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Schneider Tanaka Radovich Andrew & Tanaka, LLLC
1100 Alakea Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 792-4200

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**BYLAWS OF THE
ASSOCIATION OF UNIT OWNERS OF
HOLOMUA**

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**BYLAWS OF THE
ASSOCIATION OF UNIT OWNERS OF
HOLOMUA**

1. INTRODUCTORY PROVISIONS

1.1 Definitions. For purposes of construing and interpreting these Bylaws, the terms defined in this Section 1, when written with initial capital letters in these Bylaws shall have the meaning given such terms in this Section 1. Such defined terms may be used in the singular or plural or in varying tenses or forms, but such variation shall not affect the defined meaning of such terms as long as those terms are written in initial capital letters. When such terms are used in these Bylaws, but are written without initial capital letters, such terms shall have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade meanings, such terms shall be given such legal, technical or trade meanings. In the event of a conflict between the definition of a term used in these Bylaws versus the definition of a term used in the Declaration, the definition given in the Declaration shall control. Capitalized terms not defined in these Bylaws, but defined in the Declaration, shall have the meanings given to them in the Declaration.

1. **"Act"** means the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, and, as applicable, the rules of the Real Estate Commission promulgated pursuant thereto, as amended.

2. **"Arbitration"** shall have the meaning ascribed to it in Section T.2 of the Declaration.

3. **"Association"** means the Association of Unit Owners of Holomua, consisting of all Unit Owners acting as a group in accordance with the Declaration, these Bylaws and the Act.

4. **"Bureau"** means the Bureau of Conveyances of the State of Hawaii.

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

6. **"Bylaws"** means these Bylaws of the Association Recorded concurrently with the Declaration, as amended from time to time.

7. **"C.P.I. Adjusted"** means that the figure will be increased or decreased as the C.P.I. Index changes. The amount of the increase or decrease will be equal to the percentage change between (a) the C.P.I. Index published for December of 2008, and (b) the most recent December C.P.I. Index figure.

8. **"C.P.I. Index"** means the U.S. Department of Labor Consumer Price Index for All Urban Consumers – Honolulu. If the U.S. government stops publishing that index, then the most similar index available will be used in its place. The Board will choose the replacement index.

9. **"Capital Improvements Reserve Fund"** means that fund established by the Board pursuant to Section 6.3 of these Bylaws to provide for specific capital improvements for the Project.

10. **"Chapter 201H"** means Chapter 201H of the Hawaii Revised Statutes, as amended from time to time, and Hawaii Administrative Rules, Title 15, Subtitle 14, Chapter 174, as amended from time to time.

11. ~~**"Common Assessments"** means the mandatory maintenance fees to be assessed by the Association against the Unit Owners for the payment of the Common Expenses allocable to the Owners' Units in such manner as set forth in the Declaration and these Bylaws.~~

12. **"Common Elements"** shall mean those parts of the Project that are defined in Section D.4 of the Declaration.

13. **"Common Expenses"** are defined in Section I.1 of the Declaration.

14. **"Common Interest"** means the undivided interest described in Section F.1 of the Declaration.

15. **"Condemnation Trustee"** means a bank or trust company doing business in Hawaii and having net assets of not less than Five Million Dollars designated by the Board of Directors for custody and dispensation of all proceeds of condemnation as provided in these Bylaws; provided that if the Board is unable, after a reasonably diligent search, to find a bank or trust company willing to serve as such trustee upon terms and conditions, including compensation, acceptable to the Board, then the Board shall act as such trustee.

16. **"Condominium Map"** means the plans showing the layout, location, unit numbers, and dimensions of the Units and elevations of the buildings of the Project filed in the Land Court as Condominium Map No. 4776, as amended from time to time.

17. **"Condominium Property Regime"** shall have the meaning set forth in the Act.

18. **"County"** refers to the City and County of Honolulu.

19. **"Covered Matters"** shall have the meaning ascribed to it in Section T.2 of the Declaration.

20. **"Declarant"** means **KRC PARTNERS LLC**, a Hawaii limited liability company, the address of which is 615 Piikoi Street, Suite 808, Honolulu, Hawaii 96814, the owner in fee simple of the land described in EXHIBIT "1" attached hereto, its successors and assigns. All references to "Declarant" in this document shall include the successors and assigns, as appropriate. A Person shall be deemed a successor or assign of Declarant for purposes of the Declaration only if specifically so designated in a duly Recorded written instrument as a successor or assign of Declarant under the Declaration, and shall be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under the Declaration that are specifically designated in the Recorded written instrument.

21. **"Declaration"** means the Declaration of Condominium Property Regime of Holomua Recorded as Document No. _____, as amended from time to time.

22. **"Dispute"** shall have the meaning ascribed to it in Section T.2 of the Declaration.

23. **"Insurance Trustee"** means a bank or trust company doing business in Hawaii and having net assets of not less than Five Million Dollars designated by the Board of Directors for custody and dispensation of all proceeds of insurance as provided in these Bylaws; provided that if the Board is unable, after a reasonably diligent search, to find a bank or trust company willing to serve as such trustee upon terms and conditions, including compensation, acceptable to the Board, then the Board shall act as such trustee.

24. **"Land"** means the land described in EXHIBIT "1" to these Bylaws, including all easements and other rights appurtenant thereto; provided, however, that if the description of the Land contained in Exhibit "A" to the Declaration is revised, then that revised description shall be deemed to apply to these Bylaws as well.

25. **"Limited Common Elements"** shall mean those parts of the Project that are defined in Section D.5 of the Declaration.

26. **"Limited Common Expense"** shall have the meaning ascribed to it in Section I.1 of the Declaration.

27. **"Majority of Owners"** means the Owners of Units to which are appurtenant more than 50% of the total Common Interests in the Project. References to a certain percentage of the Unit Owners means the Owners of Units to which are appurtenant that percentage of the total Common Interests in the Project.

28. **"Management Agreement"** means the agreement described in Section H.3 of the Declaration.

29. **"Manager"** shall refer to the person, if any, retained by or on behalf of the Board pursuant to Section 5.3(d) of these Bylaws to manage the day-to-day operations of the Project, including a resident manager who maintains a residence at the Project.

30. **"Managing Agent"** means the agent engaged by the Board of Directors or Declarant pursuant to Section H.3 of the Declaration.

31. **"Mediation"** shall have the meaning ascribed to it in Section T.2 of the Declaration.

32. **"Member"** means every person who is entitled to membership in the Association, as provided in Section H.1(a) of the Declaration.

33. **"Membership"** means a membership in the Association.

34. **"Mortgage"** means any Recorded or otherwise perfected security instrument in real property, which is not a fraudulent conveyance under Hawaii law, and which is given in good faith and for valuable consideration as security for the performance of an obligation, but shall not include any instrument creating or evidencing solely a security interest

arising under the Hawaii Uniform Commercial Code (Hawaii Revised Statutes Chapter 490, as amended).

35. **"Negotiation"** shall have the meaning ascribed to it in Section T.2 of the Declaration.

36. **"Occupant"** means and includes an Owner, occupant, tenant, family member, guest, lessee, resident, and any other person who occupies or otherwise uses a Unit or any other part of the Project.

37. **"Person"** shall refer to an individual, corporation, partnership, limited liability entity, association or other legal entity.

38. **"Project"** shall refer to the Holomua condominium project established by the Declaration and consisting of the land described in EXHIBIT "A" to the Declaration (as may be amended), and the building, landscaping, improvements, and structures thereon (including the Units, Common Elements and Limited Common Elements) and all easements, rights, and appurtenances belonging thereto.

39. **"Project Documents"** means the Declaration, these Bylaws, the Condominium Map, and the Project Rules, as each may be amended from time to time.

40. **"Project Rules" or "Rules"** means all of the rules and regulations that may be adopted and promulgated from time to time by the Board of Directors pursuant to these Bylaws; provided, however, that Declarant shall adopt the initial Project Rules on behalf of the Association.

41. **"Property"** means the Land, the building and all other improvements and structures thereon (including the Units, Common Elements and Limited Common Elements) and all easements, rights, and appurtenances belonging thereto, and all other property with respect to which a Condominium Property Regime shall exist from time to time pursuant to the Declaration.

42. **"Real Estate Commission"** shall refer to the Real Estate Commission of the Department of Commerce and Consumer Affairs of the State of Hawaii, or any successor entity.

43. **"Record," "Recorded," "Recording," "Recordable," or "Recordation"** means an instrument of record, or the act of recording or causing to be recorded an instrument, in the Land Court and, if applicable, the Bureau of Conveyances of the State of Hawaii.

44. **"Unit"** means a part of the Project, designated and described in Section D of the Declaration and as shown on the Condominium Map, including the Common Interest appurtenant thereto, intended for a use permitted under the Declaration and the Act, with an exit to a public road, or to a Common Element leading to a public road.

45. **"Unit Deed" or "Deed"** shall have the meaning ascribed to it in Section H.3 of the Declaration.

46. **"Unit Owner" or "Owner"** means a Person or the Persons owning, jointly or in common, a Unit; provided that:

(a) To such extent and for such purposes, including the exercise of voting rights, as shall be provided by Recorded lease, a lessee of a Unit shall be deemed to be a Unit Owner;

(b) The purchaser of a Unit pursuant to a Recorded agreement of sale shall have all the rights and obligations of a Unit Owner; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the Unit, as provided in the Act; and

(c) In the event that any interest in a Unit is transferred to a trustee under a land title-holding trust under which substantially all powers of management, operation, and control of the Unit remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the Unit Owner to the extent of their interest therein except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of a Unit Owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purposes, and the transferor may continue to be recognized by the Association as the Unit Owner and shall have all of the rights and obligations of ownership.

1.2 Adoption of Bylaws. Declarant has established a Condominium Property Regime by the execution and Recordation of the Declaration affecting the Land described in the Declaration. Declarant declares that the property constituting such Condominium Property Regime is owned and shall be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in these 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 preserving the value, desirability and attractiveness of the Property and the Project. These Bylaws shall constitute equitable servitudes, liens and covenants running with the Property and all Units and shall be binding on and shall inure to the benefit of all Persons having or acquiring any right, title or interest in any portion of the Property.

1.3 Conflicts. These Bylaws are intended to comply with the Act. In case of any conflict between the provisions of these Bylaws and those of Hawaii law, the Act or the Declaration, then the provisions of Hawaii law, the Act or the Declaration, as the case may be, shall control.

1.4 Application. All Persons who use any part of the Project in any manner, including, without limitation, present and future Owners, Occupants, Invitees, as well as those claiming by or through such Persons (including Mortgagees), are subject to the Project Documents. The acceptance of a Unit Deed or other conveyance, the entry into a lease or rental agreement of a Unit or a portion of the Common Elements, or the act of occupying a Unit, shall constitute an agreement that the Project Documents are accepted, ratified and will be strictly complied with.

2. ASSOCIATION OF OWNERS

2.1 Membership. All Owners shall constitute the Association. Each Owner (including Declarant) shall be a Member of the Association upon acquiring or holding fee simple title to a Unit. The Owner of a Unit shall automatically be the holder of the Membership in the

Association, which Membership shall be appurtenant to the Unit. There shall be one Membership in the Association for each Unit owned in the Project, provided that when more than one Person owns a Unit, all such Persons shall be considered Members, provided, further, however, that the Project Documents may limit the number of Members from each Unit who are entitled to use certain of the Common Elements over a particular period of time. Membership shall terminate only when the Person is no longer an Owner of a Unit, and shall terminate automatically upon such transfer of the ownership in the Unit. It is intended that the Association qualify as a Homeowner's Association under Section 520 of the Internal Revenue Code of 1986, as amended.

2.2 Meetings of the Association.

(a) First Annual Meeting. Declarant or the Managing Agent shall call the first meeting of the Association, which meeting shall be held not later than 180 days after Recordation of the first Unit Deed, if at that time 40% or more of the Units in the Project have been sold and recorded. If 40% or more of the Units in the Project are not sold and recorded at the end of one year after Recordation of the first Unit Deed, then the first annual meeting shall be called and held as soon as practicable upon the request in writing of at least ten percent of the Owners. At such meeting, a Board of Directors will be elected or appointed to serve until the next annual meeting. The term "sold and recorded" means the sale of a Unit and the Recording of the Unit Deed. Notwithstanding anything to the contrary contained in these Bylaws, Declarant shall control the Association and appoint and remove the officers and members of the Board until expiration of the "Declarant Control Period", which shall be the earlier of: (a) 60 days after conveyance of 75% of the Units to Unit Owners other than Declarant or an affiliate of the Declarant; (b) two years after Declarant has ceased to offer Units for sale in the ordinary course of its business; (c) two years after any right to add new Units was last exercised by Declarant; or (d) the day Declarant, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association. Declarant may voluntarily surrender the right to control the Association and appoint and remove officers and members of the Board before termination of the period set forth above; provided, however, that, in such event, Declarant may require that, for the balance of the period set forth above, specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. Thereafter, Declarant, as the Owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

(b) Annual Meetings. Other than the first annual meeting of the Association, annual meetings of the Association shall be held within 180 days following the close of the fiscal year of the Association on such date as the president of the Association (herein the "**President**") may designate. If the President shall fail to designate such date by the 90th day following the close of the fiscal year, then the annual meeting shall be held on the third Tuesday in the sixth calendar month following the close of the fiscal year. Each annual meeting shall be a general meeting and any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration or these Bylaws. The Board (by resolution) or a Majority of Owners (by petition) may establish meetings in addition to annual meetings at semi-annual, quarter-annual or other regular intervals.

(c) Special Meetings. Special meetings of the Association may be called by the President, a majority of the Board, or by a petition to the secretary of the Association (the "**Secretary**") or the Managing Agent signed by not less than 25% of the Owners. Upon receipt

of the petition calling for a meeting, the Secretary or the Managing Agent shall send notice of the meeting to all Owners. If the Secretary or Managing Agent does not send out the notices for the special meeting within 14 days of the receipt of the petition calling for a meeting, then the person or petitioners calling for the meeting shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting in accordance with the requirements of these Bylaws and the Act. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within 45 days from the date the call was received. Except as provided otherwise in these Bylaws or by law, ~~only such business shall be transacted at any special meeting as shall have been indicated by a specific or general description in the notice of the meeting.~~ Any special meeting for the purpose of the removal and replacement of directors shall be called and conducted in accordance with applicable provisions of these Bylaws and the Act pertaining to the removal, replacement and election of directors.

(d) Adjournment. Any meeting of the Association may be adjourned to such place, date and time (but not later than immediately preceding the next annual meeting of the Association) as may be determined by vote of a majority of the Unit Owners present at the meeting, either in person or by proxy, and whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

(e) 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 Owners as determined by the Board; provided that in the event of a natural disaster, such as a hurricane, Association meetings may be held outside the State.

(f) Participation. Association meetings may be conducted by any means that allow participation by all Unit Owners in any deliberation or discussion.

2.3 Notice of Meetings. The notice of every meeting of the Association shall state whether it is an annual or special meeting, the date, time and place of the meeting, the items on the agenda for the meeting, and shall include a standard proxy form authorized by the Association, if any, and any other information permitted or required to be given by these Bylaws. The agenda for the meeting shall include the general nature and rationale of any proposed amendment to the Declaration or these Bylaws and any proposal to remove a member of the Board; provided that this shall not preclude any Unit Owner from proposing an amendment to the Declaration or these Bylaws or to remove a member of the Board at any annual Association meeting. Notice of each meeting, whether annual or special, shall be given by the Secretary or the Managing Agent at least 14 days but no more than 45 days before the date of the meeting and shall be given (a) by hand delivery, (b) by prepaid United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner, or (c) at the option of the Unit Owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the Unit Owner. If notice is given pursuant to the provisions of these Bylaws, the failure of any Owner to receive actual notice of a meeting shall not invalidate the meeting or any proceedings taken at the meeting. The presence of an Owner or Unit Mortgagee, in person or by proxy, at any meeting shall constitute a waiver of any required notice to that Owner or Mortgagee unless an Owner shall at the opening of such meeting object to the holding of the meeting because of the failure to comply with the provisions of this Section.

2.4 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Owners shall constitute a quorum at all meetings of Owners.

