

Grand Champions
Villas
By-Laws

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**RESTATED BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS
OF GRAND CHAMPIONS VILLAS**

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**RESTATED BY-LAWS OF
THE ASSOCIATION OF APARTMENT OWNERS
OF
GRAND CHAMPIONS VILLAS
(Condominium Map Nos.685 and 737)**

WHEREAS, the projects formerly known as Grand Champions Villas I and Grand Champions Villas II were merged pursuant to the Certificate of Merger and Amendment of Declaration of Declaration of Horizontal Property Regime of Grand Champions Villas I and Grand Champions Villas II recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on July 5, 1990 as Document No. 1743894 and noted on Transfer Certificate of Title No. 306,503 (currently Transfer Certificate of Title Nos. attached); and

WHEREAS, said Declarations provided for the organization of the Association of Apartment Owners of the Projects and established By-Laws therefor, which By-Laws were recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii for Grand Champions Villas I on October 3, 1988 as Document No. 1583781 and noted on Transfer Certificate of Title No. 306,503 and for Grand Champions Villas II on September 8, 1989 as Document No. 1665493 noted on Transfer Certificate of Title No. 335,274 (currently Transfer Certificate of Title Nos. attached);

WHEREAS, said Declarations and By-Laws were duly amended by instruments recorded on November 16, 1989 as Document No. 1683430, on May 15, 1990 as Document No. 1730236, on May 10, 2005 as Document No. 3265904 and on May 10, 2005 as Document No. 3265905; and

WHEREAS, Section 514B-109(a), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the bylaws of the associations to set forth all amendments thereof by resolution adopted by the Board of Directors;

WHEREAS, Section 514B-109(b), Hawaii Revised Statutes, provides that, subject to Section 514B-23, associations of apartment owners may at any time restate the bylaws of the associations to amend the bylaws as may be required in order to conform with the provisions of Chapter 514B, Hawaii Revised Statutes, or any other statute, ordinance, rule, or regulation enacted by any governmental authority, by resolution adopted by the Board of Directors, and the

restated bylaws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners. Section 514B-109(b), Hawaii Revised Statutes, further provides that the bylaws as restated pursuant to that section shall: 1) identify each portion so restated; 2) contain a statement that those portions have been restated solely for the purposes of information and convenience; 3) identify the statute, ordinance, rule, or regulation implemented by the amendment; and 4) state that in the event of any conflict, the restated bylaws shall be subordinate to the cited statute, ordinance, rule, or regulation;

WHEREAS, Section 514B-109(c), Hawaii Revised Statutes, provides that upon the adoption of a resolution pursuant to Section 514B-109(a) or (b), Hawaii Revised Statutes, the restated bylaws shall set forth all of the operative provisions of the bylaws, as amended, together with a statement that the restated bylaws correctly set forth, without change, the corresponding provisions of the bylaws, as amended, and that the restated bylaws supersedes the original bylaws and all prior amendments thereto;

WHEREAS, the Board of Directors of the Association of Apartment Owners of Grand Champions Villas by adoption of a resolution on May 30, 2010, voted to record a restated version of the By-Laws which would set forth the provisions of the By-Laws, as amended and which would conform to Chapter 514B, Hawaii Revised Statutes and the State and Federal Fair Housing Acts, as amended or any other statute, ordinance, or rule, enacted by any governmental authority.

NOW, THEREFORE, the By-Laws of the Association of Apartment Owners of Grand Champions Villas are hereby restated as set forth below. Each By-Law provision that has been restated has been identified in the endnotes attached hereto. Said provisions have been restated solely for the purposes of information and convenience. To the extent that there is any conflict between the restated provisions of the By-Laws and the statute, ordinance, or rule enacted by any governmental authority being implemented, the provisions of the restated By-Laws shall be subordinate to said statute, ordinance, or rule enacted by any governmental authority. The restated version of the By-Laws correctly sets forth, without change, the corresponding provisions of these By-Laws, as amended. This restated version of the By-Laws shall supersede the original By-Laws and all prior amendments and restatements thereto; provided, however, that in the event of any conflict, the restated version of the By-Laws shall be subordinate to the original By-Laws and all prior amendments thereto.

