upon the approval of the owners of seventy-five percent (75%) of the common interest, to change the use of the common elements (but not the limited common elements);

(ii) The right of the board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the board; provided that unless the approval of the owners of seventy-five percent (75%) of the common interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days written notice;

(iii) The right of the board to lease or otherwise use for the benefit of the Association those common elements not falling within paragraph (ii) above, upon obtaining (A) the approval of the owners of seventy-five percent (75%) of the common interest, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on apartments with respect to which owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees.

(c) No apartment owner shall make or permit to be made any noise by himself or his tenants, employers, guests, or invitees, which will unreasonably annoy or interfere with the rights, comfort or convenience of other owners or occupants of the Project.

(d) Every apartment owner and occupant shall at all times keep his apartment and the limited common elements appurtenant thereto in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Project.

(e) Every apartment owner and occupant shall comply strictly with the Declaration, these Bylaws, and the rules and regulations.

## ARTICLE IX MORTGAGES

9.1 Notice to Apartment Mortgagees. All notices permitted or required to be given to an apartment owner pursuant to these Bylaws shall also be given to the apartment mortgagees of such apartment owner if such apartment mortgagees have delivered to the board of directors written request for such notices.

9.2 Notice to Board of Directors. An owner who mortgages his interest in an apartment shall notify the board of directors of the name and address of his mortgagee and within ten (10) days after the recordation of the same shall provide the board of directors with the recording document number of the mortgage. The board of directors shall maintain such information in a book entitled "Mortgages of Apartments".

9.3 Mortgage Protection. Notwithstanding any provisions to the contrary contained herein:

(a) All taxes, assessments and charges which may become liens

prior to a first mortgage of record on an apartment in the Project under the laws of the State of Hawaii shall relate only to the individual apartments and not to the Project as a whole.

(b) The Declaration and these Bylaws shall not give an apartment owner or any other party priority over any rights of mortgagees of apartments pursuant to their mortgages in the case of a distribution to apartment owners of insurance proceeds or condemnation awards.

(c) No amendment to this Section 9.3 shall affect the rights of any apartment mortgagee whose mortgage is recorded prior to the recordation of such amendment and who does not consent thereto.

(d) Any holder or insurer of a duly filed first mortgage of an apartment or any interest therein whose interest appears in the record of ownership of (or who has otherwise delivered a written request to) the Association shall be entitled to:

(i) Prior written notice of any proposed amendment to the Declaration or these Bylaws;

(ii) Prior written notice of any proposed termination of the Project;

(iii) Timely written notice of any actual or threatened condemnation or eminent domain proceeding affecting the Project or any portion thereof;

(iv) Written notice of any default of any apartment owner which is not cured within sixty (60) days;

(v) Written notice of any significant damage or destruction to the common elements or to an apartment covered by the first mortgage held or insured by such party;

(vi) A copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Project or any portion thereof, at such party's expense for reproduction costs and at such party's specific written request;

(vii) Prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof; provided, however, that the granting of easements for public or private utilities or for the



public purposes consistent with the intended use of the common elements of the Project and the relocation of any easements appurtenant to the Project over other lands pursuant to the exercise of any right to relocate such easements by the owner of such other lands shall not be deemed a transfer within the meaning of this clause.

9.4 Release of Information. The board may provide any information available to it pertaining to an apartment or the Project to the first mortgagee of such apartment and such mortgagee may provide any information to the board regarding the mortgagor, the mortgagor's loan and the status of such loan.

9.5 Notification. The board shall give notification in writing to all holders of first mortgages on apartments as shown in the Association's record of ownership or of which the board has been given written notice, of any loss, or taking of, the common elements of the Project if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00). The board shall give notification in writing to the holder of a first mortgage on any apartment as shown in the Association's record of ownership or of which the board has been given written notice, of any loss, or taking of, such apartment if such loss or taking exceeds ONE THOUSAND DOLLARS (\$1,000.00).