2.5 Acts of the Association; Consent in Lieu of Meeting. Except as otherwise provided in the Declaration or these Bylaws, the vote of a majority of the Unit Owners present at a meeting at which a quorum shall be present shall constitute an act of the Association, which shall be binding upon all Owners for all purposes unless the Declaration or these Bylaws requires a different percentage; provided, however, that whenever the vote of the Owners at a meeting thereof is required or permitted to be taken in connection with any action permitted by the Declaration or these Bylaws, the meeting and vote of Owners may be dispensed with if all of the Owners who would have been entitled to vote upon the action if the meeting were held, consent in writing to the action being taken.

2.6 Duties of the Association. The administration of the Project shall be governed by the Act, the Project Documents, and any agreements, decisions and determinations lawfully made by Declarant, the Association, the Board of Directors or the Managing Agent. The right and duty to administer the Project is vested in the Association and the Board of Directors in accordance with the Declaration and these Bylaws. In addition to such duties as are set forth in the Act and the Declaration, but subject to the Act and the Declaration, the Association shall have the following duties:

(a) To make, build, maintain and repair all fences, sewers, drains, retaining walls, roads, curbs, sidewalks, parking areas and other such improvements that are part of the Common Elements of the Project and that may be required by law to be built, maintained and repaired upon, adjoining, in connection with or for the use of the Project or any portion thereof.

(b) To observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority applicable to the Project.

(c) To observe, perform and comply with all covenants, conditions, restrictions, encumbrances, agreements, and easements encumbering the title to and/or affecting the use of the Property as of the date that these Bylaws are Recorded, as such covenants, conditions, restrictions, encumbrances, agreements, and easements may be amended or otherwise revised from time to time.

(d) To abide by and comply with the Management Agreement, which shall be with a responsible, professional corporate managing agent, experienced in the operation of condominium projects and duly registered with the Real Estate Commission of the State of Hawaii.

(e) To delegate to the Managing Agent the right to hire personnel, including the Manager, on behalf of the Association for the operation of the Project.

(f) Except as otherwise provided in the Project Documents, to repair, replace, maintain, preserve and keep all Common Elements in good order and a strictly clean and sanitary condition, and maintain and keep the Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all Common Element trees, shrubs, grass and other landscaping in good cultivation and replant the same as may be necessary, and repair all defects in the Common Elements required to be repaired by the Association.

(g) To observe any setback lines affecting the Project and not place or maintain any building or structure whatsoever, except fences or walls approved or permitted in accordance with the Project Documents and by law, between any boundary of the Project and the setback line along such boundary.

(h) To not make or suffer any waste or unlawful, improper or offensive use of the Project.

~~(i) Except as otherwise provided in the Project Documents, to not erect or~~
place on or within the Project any building or structure, including fences and walls, nor make additions or structural alterations or exterior changes to any Common Elements of the Project, except in accordance with plans and specifications, including a detailed plot plan prepared by a licensed architect, if so required by the Board of Directors, first approved by such Owners as required by the Act or the Declaration, and complete any such improvements with due diligence.

(j) Except for renovations or other improvements to the Project being undertaken by Declarant, before commencing or permitting construction of any improvement on or to the Project having a cost in excess of \$100,000.00 (C.P.I. Adjusted), or such other amount as may from time to time be reasonably deemed appropriate by the Board, to obtain or cause to be obtained a performance and payment bond (or other form of security acceptable to the Board) naming as obligees, the Association, the Board and all Owners and their respective Mortgagees as their interests may appear, in a sum not less than 100% of the estimated cost of such construction and with a corporate surety authorized to do business in Hawaii assuring performance of such construction free and clear of all mechanics' and materialmen's liens, and all claims in lieu of mechanics' and materialmen's liens arising under the Act.

(k) To be bound by all waivers, if any, of claims, rights of action and suits against any Person contained in the Declaration or in the Unit Deeds, and the Association shall not bring against any Person any claim or right of action or suit relating to any of the matters waived by Owners via the Declaration or by their Unit Deeds.

(l) To pay the taxes and assessments, if any, that may be levied by any governmental authority on the Common Elements or any part thereof.

(m) To maintain a bank account or accounts for operating and reserve funds coming under the control of the Association, which shall be maintained in accordance with the Act and other applicable laws, and which maintenance obligation shall be delegated to the Managing Agent.

(n) To delegate to the Managing Agent the duty to collect Common Assessments and other assessments from Owners and to pay the Common Expenses and other expenses of the Association from such collected assessments.

(o) To timely perform all routine maintenance and maintenance inspections of the Common Elements required by any maintenance manual(s) provided to the Association by Declarant or Declarant's contractors, and to make such repairs and maintenance as may be called for pursuant to such maintenance and inspections.

(p) Regularly inspect, maintain, paint, resurface and/or replace the surface of the Project's parking and drive areas, the exterior surfaces of all exterior walls of the building, and the exterior surfaces of all fences located within the Common Elements.

(q) To indemnify and hold harmless other Persons (including, but not limited to, Declarant, Declarant's contractors (including the subcontractors of such contractors), and their respective agents, principals, consultants, subconsultants, and employees) from and against any and all claims arising out of or resulting from the Association's or the Board's failure or refusal to fully perform the maintenance and inspection obligations required by the maintenance manual(s) referenced in subsection (o) above.

(r) To waive any and all claims the Association or the Board may have ~~against other Persons (including, but not limited to, Declarant, Declarant's contractors (including the subcontractors of such contractors), and their respective agents, principals, consultants, subconsultants, and employees)~~ arising out of or resulting from the Association's or the Board's failure or refusal to fully perform the maintenance and inspection obligations required by the maintenance manual(s) referenced in subsection (o) above.

(s) To rent or lease real and personal property rented or leased to it by Declarant and to accept title to real and personal property conveyed to it by Declarant, together with any improvements thereon, including any Unit owned by Declarant, as a Unit or a Common Element (as applicable), together with the responsibility to perform any and all duties associated therewith, which, upon rental or lease by or conveyance to the Association, the Association shall maintain at its expense for the benefit of the Owners. Property interests transferred to the Association by Declarant may encompass fee simple title, easements, leasehold interests, and licenses to use. The conveyance of a fee simple interest by Declarant to the Association may be by quitclaim deed. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association "as-is", "where-is", without warranty of any kind, and without the benefit of an escrow or title insurance, provided, however, the Association may purchase such title insurance, at the Association's expense, as the Association may desire. In connection with any transfer of a property interest, Declarant reserves the right to include in the transfer instrument such terms, conditions and requirements as are typical to instruments for the transfer of real or personal property, as applicable, between unrelated parties, including, without limitation, the right to require the Association to indemnify Declarant against claims arising after such transfer from the Association's use of or exercise of rights with respect to such property. Subject to the foregoing, the transfer shall be free and clear of all liens and encumbrances except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) the terms of the Declaration and these Bylaws; (iii) easements, rights-of-way, reservations, covenants, conditions, restrictions, and equitable servitudes, or other non-financial encumbrances as Declarant in its discretion may deem appropriate; and (iv) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board. Each Owner, by accepting title to a Unit and becoming an Owner, is deemed to approve and accept the acquisition by the Association of Units and Common Elements as provided herein, and any common expenses that may relate thereto.

(t) To accept and assume Declarant's and the Association's obligations under and/or to accept assignments of agreements entered into by Declarant on behalf of the Association, including, without limitation, the Management Agreement.

Nothing in this Section 2.6 or in Section 2.7 below is intended or shall be deemed to relieve any Owner of its responsibility for such Owner's Unit, or the Limited Common Elements appurtenant thereto, pursuant to and in accordance with the Project Documents, including the Owner's obligation to pay taxes associated with the Owner's Unit. Further, nothing in this Section 2.6 or in Section 2.7 below is intended to impose limitations on the power of the

Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other Persons.

2.7 Rights and Powers of the Association. In addition to such rights and powers as are set forth in the Act and the Declaration, the Association, in its sole and absolute discretion, but subject to the Act and the Declaration, shall have the right and power to perform the following acts:

(a) ~~The Association may take any and all lawful action that may be advisable,~~ proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts that may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

(b) To impose monetary penalties upon Owners (i) as a disciplinary measure for failure of an Owner to comply with the Project Documents, (ii) as a means of reimbursing the Association for costs incurred by the Association to repair damage to the Project for which the Owner is allegedly responsible, or (iii) to bring an Owner or the Owner's Unit into compliance with the Project Documents.

(c) To levy and enforce collection of (monthly or otherwise) allocated Common Expenses and Common Assessments and other assessments, including special assessments. (Any fee to be paid by Unit Owners for the electricity (or other utility) used by the Owner's Unit, as well as the fee to a vendor measuring such electricity (or other utility) usage, shall be an ongoing special assessment charged by the Association against each Unit Owner.)

(d) To grant permits, licenses and easements over, under and across the Project for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

(e) To perform such acts and enter into such agreements as shall be necessary to allow Declarant to exercise rights reserved to Declarant in the Project Documents.

(f) To adopt, amend, repeal and enforce architectural guidelines relating to improvements to the Units.

(g) To adopt, amend, repeal and enforce Project Rules not inconsistent with the provisions of the Declaration or these Bylaws, whether in conjunction with the Board or not, provided such action shall require the affirmative vote or written consent of at least 67% of the Owners.

(h) To enforce the provisions of the Project Documents, subject, however, to the provisions of the Project Documents, provided that this shall not be construed as prohibiting enforcement of the Project Documents by Declarant or any Owner, as authorized under the Project Documents.

(i) To enter into the Management Agreement with the Managing Agent, to levy assessments for collection of the Common Assessments and other assessments and to enforce payment of the Common Assessments.

(j) To contract, provide and pay for (i) maintenance, utility, gardening and other services benefiting the Project that are not metered or charged to individual Units; (ii) persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.

(k) To contract for the purchase of tools, equipment, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Common Elements.

(l) To contract and pay for reconstruction of any portion or portions of the Common Elements damaged or destroyed.

(m) To employ such personnel as shall be hired by the Managing Agent on behalf of the Association for the operation of the Project.

(n) To enter into operational agreements for facilities located on other properties in the vicinity of the Project.

(o) To delegate its rights, powers and duties to others, including the Managing Agent, where such delegation is proper.

(p) To prosecute or defend, and to perform any act reasonably necessary to resolve by alternative dispute resolution proceedings, under the name of the Association, any action affecting or relating to the Project, or any action in which all of the Owners have an interest in the subject of the action.

(q) Subject to the vote or written consent therefor from a Majority of Owners, the Association may borrow money, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(r) To do any and all things that a nonprofit corporation organized under the laws of the State of Hawaii may lawfully do, and generally may do and perform any and all other acts that may be either necessary for, or incidental to, the exercise of any of the foregoing rights and powers, and any other such powers as are granted by the provisions of the laws of the State of Hawaii to such a corporation.

(s) To acquire by gift, purchase or otherwise, to own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire, sell or convey any real property by purchase or lease without first obtaining the vote or written consent therefor from a Majority of Owners; provided further, however, that, notwithstanding the foregoing, the Association shall be obligated to accept from Declarant, without any vote or written consent of the Board or the Owners, the conveyance or transfer of any Unit, property or interest within or relating to the Project.

(t) Subject to any applicable restrictions and procedures in the Act and/or the Declaration, to suspend a Member's voting rights and/or the right of an Occupant to use the Common Elements for any period during which any assessment against the Member's or Occupant's Unit remains unpaid and delinquent.

(u) To lease portions of the Common Elements to an entity for the following purposes relating to the Project and to Owners and Occupants within the Project: administrative offices; management offices; and/or storage, sales and marketing offices; provided, however, that so long as Declarant owns a Unit in the Project, any such lease and any use of any portion of the Common Elements for a purpose other than as described above shall require the prior written consent of Declarant, which consent may be given or withheld in Declarant's sole discretion.

2.8 Voting. Each Owner shall be entitled to that percentage of the total vote of all the Owners equal to the percentage of the Common Interest appurtenant to the Owner's Unit. Votes may be cast in person or by proxy. A personal representative, guardian, conservator, trustee, officer of a corporation, general partner of a partnership, limited liability partnership or limited partnership, member of a member-managed limited liability company, or manager of a manager-managed limited liability company may vote the percentage of vote for any Unit owned or controlled by such person in such capacity, provided that such person shall first have presented evidence satisfactory to the Association that such person owns or controls the Unit in such capacity. When a Unit is owned of Record by two or more Persons, if only one of them is present at any Association meeting, then that Owner is entitled to cast all the votes allocated to the Unit. If more than one of the Owners is present at the Association meeting, then the votes allocated to that Unit may be cast in proportion to each co-Owner's share of ownership in the Unit. Declarant, as the Owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

2.9 Proxies and Pledges.

(a) Requirements. The proxy or authority given by any Owner to another person to represent the Owner at meetings of the Association must (i) be in writing and be delivered to the Secretary of the Association 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; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed names and signatures of the persons giving the proxy, the numbers of the Units for which the proxy is given, the printed name of the person to whom the proxy is given and the date that the proxy is given; and (iii) if it is a standard proxy form authorized by the Association, it must contain boxes wherein the Owner has indicated that the proxy is given: (A) for quorum purposes only; (B) to the individual whose name is printed on a line next to this box; (C) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the directors present at the meeting; or (D) to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage (proxy forms which are not marked shall be considered a choice by the Owner that the vote be made on the basis of the preference of the majority of the directors present at the meeting). The proxy form shall also contain a box wherein the Owner may indicate that the owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act. A proxy may designate any person or the Board of Directors as an entity as proxy and may be limited as the Unit Owner indicates.

A proxy given by a co-Owner or co-Owners for only a share of a Unit's vote may be exercised to cast the entire vote for such Unit in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner. In case of a protest, each co-Owner or holder of a proxy from a co-Owner, as the case may be, shall be entitled to only a share of such Unit's vote in proportion to the respective shares of ownership in such Unit. Any provision hereof to the contrary notwithstanding, the standard proxy form, if any, which accompanies a notice of meeting: (i) shall be valid only for the meeting to which such notice pertains and its

adjournments, if any; (ii) may designate any person as proxy; and (iii) may be limited to the Unit Owner's desires as indicated; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit represented.

(b) Limitations On Proxy Votes. If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 2.3 above, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least 21 days prior to its distribution of proxies. If the Board receives within seven days from the time the Board posts the notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, then the Board shall mail to all Owners a proxy form containing either (i) the names of all Owners who have requested the use of Association funds to solicit proxies, together with their statements, or (ii) no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements. The statement shall be limited to black text on white paper, shall not exceed one single-sided 8.5" x 11" page, indicating the Owner's qualifications to serve on the Board and the reasons for wanting to receive proxies.

A Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, then the Board member shall proceed as a Unit Owner under the previous paragraph.

No Managing Agent or Manager, or employees of either, shall solicit, for use by the Managing Agent or the Manager, any proxies from any Unit Owner, nor shall the Managing Agent or Manager cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Voting rights transferred or pledged in a Mortgage, deed of trust, lease or agreement of sale of any Unit or interest therein, a true copy of which is filed with the Secretary, shall be exercised only by the person designated in such instrument unless a written release or other termination signed by the parties is filed with the Secretary. A director shall not cast any proxy vote at any Board meeting.

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.

The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the Common Elements by Unit Owners; provided that the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

(c) Termination. Unless limited by this Section or the terms of the proxy, a proxy shall continue until revoked by a writing filed with the Secretary or by the death or incapacity of the Owner. Any one of two or more Persons owning a Unit may give or revoke a proxy for the entire vote of such Unit or, if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving such proxy. A proxy given by a co-Owner for only a share of a Unit's vote in proportion to the share of ownership of such co-Owner shall be revocable only by such co-Owner.

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

- (a) Determination of Quorum;
- (b) Proof of notice of meeting;
- (c) Adoption of meeting rules (if applicable);

- (d) Approval of minutes of preceding meeting;
- (e) Reports of officers, if any;
- (f) Report of Board of Directors, if any;
- (g) Reports of committees, if any;
- (h) Appointment of inspectors of election (when and if required);
- (i) Election of members of the Board of Directors (when required);
- (j) Unfinished business;
- (k) New business; and
- (l) Adjournment.

All Association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

2.11 Committees. The Association may create, appoint and discharge such standing or special committees as the affairs of the Association may require and define the authority and duties of such committees and any such rules for the conduct of the business thereof as the Association may deem appropriate.

2.12 Candidates for Election to Board of Directors. Each candidate for election or reelection to the Board of Directors may submit to the Board, for distribution to each Member of the Association prior to the election, a personal biography, which shall include a disclosure of any significant business connection, financial or otherwise, with any current insurer or the Managing Agent of the Project.