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**BY-LAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF
GRAND CHAMPIONS VILLAS**

The following By-Laws shall apply to the above-named condominium project (herein sometimes called the "Project"), as described in and created by the Declaration of Horizontal Property Regime (hereinafter called the "Declaration") filed of record in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and to all present and future owners, tenants and occupants of any apartments of the Project and all other persons who shall at any time use the Project:

**ARTICLE I
INTRODUCTORY PROVISIONS**

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Condominium Property Act (the "Act") except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in these By-Laws, shall have the following meanings:

(A) "Apartment," or "Unit" unless otherwise provided, as used herein has the same meaning and definition as contained in the Act and includes each of the apartments designated and described in the Declaration.

(B) "Association" means the Association of Apartment Owners of the Project.

(C) "Common elements" means those elements designated in the Declaration as common elements and limited common elements.

(D) "Developer" means Grand Champions Villas Venture, a Hawaii general partnership, the issuer, or the assignee of the issuer, of apartment deeds for the Project and its successors and assigns.

(E) "Majority of apartment owners" and "majority of owners present at any meeting" have the meanings stated in Article III, Section 5, of these By-Laws.

(F) "Mortgagee," unless otherwise provided, means any holder, including an institutional holder, of any recorded first mortgage or equivalent security interest lien on any apartment in the Project.

(G) "Owner" or "apartment owner" or "unit owner" means an individual, corporation, partnership, or other person or entity, including the Developer, owning severally or as a co-tenant an apartment and the common interest appertaining thereto, to the extent of such interest so owned.

(H) "Project" includes the land described in Exhibit A to the Declaration, the buildings and all improvements thereon (including the apartments and the common elements)

and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith.

(I) "Rules and Regulations" refers to the Rules and Regulations or House Rules for the Project governing the conduct of occupants of the buildings adopted by the Board of Directors of the Association (the "Board").

(J) "Wailea Covenants" means that certain Declaration of Covenants, Conditions and Restrictions dated December 19, 1986, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1427923, and that certain Additional Declaration dated December 22, 1986, filed as Document No. 1427924, and any supplements and amendments duly made to such Declarations from time to time.

(K) "Wailea Design Committee" means the Design Committee established pursuant to the Wailea Covenants.

Section 2. Conflicts. These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the provisions of the Act, of the Declaration, or of the Wailea Covenants, the provisions of the Act, of the Declaration, or of the Wailea Covenants, as the case may be, shall control.

Section 3. Application. All present and future owners, lessees, mortgagees, vendees under agreements of sale, tenants and occupants of apartments and their invitees, licensees, guests, and employees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration, the Wailea Covenants and the Rules and Regulations. The acceptance or making of a conveyance or mortgage of an apartment or the entering into of a lease or the act of occupancy of an apartment shall constitute an agreement that the provisions of these By-Laws, the Declaration, the Wailea Covenants and the Rules and Regulations, as they may be amended from time to time, are accepted, ratified, and will be complied with.

ARTICLE II ASSOCIATION OF APARTMENT OWNERS

Section 1. Membership. The Association of Apartment Owners shall comprise all of the apartment owners acting as a group in accordance with these By-Laws and the Declaration of Condominium Property Regime.

Section 2. Qualification. All owners of apartments of the Project shall constitute the Association of Apartment Owners. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his or her ownership of such apartment ceases for any reason, at which time his or her membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by any lease or agreement of sale of any apartment filed or recorded in said Office of the Assistant Registrar, the lessee of such apartment or the purchaser thereof under an agreement of sale shall be deemed to be the owner

thereof, except the Seller under an agreement of sale may retain the right to vote on matters substantially affecting his or her security interest in the apartment as provided in the Act. Voting rights for each apartment shall not be vested until an assessment against such apartment has been levied by the Association and title to such apartment has been conveyed of record.

Section 3. Powers of Association. The Association shall have all powers with respect to the operation and regulation of the Project conferred upon the Association by, or which may be conferred upon an association of apartment owners of a condominium project pursuant to, the Act, including but not limited to the following, and the Association shall exercise said powers in accordance with the provisions hereof:

- (A) The election of a Board of Directors.
- (B) The operation of the property, payment of common expenses and determination and collection of common charges.
- (C) The collection from the apartment owners of their shares of the common expenses.
- (D) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (E) The establishment of such restrictions, requirements, rules, and regulations not inconsistent with these By-Laws, the Declaration or the Act regarding the use and maintenance of the apartments and the use of the common elements.
- (F) The amendment of these By-Laws in accordance with the Declaration, Article XI hereof and subject to the Act, as amended.
- (G) The approval of the annual budget prepared and submitted by the Board
- (H) The management, maintenance, acquisition, construction and care of the Association property. As used herein, the term "Association property" includes the common elements of the Project, and property held by the Association.