## ARTICLE X GENERAL PROVISIONS

10.1 Right of Access. The managing agent and any other person authorized by the board (or, in case of an emergency, authorized by any apartment owner) shall have a right of access to any owner's apartment for the purpose of making inspections or correcting any condition existing in an apartment and threatening another apartment or the common elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in an apartment or elsewhere in the Project, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the owner; provided further, however, that in case of an emergency, no prior request for entry need be made and such right to enter shall be deemed granted and effective immediately, whether the owner is present at the time or not. If the apartment owner has elected not to provide keys to the apartment to the managing agent or resident manager and a forced entry is reasonably required in the event of an emergency, the apartment owner shall be solely liable for all costs and expenses arising in connection with such forced entry, including all costs of replacing or repairing any part of the apartment or the common elements damaged by or in connection with the forced entry.

## 10.2 Amendment.

(a) Required Percent. Except as to those amendments requiring the prior written approval of all of the eligible mortgage holders as hereinafter provided, these Bylaws may be amended in any respect consistent with law or the Declaration by affirmative vote of sixty-five percent (65%) of all apartment owners at any meeting of the Association duly called for such purpose or by written consent of sixty-five percent (65%) of all apartment owners, and shall be effective only upon the recording in the Bureau of Conveyances of an instrument setting forth such amendment duly executed by the authorized officers of the Association; provided that each one of the particulars set forth in Section 514A-82 of the Act shall be embodied in these Bylaws always. Any proposed amendment to these Bylaws with the rationale for such proposal may be submitted by the board or by a volunteer apartment owners' committee. If submitted by a volunteer apartment owners' committee, any proposed amendment to these Bylaws with the rationale for the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners whose names appear on the Association's list of members as provided in Section 10.9 of these Bylaws. The proposed amendments to these Bylaws, the rationale, and the ballots for voting on such amendments shall be mailed by the board to the apartment owners at the common expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the board. The vote or written consent required to adopt the proposed amendments to these Bylaws shall be sixty-five (65%) of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the proposed amendments to these Bylaws are duly adopted, then the board shall cause the amendments to these Bylaws to be recorded in the Bureau of Conveyances. The volunteer apartment owners' committee shall be precluded from submitting a petition for proposed amendments to these Bylaws which are substantially similar to those which have been previously mailed to the apartment owners within one (1) year after the original petition was submitted to the board. This Section 10.2(a) shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any amendment to these Bylaws at any annual meeting of the Association.

(b) Restatement of Bylaws. Any other provision of these Bylaws notwithstanding, the board, upon resolution duly adopted, shall have the authority as set forth in the Act to restate these Bylaws from time to time to set forth any prior amendments hereto or to incorporate any provision mandated by Hawaii law or any amendments thereto.

10.3 Condominium Documents For Board Members. The Association, at its

own expense, shall provide all board members with a current copy of the Declaration, Bylaws, rules and regulations, and annually, a copy of the Act with amendments.

#### 10.4 Meeting Minutes; Financial Statements; Examination.

(a) Minutes of meetings of the board of directors and Association shall be approved at the next succeeding meeting; provided that for board of directors meetings, no later than the second succeeding meeting.

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

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

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

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

(i) The board may require the 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

(ii) The apartment owners pay for administrative costs in excess of eight (8) hours per year.

Copies of these items shall be provided to any apartment owner upon such owner's request, provided that such owner pay a reasonable fee for duplicating, postage and stationery and other administrative costs associated with the handling of the request.

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

(i) The board may require the 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

(ii) The apartment owners pay for administrative costs in excess of eight (8) hours per year. Proxies and ballots may be destroyed following the 30-day period. Copies of tally sheets, apartment owners' check-in lists and the certificates of election from the most recent meeting of the Association shall be provided to any apartment owner pay a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling such request.

(g) 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.

10.5 Availability of Project Documents. An accurate copy of the Declaration, these Bylaws, the rules and regulations, a sample original apartment deed, all public reports and any amendments thereto, shall be kept at the managing agent's office. The managing agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. In the event that the Project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association, to whom this function is delegated.

## 10.6 Records; Examination; Disposal.

(a) The managing agent or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(b) All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project or the office of the managing agent, or elsewhere within the State of Hawaii as determined by the board of directors and shall be available for inspection by the directors, officers, apartment owners and apartment mortgagees.