2.13 Prohibited Acts of Association Employees. No employee of the Association shall engage in selling or renting Units in the Project, except Association-owned Units, unless such activity is approved by an affirmative vote of at least 67% of the Owners.

2.14 Recording Prohibited. No audio taping, video taping, photography, filming, or other audio or visual recording of meetings of the Association is permitted except by or at the direction of the Secretary for the sole purpose of the production of the minutes of the meeting or as otherwise authorized by the Board. Such recordings shall not be considered records of the Association for any purpose.

3. BOARD OF DIRECTORS

3.1 Number and Qualification.

(a) Number. The affairs of the Association shall be governed by the Board of Directors. Except as set forth herein, the Board of Directors shall be composed of nine persons; provided, however, that the number of directors can be reduced pursuant to Section 514B-106 of the Act. As set forth in Section 2.2(a) above, Declarant shall appoint and remove the officers ~~and members of the Board until expiration of the Declarant Control Period.~~ The initial Board appointed by Declarant can consist of three, five, seven or nine members. Prior to termination of the Declarant Control Period, an annual or special meeting of the Association shall be called and held at which the Unit Owners shall elect a Board of nine members.

(b) Qualifications. Except with respect to the initial Board members appointed by Declarant, all directors shall either be Owners, co-Owners or vendees of Units under an agreement of sale. A personal representative, guardian, conservator, trustee, officer of a corporation, general partner of a partnership, limited liability partnership or limited partnership, member of a member-managed limited liability company, or manager of a manager-managed limited liability company, and the fiduciary or officer of a fiduciary Owner, respectively, shall be deemed to be Owners for the purposes of this Section. There shall not be more than one representative on the Board of Directors from any one Unit; provided, however, that this shall not prevent representatives of Declarant from holding more than one director position if Declarant owns more than one Unit. No Manager or other employee of the Association or employee, shareholder, member, manager, partner, or owner of the Managing Agent shall serve on the Board. No Owner who is in default, as provided in Section 6.10 of these Bylaws, in the payment of any assessments or other amounts charged to the Owner's Unit as of 4:30 p.m. on the second business day prior to the date of the annual meeting of the Association or of any special meeting of the Association called for the purpose of electing directors shall be qualified to be elected or appointed to serve on the Board.

3.2 Election and Term of Office. Except with respect to the initial Board members appointed by Declarant, the election of directors shall be by secret written ballot at each annual meeting and any special meeting called for that purpose, provided that if the number of candidates nominated is equal to or less than the number of vacancies to be filled, then the candidates shall be deemed to be elected. At the first annual or special meeting of the Association where the Owners other than Declarant are to elect the members of the Board, the two candidates who receive the largest number of votes shall be elected for terms of three years, the two candidates who receive the next largest number of votes shall be elected for a term of two years, and the one candidate who receives the next largest number of votes shall be elected for a term of one year. Thereafter, at the expiration of the term of office of each director, each director's successor shall be elected to serve a term of three 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 Association in case of delay in the election of a successor.

3.3 Inspectors for Voting and Elections. Before any meeting of the Association pursuant to which voting will take place, the Board may (but is not required to) appoint inspectors of the voting at the meeting, including the voting for the election of directors. If appointed, the number of inspectors will be either one or three. The inspector or inspectors will: (a) determine the number of votes that may be cast; the authenticity, validity and effect of proxies, pledges and other documents purporting to give a person the right to represent, act and

vote for an Owner; (b) receive votes, ballots and consents; (c) hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes; (d) count and tabulate all votes and consents; (e) decide when the polls will close; (f) determine the results of all votes and elections; (g) do other acts that may be proper to conduct the vote or election with fairness to all Owners; and (h) perform such duties impartially, in good faith, to the best of his, her or their ability and as quickly as practical. The decision, act or certificate of a majority of inspectors, if there are three, or of the single inspector, if there is one, will be effective. Any facts stated in any effective report or certificate shall be presumed to be accurate.

3.4 Nomination for Election to the Board. The Board may (but is not required to) appoint a committee to nominate Owners for election to the Board at each annual meeting. If appointed, this committee will make their selections at least 30 days before the date of each such meeting. The list of nominees must also include any qualified person nominated in any petition signed by at least 5% of the Owners and received by the Board at least 35 days before the meeting. This list of nominees must be sent to each Owner. If the list is prepared before the notice of meeting is sent, it must be sent with the notice. Each person nominated must be placed on the ballot at the meeting. Notwithstanding the appointment of the committee, at the meeting, any Owner present may nominate any other qualified person for director, and the person so nominated must be added to the ballot.

3.5 Removal. At any regular or special meeting of the Association duly called, any one or more directors may be removed with or without cause by a vote of a majority of the Unit Owners present at the meeting and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that if such removal and replacement is to occur at a special meeting, the call for such meeting shall be by the President of the Association or by a petition to the Secretary or Managing Agent signed by not less than 25% of the Unit Owners; and provided further that if the Secretary or Managing Agent does not send out the notices for the special meeting within 14 days of receipt of the petition, the petitioners shall send out the notices for the special meeting, which notices shall set forth the time, date and place for the special meeting. Any member of the Board whose removal has been proposed by an Owner shall be given an opportunity to be heard at the meeting. Any director who fails to attend three consecutive meetings of the Board may be removed by vote of a majority of the remaining directors, even though they may constitute less than a quorum; provided, however, that this right of removal shall be without prejudice to the Unit Owners' right to remove directors as provided above in this Section 3.5. Upon removal of a director by the remaining directors of the Board, the President shall schedule a special Association meeting to elect a replacement director within 60 days from the date of the former director's removal. If the President fails to so schedule a special Association meeting, the call for such meeting shall be made by a petition to the Secretary or Managing Agent signed by not less than 25% of the Unit Owners. The replacement of the director removed by the Board shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of directors. Any director removed by the Board shall not be eligible for reelection to the Board for a period of one year after such director's removal.

3.6 Vacancies. Individual vacancies on the Board (i.e., where just one director's position is vacant at a time) caused by any reason other than the removal of a director by the Association or by the Board shall be filled by a vote of a majority of the remaining directors at a special meeting of the Board held for that purpose, even though the directors present at such meeting may constitute less than a quorum. An individual vacancy on the Board may also be filled, and multiple vacancies on the Board (i.e., where more than one director's position is vacant at a time) shall be filled, at a special meeting of the Association whether or not called for

that purpose. Each person so elected shall be a director for the remainder of the term of the director whose vacancy is filled (unless sooner removed) or until a successor is elected at the next annual meeting of the Association. The death, incapacity or resignation of any director, or such director's ceasing to be qualified to serve as a director in accordance with Section 3.1 of these Bylaws shall cause such office to be vacant.

3.7 Meetings of the Board of Directors.

(a) Organizational Meeting. The initial organizational meeting of the Board of Directors shall be held at the place of and immediately following the first annual meeting of the Association; provided, however, that the directors appointed by Declarant may, in their sole discretion, hold meetings and take actions prior to the date of the first annual meeting of the Association and the Board's initial organizational meeting. No separate notice other than the notice of the annual meeting of the Association shall be necessary for such initial organizational meeting. At such meeting, the Board shall elect the officers of the Association for the ensuing year; provided, however, that the directors appointed by Declarant may, in their sole discretion, elect the initial officers of the Association prior to the date of the initial organizational meeting of the Association.

(b) Regular Annual Meetings. Regular annual meetings of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meetings, the Board shall elect the officers of the Association for the ensuing year.

(c) Additional Regular Meetings. The Board shall meet at least once a year in addition to the annual meeting following the annual meeting of the Association. The Board of Directors may fix dates, times and places of additional regular meetings of the Board of Directors.

(d) Special Meetings. Special meetings of the Board may be called by the President and will be called by the Secretary promptly upon the written request of at least three directors.

(e) Open and Executive Sessions. All meetings of the Board, other than executive sessions, shall be open to all Owners, and Owners who are not directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. The Board, 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 matters: concerning personnel; concerning litigation in which the Association is or may become involved; necessary to protect the attorney-client privilege of the Association; or necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session.

(f) Attendance By Telephone or Other Means of Communication. Members of the Board or of any committee may participate in a meeting by conference telephone or other means of communication through which all directors participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting. Subject to subparagraph (e) above, the Board shall allow Unit Owners to participate in Board meetings conducted by means of communication through which all participants can

hear each other at the same time, provided that the Unit Owner shall pay for the costs associated with his or her participation.

(g) Conduct of Meetings. All meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. No audio taping, video taping, photography, filming, or other audio or visual recording of meetings of the Board is permitted except by or at the direction of the Secretary for the sole purpose of the production of the minutes of the meeting or as otherwise authorized by the Board. Such recordings shall not be considered records of the Association for any purpose.

3.8 Notice. Fourteen days prior notice of regular meetings of the Board, and, if practicable, at least three business days prior written notice of special meetings shall be given to each director, either personally or by telephone, United States mail, electronic mail, facsimile transmission ("fax") or any other means reasonably calculated to reach the recipient, and shall state the time, place and purpose of such meeting. Notice of all Board meetings shall be posted by the Managing Agent, the Manager or a member of the Board in prominent locations within the Project no later than 72 hours prior to the meeting or simultaneously with notice to the Board. During the Declarant Control Period, the Board may act without a formal meeting, call or notice.

3.9 Waiver of Notice. A director may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall constitute a waiver of notice of the time, place and purpose of the meeting. If all the directors are present at a meeting of the Board, notice shall not be required and any business may be transacted at such meeting.

3.10 Quorum of Board of Directors. At all meetings of the Board, a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business. The votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A director may not vote by proxy at any Board meetings. Whether or not a quorum is present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

3.11 Conflicts of Interest. A director may not vote at any meeting on any issue in which such director has a conflict of interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest to the Board prior to a vote on that issue at the meeting of the Board, and the minutes of the meeting shall record the fact that a disclosure was made. As used herein, "conflict of interest" means an issue in which a director has a direct personal or pecuniary interest not common to other members of the Association. The determination of whether a conflict of interest exists as to a particular director or directors shall be determined by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties. If abstentions for such a reason would result in less than a majority being able to vote, the directors who are not required to abstain shall constitute a quorum for the purpose of voting on the matter in question. A director who is a plaintiff (or the equivalent) in any action brought against the Association or the Board or a defendant (or the equivalent) in any action brought by the Association or the Board shall be conclusively deemed to have a conflict of interest as to that matter. In the event that all directors have a conflict of interest on a matter, the President shall appoint a committee of not less than five disinterested Unit Owners who shall make recommendations to the Board on the

4. OFFICERS

4.1 Designation and Qualification. The principal officers of the Association shall be the President, a vice president (the "**Vice President**"), the Secretary and a treasurer (the "**Treasurer**"), all of whom shall be elected or appointed by the Board. The Board may elect or appoint such other officers as in its judgment may be necessary. The President and the Vice President shall, but no other officers need, be members of the Board. One individual may hold ~~no more than one office; provided, however, that multiple offices filled by Declarant may be held~~ by the same person. An Owner shall not act as both an officer of the Association and an employee of the Managing Agent. No Manager or employee of the Managing Agent or the Association shall be an officer.

4.2 Election of Officers. The officers of the Association shall be elected or appointed annually by the Board and shall hold office at the pleasure of the Board.

4.3 Removal/Vacancies. Any officer may be removed with or without cause by the affirmative vote of a majority of the Board. Vacancies may be filled by the Board at any regular meeting or at a special meeting of the Board called for such purpose.

4.4 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board, the President shall have all the general powers and duties that are incident to the office of president of a nonprofit corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among Owners as the President may, in his or her discretion, decide to be appropriate to assist in the conduct of the affairs of the Association. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned from time to time by the Board.

4.5 Vice President. The Vice President shall assume and perform the powers and duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as may be assigned from time to time by the Board or by the President.

4.6 Secretary. The Secretary shall attend and keep the minutes of all meetings of the Owners and the Board, shall maintain and keep a continuous and accurate record of the ownership of all Units, shall have charge of such books and papers as the Board may direct, keep the minute book wherein resolutions shall be recorded, and shall, in general, have all of the powers and perform all of the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Hawaii. The Secretary shall also have such other powers and duties as may be assigned from time to time by the Board. The powers and duties of the Secretary may be delegated to the Managing Agent or to an assistant secretary subject to the Secretary's supervision.

4.7 Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data and reports. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; and shall, in general, have all of the powers

and perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Hawaii. The Treasurer shall also have such other powers and duties as may be assigned from time to time by the Board. The Board or the President may decide that the powers and duties of the Treasurer shall be delegated to the Managing Agent or to an assistant treasurer subject to the Treasurer's supervision.

4.8 Compensation. No person shall receive any compensation from the Association for acting as an officer but may be reimbursed for actual expenses incurred in the course of performing such officer's duties, provided that any such expenses shall be approved in advance by the Board.

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

5. ADMINISTRATION

5.1 Management. The Board of Directors shall have the rights, powers and duties necessary for the management and operation of the Project and administration of the affairs of the Association and may do all acts and things except those that may not be delegated by the Association to the Board of Directors by the Act, the Declaration or these Bylaws.

5.2 Duties of the Board. Subject to such limitations, if any, that are set forth in the Act and the Declaration, the duties of the Board of Directors include, without limitation, such duties as are set forth in the Declaration and these Bylaws, as well as the following:

- (a) To have custody and control over all funds of the Association and open bank accounts on behalf of the Association, which shall be delegated to the Managing Agent;
- (b) To designate the signatories of bank accounts;
- (c) To keep books of accounts and records with respect to the Project as provided in the Act and these Bylaws;
- (d) To maintain, preserve, repair, replace and restore the Common Elements (including all utilities and utility systems) and make any necessary additions and alterations thereto;
- (e) To make additions, alterations and improvements to the Property, including utilities and utility systems that are part of the Common Elements, and to repair and restore the Property in accordance with the provisions of the Act, the Declaration or these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation;
- (f) To purchase, maintain and replace any equipment and provide all water and utility services required for the Common Elements;
- (g) To cause to be kept a complete record of all of the Board's acts and corporate affairs and to present a statement thereof to the Members at any meeting of the Association when such statement is requested in writing by at least 25% of the Owners;

matter in question, which said recommendations shall be binding upon the Board unless a majority of the entire Board votes to reject or modify such recommendations.

3.12 Compensation. Directors shall not receive any compensation from the Association for acting as such other than a reasonable fee, if any, for attendance at the meetings of the Board as may be set by the Owners at the annual meeting. Directors shall not spend Association funds for their travel, Directors' fees or per diem, unless the Owners are informed of such and a Majority of Owners approve of these expenses; provided that, with the approval of the Board, directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes shall reflect in detail the items and amounts of the reimbursements. Directors may expend Association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses.

3.13 Fidelity Bonds. The Board shall require that the Managing Agent obtain and keep a fidelity bond that at least meets the requirements of the Act, provided that the Board may require that the fidelity bond have greater coverage and be for a higher amount than is required by the Act. If other people besides the Managing Agent and its employees handle funds belonging to or administered by the Association, then the Board shall obtain and keep one or more fidelity bonds covering such other people, which bonds shall be in such amount as deemed reasonable by the Board. The premiums on such bonds, if paid by the Association, shall constitute a Common Expense. Every such bond shall, to the extent reasonably obtainable, as determined by the Board:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least 60 days prior written notice to the Board and every Person with a financial interest in the Project who shall have requested notice of such action; and

(b) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered.

3.14 Availability of Documents. The Association shall, at its expense, provide all Board members with a current copy of the Declaration, these Bylaws, the Project Rules, the Management Agreement and, annually, a copy of the Act.

3.15 Fiduciary Duty. In the performance of their duties, officers and members of the Board shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Haw. Rev. Stat. Chapter 414D.

3.16 Action by Directors Without a Meeting. Any action required or permitted under any of the Project Documents to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors. Such actions do not involve a meeting and, thus, Unit Owners need not be allowed the opportunity to participate in such actions or writings.