Provided, however, that except as provided in subpart (F), the Board may act in all instances on behalf of the Association. Nothing in this Section 3 or in Section 4 shall prohibit the delegation by the Association of any of its powers in accordance with these By-Laws as they may be amended from time to time.

Section 4. Other Powers. In addition to the powers enumerated in Section 3 above and in addition to the powers granted by any other provision herein, the Association may exercise any and all powers not inconsistent with any law or the Declaration that are reasonably incidental to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration or are reasonably incidental to the exercise of the powers duly held by the Association. As part of, in addition to, or complementary to any of its other powers, the

Association shall have the power to own, maintain, repair, convey or otherwise dispose of, use, and otherwise deal with, any apartment in the Project, in the same manner as individuals or entities dealing with the apartments to which they hold title, directly or through the Board of Directors or other person or persons appropriate to hold title for the Association.

ARTICLE III MEETINGS OF THE ASSOCIATION

Section 1. Annual Meeting. The meetings of the Association shall be held at the call of the Managing Agent, upon at least fourteen (14) days written notice to the apartment owners. The Association shall hold a regular meeting of its members once each calendar year (the "annual meeting"). The annual meeting of the Association shall be held at the address of the Project or such other suitable place within the State of Hawaii as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State. The annual meeting shall be held within ninety (90) days following the close of the fiscal year of the Association, or at such other time as the Board shall from time to time determine. The annual meeting shall be a general meeting, and at such meeting 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 by these By-Laws.

Section 2. Special Meetings. A special meeting of the Association may be held at any time upon the call of the President or any two (2) directors and shall be promptly called by the Board upon the vote for such a meeting by a majority of a quorum of the Board or receipt of a petition to the Secretary or Managing Agent signed by the owners of at least twenty-five percent (25%) of the common interests as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the Association's expense in accordance with the requirements of the By-Laws and of this part; provided that a special meeting based upon a petition to the Secretary or Managing Agent shall be set no later than sixty days from receipt of the petition. Upon the receipt of such call, the Secretary shall send out notices of the meeting in writing to all apartment owners. At any special meeting only business described generally or specifically in the notice may be transacted. Such special meeting shall be held at the time specified in such call (or if unspecified, then within forty-five (45) days of the receipt of the call) at the address of the Project or at any other suitable place within the State of Hawaii as may be designated by the Board.

Section 3. Posting of Notice. If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in the Act, it shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one days before its distribution of proxies. If the Board receives, within seven days of the posted notice, a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all owners either:

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

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

The statement, which shall be limited to black text on white paper, shall not exceed one single sided 8 1/2" x 11" page, indicating the owner's qualifications to serve on the Board or reasons for wanting to receive proxies.

Section 4. Notices. Any notices permitted or required to be given herein must be in writing, may be delivered either personally or by mail, or, at the option of the owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the apartment owner. The notice of every meeting of the Association shall state whether it is an annual or a special meeting, the authority for the call of the meeting, and shall contain at least the date, time and place of the meeting, and if it is a special meeting, the purpose thereof. The notice must include the items on the agenda for such meeting including the general nature and rationale of any proposed amendment to the Declaration or these By-Laws and any proposal to remove a member of the Board, provided, that this shall not prevent a member from proposing an amendment to the Declaration or By-Laws or to remove a member of the Board at any annual meeting and a standard proxy form authorized by the Association, if any. Notices of Association meetings, whether annual or special, shall be given at least fourteen (14) days before the date of such meeting, and not more than ninety (90) days before the date of the meeting. If delivery is made by mail, notice shall be deemed to have been delivered twenty-four (24) hours after a copy of such notice has been deposited in the United States mail, postage prepaid, addressed to the person to whom the notice is to be given at the address given by such person to the Board or addressed to the apartment which such person owns if no address has been given to the Board. Such address may be changed from time to time by notice in writing to the Board. Upon written request for notice delivered to the Board, the holder of any duly recorded mortgage against any apartment may promptly obtain a copy of any and all notices permitted or required herein to be made to the owner or owners whose apartment unit is subject to said mortgage. If notice is given pursuant to the provisions of this Section, the failure of any apartment owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of any apartment owner, in person or by proxy, at any meeting shall be deemed a waiver of any required notice to such owner, unless he or she shall, at the opening of such meeting, object to the holding of such meeting because of the failure to comply with the provisions of this Section. Any meetings so held without objection, notwithstanding the fact that no notice of the meeting was given, or that the notice given was improper, shall be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken by the Association.