(c) Any managing agent employed or retained by the Association may dispose of the records of the Association which are more than five (5) years old without liability if the managing agent first provides the board of directors with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within sixty (60) days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.

No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of the managing agent or the Association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records.

## 10.7 Animals.

(a) Restriction on Pets. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project, except that dogs, cats and other household pets, limited to a total of two (2) in number per apartment, and each one weighing less than 30 pounds, may be kept in each apartment, but shall not be kept, bred or used therein for any commercial purpose, provided that a reasonable number of non-poultry-type indoor birds (such as canaries, parakeets, cockatoos, and parrots) may be kept indoors (no exterior cages allowed) in addition to the two (2) household pets as referenced above. The foregoing restriction on the number of pets per apartment shall not apply to fish and other aquarium animals. In no case shall any animal prohibited by the Act or any other applicable law be allowed anywhere on the Project. Except as otherwise provided in Section 10.7(b) below, no pets shall be allowed on the common areas

except in transit and when carried or on a short leash; provided, however, that pets may be allowed in the yard area of each apartment, but shall not be allowed to roam outside of this area. No owner or occupant shall permit his pet(s) to produce or cause any waste or unsanitary material or condition anywhere on the common elements, yard area or other limited common elements (including in any areas reserved for the exclusive use of any other apartments), and any such waste or unsanitary material or condition shall be immediately removed and disposed of or remedied by such owner or occupant (including any such waste or unsanitary material or condition in the yard area surrounding each apartment). It is intended that no pet shall be a disturbance to any other owner or occupant, and any such disturbance (including but not limited to excessive barking by dogs) will not be tolerated. Any pet which, in the sole judgment of the board, causes a nuisance, unreasonable disturbance or threat to the health or safety of any owner, occupant or guest may be ejected from the Project on the demand of the managing agent or resident manager; provided, however, that upon assessment of the severity of the nuisance, disturbance or threat caused by such pet, the board, in its sole discretion may give the pet's owner an opportunity to remedy the situation short of ejection.

(b) Guide Dogs. Trained guide dogs or other trained animals upon which disabled owners or occupants depend for assistance shall be permitted to be kept by such owners or occupants in their apartments and yard area and shall be allowed to walk throughout the common areas while on a leash, provided that such animals shall at all times be accompanied by their owners while present upon the common areas. If such a guide dog or other animal causes a nuisance or unreasonable disturbance or poses a threat to the health or safety of any owner, occupant or guest, the owner thereof will be given an opportunity to rectify the problem by measures which fall short of ejection of the animal from the condominium. Ejection will be required only if the board reasonably determines that less drastic alternatives have been unsuccessful. If such an animal is ejected, it will nonetheless be allowed to remain at the Project for a reasonable period of time while the owner thereof attempts to find a suitable replacement animal, provided that the problem is controlled to a sufficient degree that the continued presence of the animal during that time does not constitute an unreasonable imposition upon, or threat to the safety or health of, other owners, occupants or guests.

(c) Indemnifications. In no event shall the board, the Association, the managing agent or resident manager be or be deemed to be liable for any loss, damage or injury to persons or property caused by or arising in connection with any owner's or occupant's or guest's pet, guide dog or other animal. By acquiring an interest in an apartment, each occupant agrees to indemnify, defend and hold

harmless the board, the Association, the managing agent and the resident manager against any claim or action at law or in equity arising out of or in any way relating to such owner's or occupant's or guest's pet, guide dog or other animal.

(d) Remedies. The board shall have all available remedies for violations as provided in these Bylaws or under applicable law, including but not limited to the right to levy fines.