(h) To contract for and maintain such insurance as the Association shall be required to maintain or as the Association shall deem appropriate to maintain, including, without limitation, fire, casualty, liability and workers' compensation insurance insuring Owners, members of the Board, and other persons;

(i) To employ, supervise, and dismiss a Managing Agent, independent contractors, employees, and such personnel, including a Manager, as the Board deems necessary, and, subject to existing contracts with such entities, to prescribe their respective duties and compensation;

(j) To keep, or cause the Managing Agent to keep, an accurate and current list of Members of the Association and their current addresses and names and addresses of the vendees under agreements of sale, if any;

(k) To accept the conveyance of, to rent or lease from Declarant, or to otherwise acquire from Declarant (or Declarant's assignee) one or more Units or other real or personal property in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association, for use by a Manager or as the Board shall otherwise deem appropriate;

(l) To cause any and all necessary or prudent repairs to the Common Elements to be undertaken and completed without delay in a manner and to an extent necessary to prevent avoidable deterioration or damage;

(m) For a period of 10 years from the date that these Bylaws are Recorded, to promptly deliver to Declarant informational copies of all written inspections and reports rendered pursuant to the Board's maintenance and repair responsibilities (without any obligation whatsoever on or of Declarant to review such documents or to take any action in connection therewith);

(n) To cause the timely performance of all routine maintenance and maintenance inspections of the Common Elements required by the maintenance manual(s) provided to the Association by Declarant or Declarant's contractor(s), and to make such repairs and maintenance as may be called for pursuant to such maintenance and inspections;

(o) To provide each Unit with all water, sewer, electricity and other utility services the Board shall deem necessary, either at the expense of such Unit, as a Common Expense or as a Limited Common Expense, as determined by the Board;

(p) To purchase or provide all other materials, supplies, labor and services required by these Bylaws or by law, or which the Board, in its discretion, deems necessary or appropriate for the proper operation and maintenance of the Property, or which are used in common or jointly by the Common Elements and Units, in each case to the extent such goods and services shall not be otherwise provided;

(q) To cause to be prepared and to approve a budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including reserves required by the Act, the Declaration and these Bylaws and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any;

(r) To prepare and approve a schedule of Common Assessments against each Owner for such Owner's proportionate share of the estimated Common Expenses and/or Limited Common Expenses to be incurred to maintain and operate the Project and the Property for such ensuing year and to levy and collect all Common Assessments and special assessments of the Common Expenses, Limited Common Expenses and other charges payable by the Owners;

(s) To pay all Common Expenses that the Association is required to pay pursuant to these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project or for the enforcement of these Bylaws, provided that if any such payment is required because of the particular actions of negligence by any Owner, the cost thereof shall be specially assessed to that Owner; and

(t) To pay and discharge any lien, encumbrance, tax, or assessment levied against all or any portion of the Property that may in the opinion of the Board constitute a lien against the Property or against the Common Elements or Limited Common Elements rather than merely against the interest of particular Owners. If one or more Owners are responsible for the existence of any such lien, then they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Board by reason of such lien.

(u) When appropriate or otherwise directed to by Declarant, to cause the Association to accept and assume Declarant's and the Association's obligations under and/or to accept assignments of agreements entered into by Declarant on behalf of the Association, including, without limitation, the Management Agreement.

5.3 Rights and Powers of the Board. Subject to such limitations, if any, that are set forth in the Act, the Declaration and elsewhere in these Bylaws, the rights and powers of the Board of Directors include, without limitation, the following:

(a) To contract and incur liabilities in connection with the exercise of any of the rights, powers and duties of the Board and the Association, and to exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws or the Declaration;

(b) To have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance or operation of the Property, for the installation, repair, maintenance or replacement of any Common Elements or for inspection or testing of a Unit and/or the Common Elements (including the Limited Common Elements) when the Association is the claimant under Hawaii Revised Statutes, Chapter 672E (Contractor Repair Act), or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units;

(c) To maintain and repair any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements, the Limited Common Elements or any other portion of the Property and if the Owner or Owners of the Unit shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of maintenance or repair shall have been delivered by the Board to the Owner or Owners. The Board shall levy a special assessment against such Unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

nominees of the Board of Directors in acquiring title to or leasing of Units on behalf of the Association;

(l) Subject to any approval requirements and spending limits contained in the Declaration and these Bylaws, to purchase any Unit in the Project at foreclosure or other judicial sales in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association;

~~(m) Subject to any approval requirements and spending limits contained in the Declaration and these Bylaws, to borrow money and incur indebtedness with or without security to be used by the Association for the repair, replacement, maintenance, operation or administration of the Project and/or the Common Elements, or for making any additions, alterations or improvements thereto and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor. 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 a Majority of Owners vote for or give written consent to such borrowing, having been first notified of the purpose and use of the funds;~~

(n) To delegate its powers and duties to the Managing Agent, and to committees, agents, officers, representatives, and employees, subject to the supervision of and direction by the Board;

(o) To limit or restrict use of the recreational facilities and other Common Elements by guests of Owners and tenants and other Persons who are not Owners or tenants (whether via numbers, frequency of visits, hours or otherwise);

(p) To designate and grant permits, licenses and easements over, upon, across, through and/or under the Common Elements, or to receive permits, licenses, and easements over, upon, across, through and/or under any property in the vicinity of the Project, for any "reasonable purpose", which term shall include, but shall not be limited to, those purposes that are necessary or convenient for the operation, care, upkeep, maintenance and repair of any Unit, the Common Elements or any Limited Common Elements in the Project, and, on behalf of the Association, to enter into one or more agreements or contracts for or relating to such purposes;

(q) On behalf of the Association, to enter into one or more agreements or contracts with (i) the association(s) of unit owners of a condominium project or condominium projects adjacent to or in the vicinity of the Project and/or (ii) the owner(s) of other development(s) adjacent to or in the vicinity of the Project, as necessary or convenient to provide for the joint satisfaction of insurance requirements, on-site management functions and other items of common interest between the Association and such other association(s) and/or development(s), as may be desirable in the interest of efficiency and/or economy for the provision of such items. In such event, the joint expenses relating to such shared items shall be allocated among the participating associations or developments based on the relative total net living floor area of all units or dwellings in each of the participating condominium projects or developments, or in such other manner as may be reasonably determined fair and appropriate by the Board and the other participating associations or developments;

(d) To employ and dismiss such personnel, including a Manager, as may be necessary or desired for the maintenance, operation, repair and replacement of the Common Elements;

(e) To procure legal, accounting, and management services necessary or proper for the operation of the Property or the interpretation, enforcement or implementation of the Project Documents and any other material documents affecting the Property;

~~(f) To review and oversee and obtain and maintain in effect, and review annually, all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws, the Board or the Act;~~

(g) To enforce the provisions of the Project Documents, as well as any agreement of the Association, and establish, assess and collect such assessments, penalties and fines and any interest as the Board deems appropriate with respect to such enforcement, including penalties, fines and interest for failure or refusal to pay to the Association on demand all costs and expenses required to be paid pursuant to the Project Documents, provided that such penalties, fines and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Owner shall constitute a lien against the Owner's interest in the Owner's Unit, which lien may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Act for the foreclosure of a lien for the nonpayment of Common Expenses; provided, however, that the lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Unit and to the liens established by the use, sale and transfer restrictions of the HHFDC Buy-Back Restrictions and/or the HHFDC Shared Appreciation Equity Program in favor of HHFDC, as established and/or set forth in Chapter 201H.

(h) To notify all Persons having any interest in any Unit who have requested such notice, as set forth in the Association's records, of delinquency exceeding sixty days in the payment of any assessment against such Unit;

(i) From time to time to adopt, amend, repeal and enforce Project Rules that govern the details of the operation and use of the Project, and establish penalties for infractions related thereto, provided, however, that the Project Rules may require Owner approval to amend certain of the Project Rules. Unless the Project Rules require otherwise with respect to one or more specific rules, no such Project Rules shall be effective if disapproved by vote of a majority of the Unit Owners present at an annual meeting or at a meeting duly called for such purpose. Nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving Project Rules adopted by the Board of Directors;

(j) To deal with the Common Elements as permitted under the Act;

(k) Subject to any approval requirements and spending limits contained in the Declaration, these Bylaws and the Act, to purchase, lease or otherwise acquire any Unit in the Project in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association, for use by a Manager or otherwise, and thereafter sell, lease, mortgage, vote the Common Interests appurtenant to and otherwise hold or deal with such Unit. The Board of Directors may organize corporations and/or limited liability entities to act as

(r) To arrange and contract for the submetering or "check-metering" of utilities for some or all of the Units and to assess the respective Unit Owners for costs related thereto;

(s) Section G.10 of the Declaration provides that, because the Project has no residential dwelling units on the ground floor (and, thus, none with a ground floor entry), the operation of a family child care home within the Project is prohibited; provided, however, that if such prohibition is determined by appropriate judicial or arbitration authority to be contrary to law, then all limitations to operation of family child care homes allowed under Haw. Rev. Stat. Chapter 502C shall apply. If operation of a family child care home is required by appropriate judicial or arbitration authority to be allowed in the Project, then the Board, having received proper authority from the Association, may:

(i) Impose conditions on the establishment or operation of a family child care home that are necessary for Association immunity from liability under the law including: (A) requiring the family child care home to comply with the Americans with Disabilities Act; (B) limiting the number of Units used as a family child care home to no less than one percent and no more than three percent of the total number of Units in the Project; (C) limiting family child care homes that may be established to those operated by an owner-occupant; and (D) restricting family child care homes to certain levels of the building; and (E) imposing all appropriate limitations applicable under Haw. Rev. Stat. Chapter 502C.

(ii) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to: (A) indemnify, hold harmless and defend the Association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home, as well as to Common Elements that are traversed by persons going to and from the family child care home; (B) reimburse the Association for the amount of any increase in the Association's liability insurance premiums attributable by the insured to the operation of the family child care home; (C) require the parent, guardian and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the Association; and (D) obtain liability insurance to cover the family child care home and the Common Elements that meets the approval of the Association and the names the Association as an additional named insured, for liability claims arising solely from the operation of the child care business; provided that policy limits shall be determined in accordance with the Declaration and the liability policy of the family child care home shall be solely remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian or caretaker of a child subject to the care of the family child care home.

(iii) Prohibit the establishment of the family child care home in the event that coverage for the family child care home is excluded from the Association insurance policy and an alternative source of liability coverage for the same risk or risks is unavailable.

(iv) Require that any family child care home be in compliance with all covenants, conditions and restrictions applicable to the Property;

(t) To prohibit the operation of a family child care home that does not meet the requirements of Haw. Rev. Stat. Chapter 502C, including, but not limited to, the requirements that the family child care home be operated by the owner-occupant of the Unit in which the family child care home is located, that it be operated in a ground floor Unit with a ground floor entry, and that it comply with Haw. Rev. Stat. Sections 502C-2(b) and (c);

(u) To adopt, amend, repeal and enforce architectural guidelines relating to improvements to the Units and to establish such procedures as it deems appropriate to process any Owner-initiated request for modification or alterations of Units; and

(v) To employ a Manager or to cause the Managing Agent to do so. In either case, the Board will set the compensation of any Manager. The Board may delegate to the Manager any of its powers and duties except those that, by law or under the Project Documents, it cannot delegate.

5.4 Employment of a Managing Agent.

(a) Except as otherwise provided in the Declaration with respect to the initial Managing Agent, the Board (on behalf of the Association) shall at all times employ, as Managing Agent, a responsible, professional company, experienced in the operation of condominium projects, duly registered with the Real Estate Commission and licensed to do business in the State of Hawaii to manage and control the Project, with such administrative functions as shall be delegated by the Board, subject at all times to (i) supervision of and direction by the Board, (ii) the primary rights and responsibility of the Association, and (iii) the relevant provisions of the Project Documents and the Management Agreement. Except as otherwise provided in the initial Management Agreement with respect to the initial Managing Agent, the compensation of the Managing Agent shall be determined by the Board. The initial Managing Agent shall be designated by Declarant and the compensation of the initial Managing Agent shall be as set forth in the initial Management Agreement.

(b) The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Project, (ii) maintenance, repair, replacement and restoration and any additions to or alterations of the Common Elements, (iii) the purchase, maintenance and replacement of any equipment for the Common Elements, (iv) provision for utility services to the buildings and the various Units, (v) hiring, supervision and dismissal of such personnel (including a Manager) as it deems necessary for the maintenance and operation of the Project, (vi) contracting with others for the furnishing of such services as it deems proper for the Project, (vii) preparation of a proposed budget and schedule of assessments, (viii) collection of assessments and payment of bills to third parties, (ix) purchase of such insurance as is required and/or contemplated by the Act, the Declaration or these Bylaws, (x) collection, custody, control and disbursement of all funds, (xi) maintenance of books and records, and (xii) preparation of financial reports.

(c) In addition to complying with the termination provisions in the Management Agreement, before the Board can decide to terminate professional management of the Project, the Board must receive the prior written consent of at least 67% of the Owners.

(d) The Board of Directors may, upon the prior written approval of at least 67% of the Owners, limit any of the powers granted to the Managing Agent in these Bylaws. The Board may in its discretion grant additional powers to the Managing Agent.

5.5 Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts, and other instruments, whether signed by officers of the Board, the Managing Agent or employees of the Association or the Managing Agent, must be signed by two people, unless the Board, by resolution, decides to allow certain types of checks, drafts, notes, acceptances, conveyances, contracts, and other instruments to be signed by just one person; provided,

however, that instruments signed by officers appointed by the Board when controlled by Declarant need only be signed by one person. In the absence of a resolution applicable to such instrument or instruments, if checks, drafts, notes, acceptances, conveyances, contracts, and other instruments are to be signed by officers of the Board, they shall be signed by any two officers. The Managing Agent and employees of the Association or the Managing Agent shall have the authority to sign checks, drafts, notes, acceptances, conveyances, contracts, and other instruments on behalf of the Association, provided such signing authority shall be under the general supervision of the Board.

5.6 Deposits of Association Funds. The funds of the Association shall be: (a) deposited in a financial institution, including a federal or community credit union, located in the State of Hawaii, pursuant to a resolution adopted by the Board, and whose deposits are insured by an agency of the United States; (b) held by a corporation authorized to do business under Haw. Rev. Stat. Article 8, of Chapter 412; (c) held by the United States Treasury; (d) 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, that has an office in the State of Hawaii, 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; or (e) as otherwise permitted pursuant to Section 514B-149(c) of the Act. The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the Managing Agent commingle any Association funds with its own funds. For purposes of this Section, lease rent collections and rental operations shall not include the rental or leasing of Common Elements conducted on behalf of the Board of Directors. Association funds shall not be transferred by telephone between accounts.

5.7 Books and Records of Account.

(a) Financial Records. The Board of Directors will maintain or cause to be maintained accurate and complete books of account and other financial records on a cash basis (unless the Board votes to use an accrual basis) in accordance with recognized accounting practices. The records shall include, without limiting the generality of the foregoing, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration and replacement of the Common Elements and any other expenses incurred, all vouchers authorizing payment of such expenses and statements showing the total current delinquent amount of unpaid assessments for Common Assessments.

(b) Annual Statements. Within ninety days after the end of each fiscal year of the Association during which an annual meeting of the Association took place, the Board will render or cause to be rendered to each Owner a balance sheet and a statement of all receipts and disbursements, including assessments received and receivable, during the preceding year.

(c) Audit. The Association shall require an annual audit of the Association's financial accounts and no less than one yearly unannounced verification of the Association's cash balance by an independent public accountant. A copy of the annual audit shall be made available to each Unit Owner in accordance with the requirements set forth in the Act.

5.8 Record of Ownership. The Secretary or the Managing Agent under the direction and supervision of the Board shall keep an accurate and current record of the names and addresses of the Unit Owners, their Occupants, Mortgagees, and vendees under agreements of

sale, as well as the Common Interest appurtenant to each Owner's Unit, which information shall be promptly provided to the Secretary or the Managing Agent by each Owner. Each Owner shall also promptly file with the Secretary or the Managing Agent a true and complete copy, as Recorded, of each Unit Deed, lease, Mortgage, agreement of sale, assignment or other instrument whereby such Owner acquires, encumbers or disposes of an interest in a Unit. The records and information required under this Section shall be maintained at a place designated by the Board. A copy of the list of Owners shall be available at cost to any Member of the Association as may be provided in the Project Rules or, in any event, to any Member who furnishes to the Managing Agent or the Secretary an affidavit stating that the list will be used by the Member personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and that the list will not be used or furnished to any other Person for any other purpose. Each Owner shall pay the Association or the Managing Agent on demand a service charge in a reasonable amount fixed from time to time by the Board for the registration on the records of the Association of a change in the ownership or occupancy of a Unit.

5.9 Minutes of Meetings.

(a) Association Meetings. Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within 60 days after the meeting, if authorized by the Owners at an annual meeting. If approved by the Board, Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval. Minutes of all meetings of the Association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting. An Owner shall be allowed to offer corrections to the minutes at an Association meeting.