Section 5. Quorum; Majority Rule. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners present at any meeting, at which a quorum is present, shall be the acts of the Association except as otherwise provided herein. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration. The term "majority of owners present

at any meeting" shall mean owners of apartments to which are appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to apartments owned by those present in person or by proxy at the meeting. Any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 6. Voting.

(A) All apartment owners shall be members of the Association and shall be entitled to vote at meetings thereof. Voting shall be on a percentage basis with the percentage of the total vote to which each apartment is entitled being the same as the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him or her in such capacity, whether or not the same shall have been transferred to his or her name in the Association's record of ownership, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such apartment in such capacity. The vote for any apartment owned of record by two (2) or more persons may be exercised by any one (1) of them present at any meeting and shall not be fractionalized unless there is protest by the other co-owner or co-owners, provided written notice of such co-ownership has been given to the Board at least two (2) days prior to any meeting. In case of such protest and written notice each co-owner shall be entitled only to the share of such vote proportionate to his or her share of ownership in such apartment. Votes allocated to any area that constitutes a common element under the Act or any successor statute shall not be cast at any Association meeting, whether or not such allocation is made or such area is designated as a common element in the Declaration.

(B) Votes allocated to an apartment may be cast pursuant to a proxy duly executed by an apartment owner. An apartment owner may vote by mail or electronic transmission through a duly executed proxy. If an apartment is owned by more than one person, each owner of the apartment may vote or register protest to the casting of votes by the other owners of the apartment through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the apartment by proxy. An apartment owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the Secretary of the Association or the Managing Agent. A proxy is void if it purports to be revocable without notice.

(C) No votes allocated to an apartment owned by the Association may be cast for the election or reelection of directors.

(D) The Board or a member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as an apartment owner as provided herein.

(E) No Managing Agent or Resident Manager, or their employees, shall solicit, for use by the Managing Agent or Resident Manager, any proxies from any apartment owner of the Association if the Association retains the Managing Agent or employs the Resident Manager, nor shall the Managing Agent or Resident Manager cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(F) 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.

Section 7. Cumulative Voting. There shall be cumulative voting in the election of directors. Each apartment owner may accumulate his or her votes and may cast a total vote equivalent to the votes to which such owner is entitled, multiplied by the number of directors to be elected by the Association. Each owner shall be entitled to give all of his or her votes to one nominee or to distribute his or her votes in such manner as such owner shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected by the Association, shall be deemed elected.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him or her at meetings of the Association shall be evidenced by a form of written proxy signed by such owner, which may be the standard form of proxy authorized by the Association and which accompanied the notice of such meeting or may be such other form that complies with requirements herein as to proxies. A proxy, to be valid, must be delivered to the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains and must contain at least the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the name of the persons to whom the proxy is given, and the date that the proxy is given. Notwithstanding any provision hereof to the contrary, a proxy shall be valid only for the meeting to which such notice pertains and its adjournment, if any, may designate any person as proxy and shall be valid only as to the matters specified in the meeting agenda and may be otherwise limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the apartment. A proxy is void if it purports to be revocable without notice. 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. Proxies may be given to the Board as an entity; provided that if the proxy form is a standard proxy form authorized by the Association, it shall contain boxes wherein the owner has indicated that the proxy is given:

- (1) For quorum purposes only;
- (2) To the individual whose name is printed on a line next to this box;

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

(4) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

Any standard proxy form authorized by the Association shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report. Nothing herein shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest herein, a true copy of which is filed with the Board through the Secretary, Resident Manager or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. Any one (1) of two (2) or more persons owning any apartment may give or revoke a proxy for the entire vote of such apartment 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. Any proxy given by a co-owner or co-owners shall be revocable only by such co-owner or co-owners. Any proxy given by a co-owner or co-owners for only a share of an apartment's vote may be exercised to cast the entire vote for such apartment in the absence of protest by another co-owner or the holder of a proxy from another co-owner, and, in case of such protest, 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 apartment's vote in proportion to the respective shares of ownership in such apartment.