10.8 Mediation/Arbitration of Disputes Concerning the Act, the Declaration, These Bylaws or the Rules and Regulations. If a dispute arises concerning or involving one or more apartment owners and the Association, the board, and managing agent of the other apartment owners relating to the interpretation, application or enforcement of the Act or the Declaration, these Bylaws or the rules and regulations, the parties involved in such dispute shall first try in good faith to settle the dispute by mediation under the rules of Dispute Prevention & Resolution, Inc. before resorting to arbitration. Thereafter, at the request of any party, any remaining unresolved controversy, shall be submitted to arbitration as provided by Section 514A-121 of the Act. Nothing in this paragraph shall be interpreted to require the arbitration of any dispute which is either exempt from arbitration pursuant to Section 514A-121 of the Act or determined to be unsuitable for arbitration pursuant to Section 514A-122 of the Act. In the event of any conflict or inconsistency between this section and the Declaration, the Declaration shall control.

10.9 Membership List. The resident manager or managing agent or board of directors shall keep an accurate and current list of members of the Association and their current addresses, the names and addresses of the vendees of any apartment under an agreement of sale, if any, and the names and addresses of apartment mortgagees, if any. The list shall be maintained at a place designated by the board of directors, and a copy shall be available, at cost, to any apartment owner, provided the apartment owner furnishes to the resident manager or managing agent or board of directors a duly executed and acknowledged affidavit stating that the list (a) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters and (b) shall not be used by such owner or furnished to anyone else for any other purpose.

Each owner shall promptly record the apartment deed or other conveyance to him or his apartment, and any mortgage of his interest in his apartment, and file with the board of directors, through the managing agent, a copy of the apartment deed or other conveyance document, together with a copy of the Land Court certificate of title for the apartment, showing title vested in the

owner. Each vendor of an apartment under an agreement of sale shall promptly record the agreement of sale and file a copy of such document with the board of directors. Each apartment owner, vendor, vendee and apartment mortgagee shall promptly notify the board of directors of any changes in his or its address.

10.10 Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Association. The corporation shall be formed upon the written approval of all apartment owners. The formation of the corporation shall in no way alter the terms, covenants and conditions set forth herein and these Bylaws shall be adopted by the corporation as the bylaws thereof. The articles of the corporation shall be subordinated hereto and controlled hereby. Any action taken by the corporation which is in violation of any or all of the terms, covenants or conditions contained herein, shall be void and of no effect.

10.11 Notices. All notices to the Association shall be either mailed or delivered to the members of the board of directors at their respective addresses as shown on the membership list, or to such other address as the board of directors may designate by notice to all owners and all apartment mortgagees. All notices to any owner shall be either mailed or delivered to him at his address as shown on the membership list. All notices to apartment mortgagees shall be mailed to their respective addresses as shown on the membership list, or to such other addresses as designated by them by notice to the board of directors. All notices shall be in writing and service of such notice shall be deemed complete upon the earlier of the date of actual delivery or, if mailed, the third day after the date of mailing, except notices of addresses and changes of addresses, which shall be deemed to have been given when received.

10.12 Captions. The captions of these Bylaws are inserted only as a matter of convenience and shall in no way define, limit or prescribe the scope of these Bylaws or the intent of any provision hereof.

10.13 Pronouns. All pronouns used in these Bylaws include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

10.14 Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium project whereby the owners of apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.



10.15 Severability. The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

10.16 Changes in Law. In the event any change in the Act shall result in a conflict or inconsistency between the provisions of these Bylaws and the Act, the provisions of the Act shall prevail.

IN WITNESS WHEREOF, the Developer has executed this instrument this 22<sup>nd</sup> day of September, 2004.

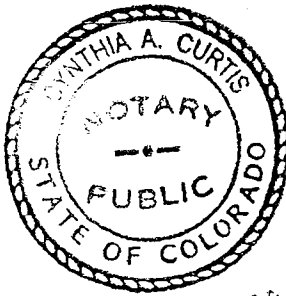
WS KAI MAKANI, INC.

By: Richard M. Gross  
Its: PRESIDENT

"Developer"

STATE OF Colorado )  
 )  
COUNTY OF Arapahoe ) SS.

On this 22 day of September, 2004, before me personally appeared Richard Morris, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



My Commission Expires 2-7-08

Cynthia A Curtis  
Notary Public, State of Colorado  
Printed Name: Cynthia A. Curtis  
My Commission Expires: 2-7-08