(b) Board Meetings. The minutes of meetings of the Board shall include the recorded vote of each Board member on all motions except those voted on in executive session. Minutes of meetings of the Board of Directors shall be approved no later than the second succeeding regular meeting of the Board. Minutes of all meetings of the Board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty 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. Minutes of meetings of the Board, once approved, for the current and prior year shall either: (i) be available for examination by Unit Owners at no cost or on 24-hour loan at a convenient location at the Project, to be determined by the Board; or (ii) be transmitted to any Unit Owner making a request for the minutes, by the Board, the Managing Agent, or the Association's representative, within 15 days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Owner, if the Owner indicated a preference at the time of the request; and provided further that the Owner shall pay a reasonable fee for administrative costs associated with handling the request.

5.10 Location and Inspection of Books and Records.

(a) Location. All of the Association's books and records shall be kept at the Project or at such other convenient place within the State of Hawaii as the Board shall designate, and in accordance with the requirements of the Act. The Board of Directors shall establish reasonable rules with respect to notice to be given to the custodian of the records by

an Owner desiring to make inspection, the hours and days of the week when such inspection may be made and the payment of the cost of reproducing copies of documents so requested.

(b) Inspection of Financial Records. The Association's most current financial statement shall be available to any Owner or Owner's Mortgagee at no cost or on twenty-four hour loan, at a convenient location designated by the Board of Directors.

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 days or more shall be available for examination by Unit Owners and their Mortgagees at convenient hours at a place designated by the Board; provided:

- (1) That the Board may require Owners and Mortgagees 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 and Mortgagees pay for administrative costs in excess of eight hours per year.

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

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

- (A) The request to examine the documents shall be made within 30 days after the Association meeting;
- (B) The Board may require Owners and Mortgagees to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its Members or both; and
- (C) Owners and Mortgagees pay for administrative costs in excess of eight hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed 30 days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional 60 days, after which they may be destroyed. 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 or Mortgagee upon the Owner's or Mortgagee's request, provided that the Owner or Mortgagee pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

Owners and Mortgagees 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.

Every director shall have the right at any reasonable time and upon reasonable advance notice to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association, provided that if the director is a plaintiff (or the equivalent) in any action brought against the Association or the Board or a defendant (or the equivalent) ~~in any action brought by the Association or the Board, such books, records and documents shall only be produced or such inspection of physical properties conducted in accordance with the rules of discovery applicable to that action, and provided further, that if a director has a conflict of interest as to any matter to which such books, records and documents are related or involving a physical property owned or controlled by the Association, such inspection may be refused or limited to the extent required by such conflict of interest. The right of inspection by a director includes the right to make extracts or copies of the documents at the director's own expense.~~

(c) Statutory Requirements. Anything in the Declaration or these Bylaws to the contrary notwithstanding, the Managing Agent shall provide copies of Association records maintained pursuant to Sections 514B-152, 153 and 154 of the Act 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. Prior to the organization of the Association, any Owner shall be entitled to inspect and receive a copy of the Management Agreement from the Managing Agent. 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 30 calendar days of receipt of the request. The Association may comply with the records-inspection requirements by making information available to Owners, at the option of each Owner and at no cost to the Owner for downloading the information, through an Internet website.

5.11 Representation. Subject to the limitations set forth in the Declaration, the Board may represent the Association or any two or more Owners in any matter or in any action, suit, hearing or other proceeding affecting the Association, the Common Elements or more than one Unit. Subject to the limitations set forth in the Declaration, the Board, on its behalf or on behalf of the Association or any two or more Owners, may institute, defend, intervene in, prosecute and settle any such matter, actions, suits and proceedings, without prejudice to the rights of any Owners individually to appear, to sue or be sued. Service of process on two or more Owners in any such action, suit or proceeding may be made on the President. It shall not be a breach of fiduciary duty if the Board determines, in good faith, not to prosecute or bring a particular action, suit or proceeding.

5.12 Liability and Indemnity of the Board of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners for any mistake of judgment or otherwise except for their own gross negligence, recklessness or willful misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities which may be incurred by or imposed on him or her in connection with any claim, action, proceeding, investigation or inquiry made, instituted or threatened in which such person may be involved as a party or otherwise by reason of such person being or having been a director or officer of the Association, or by reason of any past or future action taken, authorized or approved by such director or officer or any omission to act as a director or officer, whether or not such person continues to be such director or officer at the time of the incurring or

imposition of such costs, expenses or liabilities. Such costs, expenses or liabilities shall include judgments, amounts paid in compromise, settlements and amounts paid for services of counsel and other related expenses, except those costs, expenses and liabilities as shall relate to matters as to which such officer or director shall be finally adjudged to be, or shall be, liable by reason of gross negligence, recklessness or willful misconduct toward the Association in the performance of such person's duties as a director or officer. In the absence of a final adjudication of the existence or nonexistence of a director's or officer's liability to the Association, the determination of whether a director or officer has acted with gross negligence, ~~recklessness or willful misconduct may be made (a) by the Board of Directors by a majority vote~~ or a quorum consisting of disinterested directors, or (b) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel selected by the Board of Directors, or (c) if a quorum of disinterested directors so directs, by a Majority of Owners. The foregoing right of indemnification shall not be exclusive of other rights that any director or officer may have and shall inure to the benefit of the heirs and personal representatives of each director or officer.

6. BUDGETS, RESERVES AND ASSESSMENTS

6.1 Budget.

(a) Unless the Board decides otherwise, the calendar year shall be the fiscal year of the Association. Before the start of each fiscal year of the Association, the Board shall prepare, or have prepared, and adopt and distribute to all Owners an annual operating budget in accordance with Sections 514B-144(a) and 148 of the Act. At a minimum, the budget shall include the following:

(i) The estimated revenues and operating expenses of the Association for the upcoming year;

(ii) Information as to whether the budget has been prepared on a cash or accrual basis;

(iii) The total replacement reserves (as defined in Section 514B-148 of the Act) of the Association as of the date of the budget;

(iv) The estimated replacement reserves the Association will require to maintain the Property based on a reserve study performed by the Association;

(v) A general explanation of how the estimated replacement reserves are computed;

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

(vii) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. (The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subsection (iv) above.);

(viii) An estimate of the maintenance reserves the Association must collect in accordance with applicable provisions in the Declaration;

(ix) An amount that the Board deems appropriate to make up all or a portion of any deficiency from a prior year; and

(x) The amount of surplus from the prior year, if any, which shall be used to pay Common Expenses in the upcoming year.

(b) For the fiscal year beginning after the Association's first annual meeting and for each fiscal year thereafter, the Association shall assess the Owners, in proportion to their respective Common Interest, to either fund, for the applicable fiscal year, a minimum of 50% of the estimated replacement reserves or fund 100% of the estimated replacement reserves when using the cash flow plan (as that term is defined in the Act), in accordance with the Act. Estimated replacement reserves shall be computed by a formula based on the estimated life and the estimated capital expenditure or major maintenance (as such terms are defined in Section 514B-148 of the Act) required for each part of the Property and shall include: (i) adjustments for revenues that will be received and expenditures that 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 Property for which capital expenditures or major maintenance will exceed \$10,000.00 (C.P.I. Adjusted). Parts of the Property for which capital expenditures or major maintenance will not exceed \$10,000.00 (C.P.I. Adjusted) may be aggregated in a single designated maintenance reserve. Neither Declarant, the Association, the Managing Agent, any Unit Owner, nor any director, officer or employee of the Association who makes or participates in a good faith effort to calculate the estimated replacement reserves for the Association shall have any liability (personal or otherwise) if such estimate subsequently proves to be incorrect.

(c) Upon review and adoption by the Board, the budget shall be distributed to the Owners and shall constitute the basis of the Association's Common Expenses for the year that shall be collected from the Owners by payment of Common Assessments. The budget shall be sent to each Owner, and, if practical, each year's budget shall be sent at least thirty days before the annual meeting of the Association, provided that the budget for the first fiscal year of the Association need not be sent. The Association's annual financial statement shall also be sent out as the Board shall direct, and, if practical, shall be sent out at least thirty days before the annual meeting of the Association. Such financial statement must include a statement of all receipts and expenditures determined on a cash basis (unless the Board votes to use an accrual basis) and a statement of all Association funds and other assets, including, without limitation, all reserve accounts.

(d) The Board may, but shall not required to, adjust the budget during any year in the event of surplus funds or projected surplus funds, but no Owner will have a right to a refund of any assessment already paid or the right not to pay any assessment due but unpaid as a result of any such adjustment in the budget. At the annual meeting each year, the Association shall adopt a resolution that any surplus funds collected from the Owners for Common Expenses but left over after the end of the previous year shall be used to pay Common Expenses, excluding any capital improvements, in the next year. For this purpose, each Owner irrevocably appoints the President his proxy and attorney-in-fact to adopt such a resolution.

(e) At the end of any calendar year, if there shall be any excess assessments or excess amount in the reserve fund, and if such funds shall be qualified to be treated as

"exempt function income", as that term is defined by Internal Revenue Code, then the Association may file such documents as may be required to have such income treated as tax exempt.

(f) A copy of the Association's annual operating budget shall be furnished to the Real Estate Commission upon its request as part of the Association's registration with the Real Estate Commission under Section 514B-103 of the Act.

6.2 Supplemental Budget. The Association's expenditures in any given fiscal year may not exceed by more than twenty percent the total annual operating budget for that fiscal year, except in an emergency situation, as defined in Section 514B-148 of the Act. If an emergency situation arises or the Association experiences significant revenue shortfalls due to unpaid assessments, and the Association does not have, or the Board projects that it will not have, sufficient funds to pay Common Expenses on a current basis, the Board shall prepare or have prepared a revision of the estimated Common Expenses for that year. The increased expense or revenue shortfall amounts of such revision shall be established by Board resolution as a supplemental budget for that year. Such supplemental budget resolution shall contain written findings as to the necessity of the extraordinary expenses and why the expenses were not or could not have been reasonably foreseen in the budgeting process and shall be distributed to the Owners before any special assessment is made based on such supplemental budget.

6.3 Capital Improvements Reserve Fund.

(a) From time to time, as specifically directed by the Association at any annual or special meeting, the Board shall have the authority to establish and maintain a "**Capital Improvements Reserve Fund**" and one or more subparts thereof, by monthly, quarterly, semi-annual or annual assessment (as determined by the Board) against the Units for payment by all the Owners in proportion to their respective Common Interests, subject, however, to any exceptions set forth in the Declaration or these Bylaws. Each subpart of the Capital Improvements Reserve Fund shall be earmarked for a specific capital improvement having a useful life of one year or more, which shall have been specifically authorized by the Association at any annual or special meeting and the amount of such subpart shall be such annual amount as the Association determines to be adequate (but no more) to provide for the particular capital improvement or addition to the Project, whether it be the repair, restoration, and replacement of certain Common Elements (including those Common Elements that must be replaced on a periodic basis) and the furniture, fixtures, and mechanical equipment thereof, and for such other improvement or addition as may be specifically authorized by the Association.

(b) The Capital Improvements Reserve Fund shall be funded by the assessments against and payment by all the Owners in proportion to their respective Common Interests. The assessments for said subparts of the Capital Improvements Reserve Fund shall be deemed conclusively to be savings of the Owners held for their benefit for a Common Expense of a capital nature. Each such subpart shall be deposited in a separate special account with a safe and responsible financial institution located in the State of Hawaii whose deposits are insured by an agency of the United States government and may be in the form of a cash deposit or may be invested in obligations of or fully guaranteed as to principal by any agency of the United States of America.

(c) Disbursements from any subpart of the Capital Improvements Reserve Fund shall be made only upon authorization of the Board. Expenditure of the Capital

Improvements Reserve Fund may be made only if it adds to the attractiveness or usefulness of the Project (as determined by the Board).

(d) The proportionate interests of each Owner in the Capital Improvements Reserve Fund and all interest earned thereon shall not be withdrawn or assigned separately but shall be deemed to be transferred with each Unit even though not mentioned or described expressly in the instrument of transfer. If the Project is terminated, or if the Capital Improvements Reserve Fund or subpart thereof exceeds the cost of the particular improvement, or if the planned improvement is for any reason not implemented within a reasonable time (in any event not more than 10 years) after creation of the Capital Improvements Reserve Fund, then the Capital Improvements Reserve Fund remaining shall be distributed to all Owners in proportion to their respective Common Interests, except for the Owners of any Units then reconstituted as part of a new Condominium Property Regime, whose interests shall be placed in the Capital Improvements Reserve Fund or other capital contributions account provided for in the declaration of such Condominium Property Regime.

6.4 Notice of Increase in Maintenance Fees or Special Assessment. The Board shall direct the Managing Agent to send to all Owners thereby affected written notice of any increase in the Common Assessment or any other assessment and any special assessment, at least thirty days before the effective date of such increase or special assessment. No Owner who requests legal or other information from the Association, the Board, the Managing Agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the Association notifies the Owner that it intends to charge the Owner for the reasonable cost. The notice from the Association, the Owner's response (if any) to that notice and the Association's actions thereafter (if any) shall be subject to the requirements of Section 514B-105(d) of the Act.

6.5 Payments for Common Expenses. Each Owner shall be severally liable for and shall pay, via Common Assessment, a share of the Common Expenses in proportion to the Common Interest appurtenant to such Owner's Unit; provided, however, that, subject to the right (but not the obligation) of Declarant to temporarily assume all actual Common Expenses of the Project, all common profits and Common Expenses of the Project shall be allocated to and shared among only those Units for which a certificate of occupancy has been issued by the County, proportionate to the Common Interests appurtenant to such Units; provided, however, that if the County does not require certificates of occupancy for Units, then the relevant event shall be the County inspector's conclusion of the final inspection of the Units by signing off on the building permit that permits occupancy of the Units. The foregoing notwithstanding, if the Association owns a Unit for the purpose of housing the Manager or for another legitimate Association-related purpose, then Common Expenses shall be charged to and divided among only those Units that are not owned by the Association in the proportion that the Common Interest appurtenant to each such Unit bears to the total Common Interest of all such Units that are not owned by the Association; provided, however, that the Board may vote to levy assessments against Association-owned Units and include such assessments in the Common Expenses to be charged to the Unit Owners according to their respective Common Interests. Common Assessments and special assessments arising from any supplemental budget shall be charged to each Owner accordingly. Each assessment duly made by the Board pursuant to the Declaration or these Bylaws shall be the separate, distinct and personal obligation of each Owner assessed as of the date of assessment and shall constitute a lien on the Owner's Unit as provided in the Declaration, these Bylaws and/or the Act. When a Unit is owned by more than one Person, the obligation shall be joint and several among the co-Owners. Each Owner shall

pay the assessments against such Owner's Unit at such times and in such amounts as established pursuant to the Declaration, these Bylaws and the Act, provided, however, that Owners who are required by the terms of a first Mortgage to make payments to the Mortgagee for transmittal to the Association shall be permitted to do so. Each Owner shall also be liable for and shall pay all other amounts chargeable to such Owner in accordance with the Declaration and these Bylaws, and all such amounts shall be charged to such Owner as a special assessment, and shall constitute a lien on the Owner's Unit as provided in the Declaration, these Bylaws and the Act. No Unit Owner may be exempt from liability for the Unit Owner's share of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Owner's Unit.

6.6. Payments for Limited Common Expenses. Unit Owners shall be charged for Limited Common Expenses in the manner set forth in the Declaration.

6.7 Benefited Assessments. The Board shall have the power and authority to specifically assess Units receiving benefits, items, or services provided to less than all Units within the Property (the "Benefited Assessments"). Costs and expenses of the Association that are incurred upon the request of an Owner for specific items or services relating to or benefiting such Owner or such Owner's Unit, or that are incurred pursuant to the Project Documents for specific items or services relating to or benefiting certain Units, shall be specifically assessed as Benefited Assessments against the Unit(s) benefited.

6.8 Payment as Agent. Each Owner, as principal, shall be liable for the Owner's proportionate share of the Common Expenses. The Board, on behalf of the Owners, will pay or cause to be paid all Common Expenses and shall be responsible, as agent for each Owner, only to collect the funds for the payment of the Common Expenses and transmit the payments to third persons to whom such payments must be made.

6.9 Land Trust.

(a) In the event title to any Unit and its appurtenant Common Interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all Common Assessments and all other charges, costs and expenses assessed against such Unit or the Owner thereof pursuant to the Declaration, these Bylaws, the Project Rules or the Act.