Section 8A. Members' Acts Without Meeting. Any action which may be taken by the vote of members at a regular or special meeting, except the election of Board members where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the following procedures:

(A) The Board shall distribute a written ballot to every member entitled to vote on the matter. Such ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Board.

(B) Approval by such written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(C) Ballots shall be solicited in a manner consistent with applicable laws and regulations. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the apartment owners present in person or by proxy, whether or not a quorum is present. The quorum for an adjourned meeting shall continue to be a majority of apartment owners in person or by proxy. If a meeting is adjourned for lack of a quorum, no business other than such adjournment shall be transacted. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

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

- (A) Roll call.
- (B) Proof of notice of meeting.
- (C) Reading of minutes of preceding meeting.
- (D) Report of officers.
- (E) Report of Board of Directors and committees.
- (F) Election of directors (when so required).
- (G) Unfinished business.
- (H) New business.
- (I) Adjournment.

Section 11. Conduct of Meetings. All meetings of the Association and of the Board shall be conducted in accordance with the most current edition of *Robert's Rules of Order Newly Revised*.

Section 12. Minutes of Meetings and Financial Statements. The minutes of all meetings of the Association and the Association's financial statements shall be available for examination by the apartment owners at convenient hours at a place designated by the Board, and shall be mailed to any owner upon the owner's request at the owner's cost. The meeting minutes for the Board of Directors, once approved, for the current or prior year shall either (1) be available for examination by apartment owners at no cost or on twenty four hour loan at a convenient location at the Project, to be determined by the Board of Directors; or (2) be transmitted to any apartment owner making a request for the minutes, by the Board of Directors, the Managing Agent, or the Association's representative, within fifteen 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. Costs incurred by apartment owners shall be subject to HRS §514B-105(d). The minutes, except on motions voted on in executive session, shall include the recorded vote of each member on all motions for which a roll call vote is taken.

Section 13. Committees. The Association may create and appoint such general or special committees as the affairs of the Association may require and may define the authority and duties of such committees.

ARTICLE IV BOARD OF DIRECTORS

Section 1. Number and Qualifications.

(A) The affairs of the Association shall be governed by a Board of Directors composed of nine (9) persons unless not less than sixty-seven percent (67%) of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors. Each of the directors shall be the owner or co-owner of record of an apartment or the vendee thereof under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit. There shall not be more than one representative on the Board from any one apartment.

(B) No Resident Manager shall serve on the Board.

(C) An owner shall not act as an officer of the Association and an employee of the Managing Agent retained by the Association. Any owner who is a Board member of the Association and an employee of the Managing Agent retained by the Association shall not participate in any discussion regarding a management contract at a Board meeting and shall be excluded from any executive session of the Board where the management contract or the property manager will be discussed.

Section 2. Election and Term. Election of directors shall be by cumulative voting (pursuant to Article III, Section 7) by secret written ballot at each annual meeting and each special meeting called for that purpose. Provided, however, in the event that there are the same number of candidates for election as seats available on the Board and there is no contest as to who holds which seat, the election can take place by acclamation. The directors, except as otherwise provided in these By-Laws, shall hold office for a period of three (3) years and until their respective successors have been elected, subject to removal as herein provided. If the number of directors is reduced, the directors' terms shall be adjusted so that one-third or approximately one-third of the directors' seats shall be open at each annual meeting.

Section 3. Vacancies. Except as provided in the following two (2) sections, any vacancies on the Board (other than a vacancy caused by the normal expiration of the term of a director) shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall serve until his or her successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any

director, or his or her unexcused absence from 3 regular Board meetings, or his or her ceasing to be the sole owner, co-owner or agreement of sale vendee of an apartment, or his or her ceasing to be a trustee of a trust or representative of a legal entity that owns an apartment or is purchasing one under an agreement- of sale, shall cause his or her office to become vacant.