(b) No claim for payment of Common Assessments or other charges, costs or expenses shall be made against any such trustee personally and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the Unit as provided in the Declaration, these Bylaws and the Act, notwithstanding any transfer of beneficial interest under such trust.

6.10 Due Date of Assessments. Common Assessments shall be payable in monthly installments in advance, unless otherwise determined by the Board, on the first day of each month, commencing with respect to each Unit on the first day of the first month following the issuance by the County of a certificate of occupancy for such Unit; provided, however, that if the County does not require that a certificate of occupancy be issued for such Unit, then payment of Common Assessments shall commence on the first day of the first month following the date that

the County's inspector has concluded the final inspection of the Unit by signing off on the building permit that permits occupancy of the Unit; provided, further, however, that Declarant may assume all the actual Common Expenses and, thus, Common Assessments, in the Project by stating in Declarant's condominium public report required by Section 514B-54 of the Act that Unit Owners shall not be obligated for the payment of their respective shares of the Common Expenses until Declarant sends the Owners written notice that, after a specified date, the Owners shall be obligated to pay for their respective shares of the Common Expenses allocated to their Units. Declarant shall mail the written notice to the Owners, the Association, and the ~~Managing Agent at least 30 days before the specified date. Special assessments may be made~~ payable in a lump sum or in installments as the Board shall determine. Special assessments and other assessments and charges to an Owner shall be due on the date the next Common Assessment is due or on such other date as the Board shall determine.

6.11 Taxes and Assessments. Each Owner shall be obligated to have the real property taxes and other governmental assessments for the Owner's Unit and appurtenant Common Interest, as well as any other taxes or assessments that now are or may hereafter be assessed by law on each Unit and its Limited Common Elements or the personal property or other interest of the Owner, separately assessed against the Unit by the proper governmental authority, provided such governmental authority is ready and able to make such separate assessment. Each Owner shall be obligated to pay the amount of the taxes and assessments so determined. Each Owner shall execute such documents and take such actions as may be reasonably specified by the Board to facilitate compliance with the proper governmental authority regarding such taxes and assessments. Each Owner shall pay the Owner's proportionate share of any assessment by the Board for any taxes or assessments, if any, assessed against the Property as a whole or any part of the Common Elements as a whole and not separately. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Property or any part of the Common Elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board.

6.12 Default in Payment of Assessments. Any assessment (including any Common Assessment) not paid within 10 days after the due date thereof shall be subject to a late charge as may from time to time be established by the Board to defray the costs to the Association of additional record keeping and reporting, and shall accrue interest at the rate of 12% per annum from the due date until paid. Any unpaid assessment shall constitute a lien on the Unit for which the assessment was made, which lien shall have the priority and standing in regard to other liens as provided by law, including the Act, the Declaration and these Bylaws.

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 may have under the Project Documents or by law, the Board may enforce each such obligation as follows:

(a) By suit to enforce such assessment obligations provided that each such suit must be authorized by a majority of a quorum of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Managing Agent, if the latter is so authorized in writing. Each such action shall be brought in the name of the Board, and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include all costs and expenses incurred by the Association in collecting the assessment, including reasonable attorneys' fees. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two

members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of the default, the Board or the Managing Agent (the latter acting upon the authorization of the majority of the Board at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the Mortgagee of such Owner if required by the Declaration, these Bylaws or otherwise by the Mortgagee) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. ~~If such delinquency is not paid within 10 days after delivery of such notice, then the~~ Board may prepare and Record on behalf of the Association a claim of lien against the Unit of such delinquent Owner, which lien shall be prior to all liens except (1) all sums unpaid to HHFDC under the HHFDC Shared Appreciation Equity Program pursuant to Chapter 201H, (2) liens established by the use, sale and transfer restrictions of the HHFDC Buy-Back Restrictions and/or the HHFDC Shared Appreciation Equity Program in favor of HHFDC, as established and/or set forth in Chapter 201H, (3) liens for taxes and assessments lawfully imposed by governmental authority against the Unit, and (4) all sums unpaid on any Mortgage that was Recorded prior to the Recordation of a notice of lien by (or on behalf of) the Association, and costs and expenses (including attorneys' fees) provided in such Mortgage. Such claim of lien shall state (i) the name of the delinquent Owner; (ii) a designation of the Unit against which the claim of lien is made; (iii) the amount claimed to be due and owing (after the allowance of any proper offset); (iv) that the claim of lien is made pursuant to the terms of these Bylaws and the Act; and (v) that a lien is claimed against such Unit in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of collection, including attorneys' fees, if any. Such claim of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board or by the Managing Agent and shall be dated as of the date of execution. Upon Recordation of a duly executed original or copy of such claim of lien, the Board shall have and may exercise all available remedies. Said remedies include, but are not limited to, foreclosure of the lien in a like manner as to the foreclosure of a Mortgage of real property, and any manner of enforcement permitted by law, including non-judicial or power of sale foreclosure procedures authorized by Hawaii Revised Statutes, Chapter 667, as amended. The Owner of a Unit against which the lien of the Association is foreclosed shall pay a reasonable rental for such Unit and the plaintiff in such a foreclosure shall be entitled to a receiver to collect such rental. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

As an alternative to foreclosure proceedings with respect to unpaid assessments, where a Unit is owner-occupied, the Association may authorize the Managing Agent, or the Board to, after 60 days written notice to the Unit Owner and to the holder of a first Mortgage on the Unit of the nonpayment of the Unit's share of the Common Expenses or other assessments, terminate the delinquent Unit Owner's (and the Owner's guests', Invitees', Occupants' and others) access to the Common Elements (including any recreational facilities) and cease supplying a delinquent Unit with any and all services normally supplied or paid for by the Association (including utilities that the Association supplies or pays for). Any terminated services and privileges shall be restored upon payment of all delinquent assessments. Before the Board or Managing Agent can take the actions permitted in this paragraph, the Board must adopt a written policy providing for the actions and have the policy approved by a vote of a Majority of Owners at an annual or special meeting of the Association or by written consent of a Majority of Owners.

6.13 Collection from Occupants and Agents. If a Unit Owner shall be in default in the payment of any assessment for thirty days or more, the Board may, at its option, so long as

such default shall continue, demand in writing and receive each month from any Occupant of the Owner's Unit the rent as it becomes due or the net amounts due to the Owner under any contract between the Owners and a rental agent up to an amount sufficient to pay all sums due from the Owner, including interest and costs of enforcement, if any, but the amount shall not exceed the Occupant's rent due each month. Any such payment to the Board by an Occupant or rental agent shall be a full and sufficient discharge of the Occupant or agent as between the Occupant or agent and the Owner to the extent of the amount so paid. No such demand or acceptance of rent from any Occupant or agent shall be deemed to be an approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. Neither the Occupant nor the rental agent shall 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. The Board may not exercise this right if a commissioner or receiver has been appointed to take charge of a Unit pending a Mortgage foreclosure, if a Mortgagee is in possession pending a Mortgage foreclosure, or if the Occupant is served with a court order directing payment to a third party.

Prior to taking any action under this Section 6.13, the Board shall give the delinquent Owner written notice of its intent to collect the rent owed. The notice shall: (a) be sent by both first-class and certified mail; (b) set forth the exact amount the Association claims is due and owing by the Owner; and (c) indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid. Further, before the Board can take the actions permitted under this Section 6.13, the Board must adopt a written policy providing for the actions and have the policy approved by a Majority of Owners as evidenced by a vote at an annual or special meeting of the Association or as evidenced by written consent.

6.14 Disputed Assessments; Notices; Dispute Resolution.

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

(i) The amount of Common Assessments and/or other assessments 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 charges included in the assessment;

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

(iv) That under Hawaii law, the Owner has no right to withhold assessments for any reason;

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

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

(b) An 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 Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 514B-162 of the Act; provided that an Owner may only file for arbitration if all amounts claimed by the Association have been paid in full on or before the date of filing. If the 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 Owner pays all Association assessments within thirty days of the date of suspension, then the Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty-day period, then the Association may ask the arbitrator to dismiss the arbitration proceedings. The Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

6.15 Liability for Unpaid Assessments.

(a) Upon Voluntary Conveyance. In the event of voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Common Assessments and other assessments assessed against the grantor up to the time of the conveyance; provided, however, that the grantor or the grantee may obtain a certificate as provided in Section 6.16 below, and except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the 30-day period immediately preceding the date of such certificate, the grantee shall not be liable for, nor shall the Unit conveyed be subject to, any lien for any unpaid assessments against the grantor in excess of the amount set forth in the certificate.

(b) Upon Judicial or Non-Judicial Power of Sale Foreclosure. Subject to this subsection 6.15(b) and subsections 6.15(c) and (d), the Board may specially assess the amount of the unpaid regular Common Assessments against a Person who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent Unit; provided that:

(i) A purchaser who holds a Mortgage on a delinquent Unit that was Recorded prior to the filing of a notice of lien by the Association and who acquires the delinquent Unit through a judicial or non-judicial foreclosure proceeding, including purchasing the delinquent Unit 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 6.15(b); and

(ii) A Person who subsequently purchases the delinquent Unit from the Mortgagee referred to in subsection 6.15(b)(i) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection 6.15(b); provided that the Association has filed a notice of lien against the delinquent Unit for the unpaid Common Assessments that form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent Unit.

(c) The amount of the special assessment assessed under subsection 6.15(b) shall not exceed the total amount of unpaid regular 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 had filed a notice of lien against the delinquent Unit pursuant to subsection 6.15(b)(i). In no event shall the amount of the special assessment exceed the sum of \$1,800.00.

(d) For purposes of subsections 6.15(b) and (c), the following definitions shall apply:

(i) **"Completion"** means:

- (A) In a nonjudicial power of sale foreclosure, when the affidavit required under HRS Section 667-5 is filed; and
- (B) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to Section 514B-146(b) of the Act.

(ii) **"Regular Common Assessments"** shall not include:

- (A) Any other special assessment, except for a special assessment imposed on all Units as part of a budget adopted pursuant to Section 514B-148 of the Act;
- (B) Late charges, fines, or penalties;
- (C) Interest assessed by the Association;
- (D) Any lien arising out of the assessment; or
- (E) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.

6.16 **Certificate of Unpaid Assessments.** Any Owner (and his or her Mortgagee or any purchaser of an interest in his or her Unit) shall be entitled to a certificate from the Board or the Managing Agent setting forth the amount of any due and unpaid assessments with respect to the Owner's Unit or setting forth that all assessments due are paid, if such is the case, within fifteen days after written request and upon payment of a reasonable fee. If any claim of lien is Recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, including accrued interest and costs of enforcement, then upon demand of the Owner or the Owner's successor, and the payment of a reasonable fee, the Board, acting by any two members, shall execute, acknowledge and deliver a release of lien in Recordable form. A certificate regarding unpaid assessments executed and acknowledged or made under penalty of perjury by any two members of the Board or the Managing Agent shall be conclusive upon the Board and the Association in favor of any and all persons who rely thereon in good faith as to the matters therein contained, except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the 30-day period immediately preceding the date of such certificate.

6.17 **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 or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner with or without knowledge by the Board of the breach of any covenant hereof shall not be deemed a waiver of such breach.

6.18 Late Fees. The Association may deduct and apply portions of Common Assessment payments received from an Owner to unpaid late fees and other costs only in accordance with Section 514B-105(c) of the Act.

7. **INSURANCE**

7.1 Liability Insurance.

(a) The Board, on behalf of the Association, shall procure, purchase and at all times maintain from a reputable company or companies a policy or policies (for purposes of this section, the "**Policy**") of commercial general public liability insurance to insure Declarant, the Association, the Board, the officers, each Unit Owner, the Managing Agent, the Manager and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the Project (including the Units and the Common Elements) or activities thereon or on sidewalks or construction work. The Policy shall include coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds and broad form property damage. Premiums for the Policy shall be Common Expenses. The Policy shall be a Commercial General Liability form, which includes, but is not necessarily limited to, Fire Damage Legal Liability, and shall contain minimum limits of not less than \$5,000,000.00 for injury to one or more persons in any one accident or occurrence and for property damage, or such higher limits as the Board may from time to time establish with due regard to then-prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the parties to be insured.

(b) Each Unit Owner, at its own expense, is required to procure, purchase and at all times maintain from a reputable company liability insurance, which shall insure the Unit Owner, all Occupants of and Invitees to the Owner's Unit and the Association against claims for bodily injury, death and property damage arising out of the condition of the Owner's Unit or activities therein. The policy shall include coverage for bodily injury and property damage. The policy shall contain minimum limits of not less than \$1,000,000.00 for injury to one or more persons in any one accident or occurrence and for property damage, or such higher limits as the Board may from time to time establish with due regard to then-prevailing prudent business practice in the State of Hawaii.

7.2 Property Insurance for the Association. Pursuant to Section 514B-143 of the Act, the Board, on behalf of the Association, shall procure, purchase and at all times maintain from a reputable company or companies a policy or policies (for purposes of this section, the "**Policy**") of insurance insuring the Common Elements and, to the extent reasonably available, all Units and the Limited Common Elements, except as otherwise determined by the Board. The Policy need not cover improvements and betterments to the Units installed by Unit Owners, provided that if improvements and betterments are covered, any increased cost shall be assessed by the Association against the Units affected. (For the purposes of this Section 7.2, "improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the Unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.)

The Policy shall protect against loss or damage by fire and other casualty under the Insurance Services Office, Inc. (ISO) condominium association special coverage form or equivalent with a special Cause of Loss form (or its equivalent) attached, or such broader forms of protection as the Board shall determine, with endorsements for extended coverage, construction code (if there is a construction code provision that would require changes to undamaged portions of the Project even where only part of a building or structure is damaged or destroyed by an insured hazard), vandalism and malicious mischief and, during times of war reasonably anticipated to physically impact the Project, to the extent that the same is reasonably available, against war risks (from any source), or such broader forms of protection as the Board may determine, in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the Policy is purchased and at each renewal date. Every such Policy shall, unless unobtainable at a reasonable cost (as determined by the Board):

(a) Contain a waiver of any right of the insurer to repair, rebuild or replace if the Owners decide pursuant to the Declaration and Section 9 below not to repair, rebuild or restore any damage or destruction;

(b) Provide that any loss shall be adjusted with the Board of Directors and the Mortgagee of any Unit directly affected by a loss;

(c) Contain a standard Mortgagee clause which shall:

(i) Name the holder of any Mortgage affecting any Unit whose name has been furnished to the Board;

(ii) Provide that any reference to a Mortgagee in the Policy shall mean and include all holders of Mortgages affecting any Unit of the Project, in their respective order and preference;

(iii) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Association, the Board, an Owner, an Occupant or any persons acting under any of them;

(iv) Waive (A) any provision invalidating such Mortgagee clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or vacancy, (B) any requirement that the Mortgagee pay any premium (provided that if the Board fails to pay any premium due or to become due under the policy, the Mortgagee may pay the same prior to the termination of the policy for nonpayment of premiums), (C) any contribution clause, and (D) any right to be subrogated to the right of any Mortgagee against the Owner or lessee of any Unit or the Association or the Board of Directors or to require any assignment of any Mortgage to the insurer;

(v) Provide that, without affecting any protection afforded by such Mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee;

(d) Provide for the payment of the proceeds to the Insurance Trustee;

(e) Be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies the requirements of this Section 7.2; provided, however, that the broker shall not be required to confirm that insurance values represent 100% of the replacement costs, which shall be the obligation of the Board.

7.3 Property Insurance for Owners. Each Unit Owner, at its own expense, is required to procure, purchase and at all times maintain from a reputable company insurance that insures the contents of the Owner's Unit, the personal property of the Owner, the appliances and the interior finishes of the Units (including the wall coverings and floor coverings) against loss or damage by fire and other casualty. Before an Owner's Unit can be occupied, the Owner shall be required to provide to the Board or the Managing Agent written evidence that the Owner has procured the insurance required by this paragraph.

7.4 Requirements of All Policies. All insurance policies:

(a) Shall be issued by an insurance company authorized to do business in the State of Hawaii and having an "A" or better general policyholder's rating and a "6" or better financial performance index rating in Best's Insurance Reports and a "BBBq" or better qualified solvency rating or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service, or such other ratings and systems first approved in writing by the Board;

(b) Shall, if obtainable at reasonable cost (as determined by the Board), not relieve the insurer from liability because of loss occurring while the hazard is increased in or to the buildings, whether or not the hazard is within the control or knowledge of the Association or the Board of Directors, or because of any breach of warranty or condition caused by Declarant, an Owner or Occupant of a Unit or because of any act or neglect of the Association, the Board of Directors, or an Owner or Occupant of a Unit;

(c) Shall contain a waiver by the insurer of any right of subrogation to any right of Declarant, the Association, the Board of Directors, or an Owner against any of them or any person acting under them;

(d) Shall provide that the policy and its coverage may not be canceled, not reviewed or substantially modified (whether or not requested by the Board or the Association) except by giving at least thirty days prior written notice to the Association, the Board, any other insured or loss payee, each Owner and every other Person in interest (including Mortgagees) who shall have requested such notice of cancellation, nonrenewal or substantial modification. A substantial modification is a material adverse change in the amount of coverage, the losses covered, or the perils insured against;

(e) Shall contain no provision limiting or prohibiting other insurance by an Owner, but provide that the liability of the insurer shall not be affected by, and the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance;

(f) Shall, with respect to all insurance to be obtained by or on behalf of the Association, require that the insurance carrier, at the inception of the policy and on each anniversary date, provide the Board with a summary of the policy written in layman's terms, which summary shall include a description of the type of policy, the coverage and limits of

coverage, the amount of annual premium and the policy renewal dates, and which summary shall be provided by the Board to all Owners;

(g) Shall contain a "severability of interest" endorsement precluding the insurer from denying the claim of an Owner because of a negligent act of the Association, the Board or other Owners;

(h) Shall name the Unit Owners, the Association and, if possible, the Managing Agent and Declarant, its affiliates and subsidiaries, as insureds;

(i) Shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to Section 9.1 of these Bylaws not to repair, rebuild or replace the damage or destroyed property; and

(j) Shall have a loss-payable clause showing the Association or the Insurance Trustee as trustee for each Unit Owner and each of their respective Mortgagees.

7.5 Directors' and Officers' Insurance. The Association shall purchase and maintain directors' and officers' liability insurance with coverage in such reasonable amount as shall be determined by the Board of Directors. The premiums for such policy or policies shall be a Common Expense of the Project.

7.6 Flood Insurance. If (a) the Property is located in an identified flood hazard area as designated by the appropriate federal agency or department or (b) the Board determines that flood insurance should be obtained for the Project, then, in either event, the Association shall procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act (or other applicable statute), with such coverage and terms to comply with the National Flood Act.

7.7 Insurance Against Additional Risks. The Association may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii. Such additional insurance may include Employment Practices coverage, which shall include legal liability coverage arising out of lawsuits related to employment contracts of the Association.

7.8 Assignment of Insurance Proceeds. If any loss intended to be covered by insurance carried by the Board shall occur and the proceeds payable thereunder shall be reduced by reason of any insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by it, to the extent of such reduction to the Board for application to the same purposes as the reduced proceeds are to be applied.

7.9 Liability for Insurance Decisions. The Board will not be liable for any decision it makes on insurance unless it was grossly negligent, reckless or was guilty of intentional misconduct. Likewise, neither Declarant nor the Managing Agent will be liable except for their gross negligence, recklessness, or intentional misconduct regarding any decisions on insurance.

7.10 Minimum Required Insurance. Notwithstanding anything to the contrary contained in this Section 7 or elsewhere in these Bylaws or in the Declaration, the Association

shall be required to carry the minimum types and levels of insurance that are required by the Act, including, without limitation, Section 514B-143 of the Act.

7.11 Review; Inspection; Miscellaneous.

(a) The Board shall review, not less frequently than annually, the adequacy of its insurance program and shall report in writing its conclusions and actions taken on such review to Declarant (as long as Declarant owns a Unit in the Project) and each Owner and to any Mortgagee of a Unit who shall have requested a copy.

(b) At the written request of any Mortgagee of a Unit, the Board shall furnish to the Mortgagee a copy of the Policy described in Section 7.2 and of any other policy to which a Mortgagee endorsement shall have been attached and proof that premiums on such policy have been made for the period for which the Mortgagee shall so request. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner (or purchaser holding a contract to purchase an interest in a Unit) at a place designated by the Board.

(c) Any coverage procured by the Board shall be without prejudice to the right of any Owner to insure the Owner's Unit and the contents for the Owner's own benefit at the Owner's own expense. To the extent that the insurance required hereunder cannot be obtained or is not available on a commercially reasonable basis, the Board shall obtain and maintain such available insurance as shall most nearly approximate the insurance coverage required hereunder and that is then available on a commercially reasonable basis. The Board shall be entitled to obtain and maintain insurance with a deductible.

(d) In the event of loss covered by insurance, the deductible shall be paid by the Unit Owner or Owners whose Unit or Units were subject to the loss. If the loss is with respect to a Common Element, the deductible shall be paid by the Association as a Common Expense.

(e) The Board, with the vote or written consent of a Majority of Owners, may require Unit Owners to obtain reasonable types and levels of insurance. The liability of a Unit Owner shall include, but not be limited to, the deductible of the Owner whose Unit was damaged, any damage not covered by insurance required by this section, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings. If the Unit Owner does not purchase or produce evidence of insurance requested by the Board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the Unit Owner. In no event is the Association or Board liable to any Person either with regard to the failure of a Unit Owner to purchase insurance or a decision by the Board not to purchase the insurance for the Owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverage obtained.

8. MAINTENANCE AND USE

8.1 Maintenance and Repair of Units.

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

(b) All repair, maintenance and alteration work must be performed in accordance with all applicable local, state and federal laws.

(c) Every Owner shall reimburse the Association for any expenditures incurred by the Association in repairing damage to, or in preventing or attempting to prevent damage to the Common Elements or to furniture, furnishings, or other property of the Association or any other Owner or Occupant damaged or lost through the fault of such Owner or any person using the Project under him, and such Owner shall give prompt notice to the Managing Agent or the Manager of any such damage, loss, or other defect when discovered.

(d) No Owner shall use or keep anything on the grounds of the Project or any other Common Element not located within his Unit that would in any way hinder the full use and enjoyment thereof by any other Owner or Occupant entitled to the use thereof.

8.2 Maintenance and Repair of Common Elements. Except as provided otherwise in the Declaration or these Bylaws, all maintenance, repairs and replacements of the Common Elements (excluding Limited Common Elements), whether located inside or outside of the Units, shall be made only by or at the direction of the Board of Directors and shall be charged to all the Owners as a Common Expense, except: (a) the costs of maintenance, repairs and replacements necessitated by the negligence, misuse or neglect of an identified Unit Owner or such Unit Owner's Occupants or Invitees shall be charged to such Unit Owner as a special assessment and shall be the liability of such Owner; and (b) all costs of maintenance, repair, replacement, additions and improvements to any Limited Common Element shall be charged to the Owner(s) of the Unit or Units to which such Limited Common Element is appurtenant, except for the exterior parking stalls appurtenant to the Units, which shall be maintained by the Association. Repair, maintenance and alteration work to the Common Elements must be performed by a licensed contractor, authorized to do business in the State of Hawaii, and must be done in accordance with all applicable local, state and federal laws and regulations.

8.3 Use of Project.

(a) All Units shall be used only for such purposes as are authorized under the Declaration, these Bylaws and the Rules, subject to compliance with all applicable laws.

(b) Every Owner and Occupant shall at all times keep his or her Unit and the Limited Common Elements appurtenant thereto in a strictly clean and sanitary condition and shall observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association that are applicable to the Property.

(c) No Owner or Occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his or her Unit, any Limited Common Element appurtenant thereto or any other part of the Project, nor shall any Owner or Occupant alter or remove any furniture, furnishings or equipment from the Common Elements that are not Limited Common Elements available for exclusive use by such Owner or Occupant.

9. RESTORATION

9.1 Determination to Reconstruct or Repair.

(a) If the Project is damaged or destroyed by fire or other casualty that is insured against and said damage is limited to a single Unit and/or the Limited Common

Elements appurtenant thereto, then the insurance proceeds from insurance carried by the Association shall be used by the Board or the Insurance Trustee for payment of the contractor retained by the Board to rebuild, repair and restore the Unit, including paint, floor covering, and fixtures, in accordance with the original plans and specifications therefor (and including improvements of the Unit Owner, but only if such improvements are covered by insurance carried by the Association and then only to the extent made possible by actual recovery of the proceeds thereunder).

~~(b) If the damage or destruction extends to two or more Units or extends to any Limited Common Elements appurtenant to two or more Units, then the damaged property shall be repaired and restored in its entirety unless all of the Owners of the damaged or destroyed Units or Limited Common Elements affirmatively vote not to rebuild, repair or restore the damaged property.~~

(c) If the damage or destruction extends to any part of the Common Elements (excluding the Limited Common Elements) and if such property is capable of being restored in its entirety, then the damaged Common Elements shall be repaired and restored in its entirety unless 75% of the Unit Owners affirmatively vote not to rebuild, repair, or restore the damaged Common Elements. Unless the Owners vote, within 90 days after the casualty or within 60 days after the date the insurance loss is adjusted, whichever occurs later, not to rebuild, repair, and restore the damaged property, or upon the earlier determination of the Owners to rebuild, repair and restore, the Board of Directors shall immediately contract to rebuild, repair, and restore the damaged Units and Common Elements. If such rebuilding, repair or restoration does not commence within 90 days following the date of the casualty, then the Association, as a Common Expense, shall remove all remains of improvements so damaged or destroyed and restore the site to good orderly condition and even grade. In the absence of an affirmative vote by 75% of the Unit Owners not to rebuild, repair or restore, there shall be an affirmative obligation on the Owners to rebuild, repair and restore the Project.

(d) All costs of repair and restoration of the Units and the Common Elements shall be paid from the proceeds of insurance, and if the casualty is uninsured or the insurance proceeds are insufficient for the restoration, the deficiency shall be paid out of the replacement reserve fund; provided, however, that the Unit Owners shall be solely responsible for such deficiency as it relates to the restoration of their respective Units. If the reserve fund is inadequate, then the Board of Directors shall levy a special assessment on the appropriate Owners in accordance with the Common Interest appurtenant to their Units.

(e) Decisions not to be repair, rebuild or restore Units or Common Elements after damage or destruction by fire or other casualty must comply with applicable Mortgagee-protection, notice and approval provisions.

9.2 Notice to Owners. As promptly as possible after any casualty that requires the Owners to decide whether to repair and restore any damage or destruction, the Board of Directors shall notify all Owners of the nature and extent of the damage, the estimated cost to repair or restore, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds, and any other information deemed relevant by the Board of Directors. Notice shall also be given of a meeting of Owners to decide the question of restoration. An Owner's approval or disapproval may be expressed by vote or in writing filed with the Association at or prior to the meeting. The expense of such determination shall be a Common Expense.

9.3 Plans and Specifications. Any reconstruction or repair shall be substantially in accordance with the plans and specifications for the improvements existing immediately prior to the casualty, and if restoration to such design is not permissible under applicable laws and regulations then in force, then such reconstruction or repair shall be in accordance with such modified plans and specifications approved as provided in Section L of the Declaration. If one or more Units are eliminated from the Project as a result of a casualty, then the Common Interests and other rights of the Owners of Units in the modified Project shall be adjusted in an amendment of the Declaration, provided that the Common Interest of any Owner shall not be altered without the Owner's consent. ~~The Owner of any eliminated Unit shall be discharged from all future obligations under the Project Documents upon the amendment of the Declaration.~~ Alternatively, if the Declaration is not amended so as to discharge the Owners of eliminated Units of all such obligations and to adjust equitably the Common Interest appurtenant to those Units not eliminated, then the Owner of any eliminated Unit shall be entitled to convey the Owner's interest to the Association for the benefit of all other Owners and thereby be discharged from all such obligations under the Project Documents.

9.4 Construction Contract. The Board shall contract to repair or rebuild the damaged portions of the Property, including all Units so damaged as well as the Common Elements, in accordance with the approved plans and specifications. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Owner and if the insurance carried by the Association does not cover such casualty, then the Owner shall be responsible for reconstruction and repair after casualty.

9.5 Disbursement of Funds. The funds for payment of costs of repair and restoration, which shall consist of proceeds of insurance and funds collected by the Association from assessments against Owners, shall be disbursed in the following manner:

(a) In the event a decision is made not to repair or rebuild all or any lesser number of the damaged or destroyed Units, the Insurance Trustee shall pay to the Owner and any Mortgagee of each Unit eliminated, as their interests may appear, the portion of the insurance proceeds allocable to their respective Unit, less the proportionate share of the cost of debris removal. The Owner of any eliminated Unit may, in addition to the Owner's allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate. The remaining insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work in accordance with the terms of the construction contract and the terms of this Section 9.5. When such funds are exhausted, the Association, or if an Owner shall be responsible for costs in excess of insurance proceeds, then that Owner, shall disburse the funds to the contractor.

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

(i) An architect or engineer (who may be an employee of the Board) shall be in charge of the work when the cost of repairs is in excess of \$100,000.00 (C.P.I. Adjusted).

(ii) Each request for payment shall be made on seven days prior written notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer (if one is required hereunder) stating that all of the work completed has been done in compliance with the approved

plans and specifications and that the sum requested is required to reimburse the Board for payments by the Board to, or is due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering service or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Insurance Trustee, the sum requested does not exceed the value of the work done to the date of the certificate.

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Insurance Trustee and the Board covering that part of the work for which payment or reimbursement is being requested and by a search of title prepared by a licensed abstractor or other evidence satisfactory to the Insurance Trustee showing that no mechanics' or materialmen's or other lien or instrument for the retention or encumbrance of title shall have been filed since the commencement of the reconstruction work and permitted to remain undischarged of record with respect to the Property or any part of the work.

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

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

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

(c) The first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. Upon the completion and payment in full of the work, any remaining balance in a construction fund shall be paid or credited to the Owners (or to the holder of any Mortgage on a Unit) in proportion to their respective Common Interests.

(d) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Owner or Occupant. To the extent that any loss, damage or destruction to the property of any Owner or Occupant is covered by insurance procured by such Owner or Occupant, such Owner or Occupant shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Owner, or the Association.

9.6 Directions to Insurance Trustee. The Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary stating whether the damaged property is to be reconstructed or repaired. The Insurance Trustee shall not be required to determine whether sums paid by Owners upon assessments shall be deposited by the Association with the Insurance Trustee, or to determine whether the disbursements from the construction fund are to be upon the order of the Board or upon approval of an architect or otherwise, or whether a disbursement is to be made from the construction fund, or to determine the payee or the amount to be paid. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the

(iii) If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and any Mortgagee of a removed Unit and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, then such excess shall be divided among the Owners in accordance with their Common Interests prior to the condemnation.

10.2 Arbitration. If the portion of a condemnation award allocable to a Unit that is reduced in size, eliminated or not restored cannot be determined by agreement between the Owner and the Board of Directors within thirty days after notice by either party to the other party, then the portion shall be determined by an arbitration board consisting of three impartial real estate appraisers who shall be members of the American Institute of Real Estate Appraisers or its successor organization. Each party in interest shall name one such arbiter. In case a party shall fail to make an appointment within 10 days after the appointment of the first arbiter, the party naming an arbiter may apply to any judge of the Circuit Court having jurisdiction for the appointment of a second arbiter. The two arbiters appointed in either manner shall appoint a third arbiter. The decision of a majority of the arbiters shall be final, conclusive, and binding upon the Owners and the Association. This Section shall be governed by the provisions of Chapter 658A, Hawaii Revised Statutes, as it may be amended from time to time, and the arbiters shall have all the powers and duties prescribed by statute and judgment may be entered upon any such award by the Circuit Court as provided by statute. All proper costs of such arbitration, other than attorneys' fees, shall be borne by all Owners in proportion to their Common Interest prior to the condemnation.

10.3 Representation in Condemnation Matters. Each Owner gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. However, Declarant will represent itself with respect to any right or claim it may have to proceeds payable for Declarant's reserved rights under the Declaration or these Bylaws.

11. MORTGAGES AND MORTGAGEES

11.1 Examination of Books and Project Documents. Each holder of a first Mortgage on a Unit shall be permitted to examine the Project Documents and the books, records, and financial statements of the Association at reasonable times on business days, and each such Mortgagee shall have the right to require the submission to it of annual reports and other financial data that may be required to be submitted to an Owner.

11.2 Right of First Refusal Not Applicable. In the event that there shall be any "right of first refusal" to purchase any Unit by the Association, any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in a Mortgage or foreclosure of the Mortgage or deed in lieu of foreclosure shall be exempt from such "right of first refusal".

11.3 Unpaid Assessments. Except as provided in the Act, the Declaration or herein, any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in a Mortgage or foreclosure of the Mortgage shall not be liable for such Unit's unpaid Common Assessments and other assessments that accrue prior to the acquisition of title to such Unit by the Mortgagee. The unpaid Common Assessments or other assessments shall be deemed to be collectible from all of the Owners, including an acquirer of such Unit and his or her successors and assigns.

11.4 Release of Information. The Board may provide any information available to it pertaining to a Unit or the Project to the first Mortgagee of a Unit and such Mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

11.5 Amendments to Bylaws. An amendment to this Section 11 must be agreed to by Mortgagees that represent at least 51% of the Common Interest of Units that are subject to Mortgages. Implied approval by a Mortgagee to a proposed amendment to this Section shall be assumed when such Mortgagee fails to submit a response to a written proposal for such amendment within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

12. GENERAL AND MISCELLANEOUS PROVISIONS

12.1 Animals/Pets. Except as set forth in the Project Rules, no animals may be allowed or kept in any part of the Project (including the Units and the Common Elements).

12.2 Project Rules. Declarant, acting as and on behalf of the Association, shall initially establish and the Board and/or the Association (by 67% of the Owners) shall thereafter adopt, amend or repeal Project Rules as the Board and/or the Association may deem necessary to govern the conduct, management, use and operation of the Project, including the Units, Common Elements and the Limited Common Elements. Unless prohibited by the Act, the Project Rules shall be permitted to regulate use of or behavior in the Units; provided, however, that the Project Rules initially established by Declarant are agreed to be and shall be deemed, reasonable regulations of use and behavior. Each Owner agrees that the Owner's rights with respect to the Project shall be in all respects subject to the Project Rules. Each Owner agrees to obey the Project Rules as the same may be promulgated and amended from time to time and shall see that the Project Rules are faithfully observed by the Owner's Occupants, Invitees, guests, employees and tenants. The Project Rules shall uniformly apply to and be binding upon all Occupants of the Units. The Project Rules shall take effect upon the first conveyance of a Unit to an Owner other than Declarant. Amendments to the Project Rules shall take effect 30 days after the Board or the Managing Agent mails a copy of the amendments to the Owners. Unless Declarant specifically subjects itself in writing to one or more of the Project Rules, the Project Rules shall not apply to Declarant and Declarant shall not be obligated to observe or perform the Project Rules, whether as a Unit Owner or otherwise.

12.3 Amendment of Bylaws.

(a) Vote or Consent Requirements. Except as otherwise expressly provided in these Bylaws (including, specifically, subsections (d) and (e) below) or in the Act, these Bylaws may be amended in any respect not inconsistent with law or the Declaration by the affirmative vote and/or written consent of Owners of Units to which are appurtenant not less than 67% of the Common Interest of the Project, which amendment shall be effective upon the Recording of a written instrument setting forth such amendment and vote and/or consent, duly executed by all of the consenting Owners or any two officers of the Association; provided, however, that each one of the particulars set forth in Section 514B-108(b) of the Act shall always be embodied in these Bylaws. Notwithstanding anything in these Bylaws to the contrary, amendments to the provisions of these Bylaws that are for the express benefit of Declarant shall also require the express written consent and joinder of Declarant, together with such other approval requirements set forth in this Section 12.3(a). Subject to the Owner-approval requirements set forth above and any other requirements set forth in these Bylaws, any two

officers may prepare, execute, certify, and Record an amendment to these Bylaws on behalf of the Association.

(b) Proposed Amendments. Proposed amendments to these Bylaws together with the detailed rationale for the proposal may be submitted to the Owners either by the Board of Directors or by a volunteer Owner's group. If a volunteer Owner's group desires to submit a proposal to the Owners, then the proposal shall be accompanied by a petition supporting the proposed Bylaws signed by not less than 25% of the Owners, as shown on the Association's record of ownership. ~~The proposed Bylaws, rationale, and ballots for voting on any proposed~~ Bylaw shall be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within 30 days of the receipt of the petition by the Board. The vote or written consent, to be valid, must be obtained within 365 days after mailing for a proposed Bylaw submitted by either the Board or a volunteer Owner's group. If the Bylaw is duly adopted, then the Board shall cause the Bylaw amendment to be Recorded. The volunteer Unit Owners' group shall be precluded from submitting a petition for a proposed Bylaw that is substantially similar to that which has been previously mailed to the Owners within 365 days after the original petition was submitted to the Board. This subsection shall not preclude any Unit Owner or voluntary Unit Owners' group from proposing any Bylaw amendment at any annual Association meeting.

(c) Adoption of Committee's Proposal. If the Board fails to mail the proposed amendments to these Bylaws, rationale, and ballots for voting to the Owners within 30 days of the receipt of the petition by the Board, then the Owner's group may mail such items to the Owners, and the vote thus taken will be valid, provided the Owner's group has complied with all other applicable rules on voting for Bylaw amendments. The results of such vote shall be presented to the officers of the Association, who shall promptly execute such documents as shall be necessary to permit the amendments to be Recorded.

(d) Declarant's Right to Amend. Any provision of this Section 12.3 or these Bylaws to the contrary notwithstanding, and until the Recording of Unit conveyances or agreements of sale with respect to all of the Units in the Project in favor of persons other than Declarant, Declarant may amend these Bylaws without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, Occupant, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to make such amendments (i) to correct any misstatements of fact in the Project Documents, to correct typographical errors, to correct mathematical errors in the statement of Common Interests or to correct errors in the legal description of the Land, and (ii) as may be required by law, by the Real Estate Commission, by the County, by any title insurance company issuing a title insurance policy on the Project or any of the Units, by any institutional lender lending funds on the security of the Project or any of the Units, or by any governmental agency.

(e) Restatement of Bylaws and Declaration. Subject to Section 514B-23 of the Act, the Association at any time may, by a resolution adopted by the Board, restate the Declaration or these Bylaws to amend the Declaration or these Bylaws for the reasons set forth in Section 514B-109(b) of the Act, subject, however, to the requirements of Section 514B-109(b) of the Act.

(f) When Amendments Are Effective. An amendment to these Bylaws shall be effective only upon the Recording of such amendment.

12.4 Abatement and Enjoyment of Violations. The violation of any Project Rules adopted by the Board, or the breach of any of these Bylaws or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other right set forth in the Declaration or these Bylaws:

(a) to enter the Unit and/or Limited Common Elements appurtenant thereto, in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the appropriate Owner or Occupant, any structure, thing or condition that may exist therein ~~contrary to the intent and meaning of the Project Documents, and the Board shall~~ not be deemed guilty in any manner of trespass; and/or

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

12.5 Penalties for Violation. The violation of any of the covenants, conditions and restrictions set forth in the Declaration, these Bylaws or the Project Rules by any Owner, Occupant, Invitee, employee, contractor or other person claiming by or through an Owner shall give the Board the right, in addition to other rights set forth in the Declaration or these Bylaws, to assess a reasonable fine against the Owner; provided that if any such violation continues for a period of ten days after notice of violation has been given to such Owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. The unpaid amount of such fines against any Owner shall constitute a lien against his interest in his Unit which may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Declaration, these Bylaws or the Act for unpaid Common Assessments; provided, however, that the lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Unit and to the liens established by the use, sale and transfer restrictions of the HHFDC Buy-Back Restrictions and/or the HHFDC Shared Appreciation Equity Program in favor of HHFDC, as established and/or set forth in Chapter 201H. No penalty may be imposed under this Section 12.5 until the applicable Owner has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing, or has waived such right in writing. Each such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing.

12.6 Expenses of Enforcement. Each Owner shall pay all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such Owner, in foreclosing its lien therefor or in enforcing any provisions of the Declaration, these Bylaws or the Project Rules.

12.7 Manner of Giving Notices. All notices permitted or required to be given under these Bylaws, the Declaration or the Act must be in writing and may be delivered either personally, by fax or by mail. Unless otherwise required by the Act, the Declaration or these Bylaws: (a) all notices mailed to Owners shall be sent by first class mail, or by an express mail service that provides a receipt for, or other proof of, delivery, to the Owner or Owners at the address furnished in writing from time to time to the Association, or if no address has been furnished, to the Unit; (b) all notices to the Board may be personally delivered to a director or may be sent by first class mail, by an express mail service that provides proof of delivery, or by fax to the office of the Managing Agent or to such other address as the Board may hereafter designate from time to time by notice in writing to all Owners; and (c) all notices to Mortgagees of Units shall be sent by first class mail, or by an express mail service that provides a receipt for,

or other proof of, delivery, to their respective addresses, as designated by them from time to time in writing, to the Board. All notices given by mail shall be deemed to have been given 24 hours after being deposited in the United States mail, or with the express mail service provider, postage prepaid, except notices of changes of address which shall be deemed to have been given when received. All notices given by fax shall be deemed to have been given upon transmission to the fax number shown on the records of the Association or the Board.

12.8 Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a nonprofit membership corporation, formed under applicable laws for the purposes herein set forth. If such a corporation has not already been formed at the time these Bylaws are Recorded, such corporation shall be formed upon the approval of Owners owning at least 67% of the Units. The formation of the corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles of Incorporation of the corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

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

12.10 Gender. The use of a pronoun of any gender in these Bylaws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural whenever the context requires.

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

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

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

12.14 Exclusion from Project. Notwithstanding any other provision of the Declaration or these Bylaws, the Board shall have the absolute and irrevocable right, upon reasonable notice under the circumstances, to exclude Owners and Occupants (other than Declarant) from any Unit or the Common Elements for such period of time as the Board deems necessary when appropriate, as determined by the Board, in connection with any maintenance, repair, replacement or construction of the Common Elements, or for the purpose of correcting any condition originating in one Unit and threatening another Unit or the Common Elements, and no Owner or Occupant shall have any claim of any kind whatsoever for compensation or damages on account of any such exclusion, including, but not limited to, any claims for lost rental income or for the cost of alternative accommodations.

12.15 Termination of Rental Agreements and Leases. The violation of any of the Project Rules, the breach of any of these Bylaws or the breach of any provision of the

Declaration, or violation of the Act by an Occupant other than an Owner, shall give the Board the right, in addition to any other rights or remedies provided by law, the Declaration or these Bylaws, to initiate and prosecute to conclusion a legal action to terminate any lease, rental agreement or other occupancy right of such Occupant and/or to obtain a court order directing such Occupant immediately to permanently vacate such Unit and to refrain from re-entering the Project, without joining the Owner as a party to the legal action, and, in such event, the Association shall have no liability to the Owner for lost rentals or any other consequence of such termination or removal.

12.16 Dispute Resolution. It is specifically intended that all Disputes and Covered Matters as described in Section T of the Declaration, except as otherwise provided in the Declaration or these Bylaws, be resolved by alternative dispute resolution methodologies pursuant to the procedures set forth in said Section T. The Board, absent an affirmative vote or written consent of not less than 67% of the Owners, shall not commence any litigation (except as specifically permitted under the Declaration and these Bylaws).

12.17 Amendment of Declaration. Subject to the Owner-approval and other requirements set forth in the Declaration, any two officers may prepare, execute, certify, and Record an amendment to the Declaration on behalf of the Association.

12.18 Disposition of Unclaimed Personalty. If personal property is abandoned on or within the Common Elements, then the Board may sell such personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage or donation shall occur until 60 days after the Board has notified any such owner in writing of the Board's intent to so sell, store, donate or dispose of such personalty. Notification shall be made in accordance with Section 12.7 of these Bylaws. If the identity or address of the owner of the personalty is not known, the Board shall first post the intended sale, donation or disposition at a conspicuous location within the Project for a period of 30 days. The proceeds of any such sale or disposition of such personalty shall, after deduction of any accrued costs of notification, advertising, storage and sale, be held for the owner of the personalty for a period of 30 days. Thereafter, any such proceeds shall become the property of the Association and may be deposited to the account of the Association in accordance with these Bylaws.

[SIGNATURE PAGE FOLLOWS]

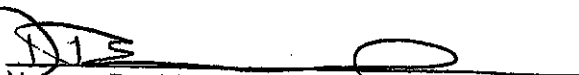
CERTIFICATE OF ADOPTION

The undersigned Declarant and Owner of all Units in the Project hereby adopts the foregoing as these Bylaws of the Association of Unit Owners of Holomua as of FEB 18 2009.

KRC PARTNERS LLC,
a Hawaii limited liability company

By KRC Partners Holdings LLC,
a Hawaii limited liability company
Its Manager

By


Name: David L. Bierwert
Title: Manager

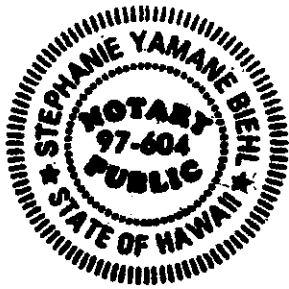
Declarant

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 18th day of February, 2009, before me personally appeared David L. Bierwert, 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.

Further, I certify, as of this date, as follows:

Date of Document: February 18, 2009
Number of Pages: 67
Document Description: Bylaws of the Association of Unit Owners of Holomua
Jurisdiction/Judicial Circuit Where Signed: First Circuit



Stephanie Yamane Biehl
Type or print name: Stephanie Yamane Biehl
Date: February 18, 2009
Notary Public, in and for said County and State
My commission expires: October 19, 2009

EXHIBIT "1"

PARCEL FIRST:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 177 to P. J. Gulick) situate, lying and being on the east side of Kalakaua Avenue between Beretania and Young Street, City and County of Honolulu, State of Hawaii, and being more particularly described as follows:

Beginning at a pipe on the east side of Kalakaua Avenue, said point of beginning located by true azimuth traverse from a Government Survey Street Monument set near the north corner of Beretania and Punahou Streets as follows:

- (a) 111° 12' 494.45 feet
- (b) 3° 15' 280.60 feet to the above described initial point, and thence running by azimuths measured clockwise from true South:
- 1. 183° 15' 58.84 feet along the east side of Kalakaua Avenue to a pipe;
- 2. 290° 09' 30" 178.06 feet along the remainder of Grant 177 to P.J. Gulick to a pipe;
- 3. 21° 44' 30" 127.79 feet along same to a pipe;
- 4. 108° 46' 30" 11.01 feet along the northeast side of Young Street to a pipe;
- 5. 201° 44' 30" 75.10 feet along the remainder of Grant 177 to P.J. Gulick to a pipe;
- 6. 108° 46' 30" 148.32 feet along same to the point of beginning and containing an area of 10,052 square feet, more or less.

TOGETHER WITH an easement for ingress and egress to and from Beretania Street, eleven (11) feet wide, as set forth in partition Deed dated October 28, 1944, recorded in the Bureau of Conveyances, State of Hawaii, in Book 1884, Page 387, said easement being more particularly described therein.

PARCEL SECOND:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 177 to P. J. Gulick) situate, lying and being on the east side of Kalakaua Avenue between Beretania and Young Street, City and County of Honolulu, State of Hawaii, and being more particularly described as follows:

Beginning at a pipe on the east side of Kalakaua Avenue, said point of beginning located by true azimuth traverse from a Government Survey Street Monument set near the north corner of Beretania and Punahou Streets as follows:

- (a) 111° 12' 494.45 feet
 - (b) 3° 15' 162.92 feet to the above described initial point, and thence running by azimuths measured clockwise from true South:
-
- 1. 291° 12' 185.67 feet along the remainder of Grant 177 to P.J. Gulick;
 - 2. 201° 44' 30" 99.01 feet along the remainder of Grant 177 to P.J. Gulick;
 - 3. 291° 12' 11.00 feet along the southwest side of Beretania Street to a concrete post marked "+";
 - 4. 21° 44' 30" 151.75 feet along the remainder of Grant 177 to P.J. Gulick;
 - 5. 110° 09' 30" 178.06 feet along the remainder of Grant 177 to P.J. Gulick;
 - 6. 183° 15' 58.84 feet along the east side of Kalakaua Avenue to the point of beginning and containing an area of 11,287 square feet, more or less.

TOGETHER WITH an easement for ingress and egress to and from Young Street, eleven (11) feet wide, as set forth in Partition Deed dated October 28, 1944, recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau"), in Book 1884, Page 387, said easement being more particularly described therein.

Being the same lands (Parcels First and Second) conveyed to KRC Partners LLC, a Hawaii limited liability company, by Warranty Deed dated December 31, 2007, recorded in the Bureau as Document No. 2007-223914.

END OF EXHIBIT "1"