Section 4. Temporary Vacancy. In case of a vacancy for more than ninety (90) days due to the sickness or disability of any director, the remaining directors, whether constituting a majority or a minority of the entire Board, may appoint a person as a substitute director, which person shall have the required ownership status to be a director. Such substitute director shall act as a director during the disability of the director for whom he or she substitutes.

Section 5. Removal of Directors. At any annual or special meeting of the Association duly called, any one (1) or more of the directors may be removed with or without cause by vote of a majority of the apartment owners, and a successor shall then and there be elected to fill the vacancy thus created; provided, that unless the entire Board of Directors is removed from office, no one (1) Board member shall be removed prior to the expiration of his or her term of office if the number of votes cast against removal would be sufficient to elect such Board member if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Board members authorized at the time of the most recent election of the Board were then being elected. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President, a majority of the Board or by a petition to the Secretary, Resident Manager or Managing Agent signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership; and provided further that if the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-Laws and the law; provided that a special meeting based upon a petition to the Secretary or Managing Agent shall be set no later than sixty days from receipt of the petition. Except as otherwise provided, if so provided, in the Act, such meeting and the procedures adopted for the removal from office and replacement of directors shall be scheduled, noticed and conducted in accordance with these By-Laws pertaining to the removal, replacement, and election of directors. As to such numbers of votes, the minutes of such meeting shall be prima facie evidence of such votes. If said vacancy is not so filled at the meeting at which such removal occurs, the Board shall fill such vacancy until the next annual or special meeting. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting. Any successor director elected shall serve for the remainder of the term of the removed director.

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

Section 7. Regular Meetings. Regular meetings of the Board may be held at such time as shall be determined from time to time by a majority of the directors, but at least one (1)

such meeting shall be held during each calendar quarter of every year, unless the business to be transacted by the Board justifies more frequent meetings. Regular Board meetings shall be held at the Project location unless a majority of the directors decide upon a different meeting location due to inconvenience. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone, facsimile transmission or other form of electronic communication at least three (3) days, if practicable, prior to the date of such meeting. For purposes of this and the following sections, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail, or twelve (12) hours after communicated by facsimile transmission or other form of electronic communication. Notice of the time and place of each regular Board meeting shall also be posted by the Managing Agent, Resident Manager or a member of the Board at a prominent place or places within the common elements of the Project seventy-two hours prior to the meeting or simultaneously with notice to the Board.

Section 8. Special Meetings. Special meetings of the Board may be called by the President of the Association by written notice signed by the President or signed by two (2) Board members other than the President. Such notice shall state the time and place of such meeting and the nature of the special business to be considered. Notice of special Board meetings shall be posted in the same manner prescribed for notices of regular meetings and shall be sent to all Board members not less than eight (8) hours prior to the scheduled time of the meeting; provided, however, that notice of the meeting need not be given to any Board member who signed a waiver of notice or a written consent to holding of the meeting.

Section 8A. Attendance at Board Meetings. All meetings of the Board, other than executive sessions, shall be open to all members of the Association and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. The Board may, with the approval of a majority of a quorum of its members adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

- (A) Concerning personnel;
- (B) Concerning litigation in which the Association is or may become involved;
- (C) Necessary to protect the attorney-client privilege of the Association; or
- (D) Necessary to protect the 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.

Section 8B. Minutes of Meetings. The minutes of all meetings of the Board for the current or prior year shall be available for examination by the apartment owners at no cost or on twenty four hour loan at a convenient location at the Project, to be determined by the Board of Directors; or (2) be transmitted to any apartment owner making a request for the minutes, by the

Board of Directors, the Managing Agent, or the Association's representative, within fifteen 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. Costs incurred by apartment owners pursuant to this Section shall be subject to §514B-105(d), HRS. The minutes shall include the recorded vote of each Board member on all motions except motions voted on in executive sessions.

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

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

Section 10A. Directors' Telephone Meetings. Subject to the provisions herein relating to notice, members of the Board or any Committee designated thereby may participate in a meeting of such Board or Committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting; provided, however, that at least one (1) director must physically be present at the noticed location of the meeting. If permitted by the Board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the unit owner pay for the costs associated with the participation.

Section 11. Powers and Duties of the Board. In the performance of his or her duties, each member of the Board of Directors shall owe to the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D in the performance of the Board member's responsibilities.

(A) The Board shall have the power to do all things set forth in these By-Laws, the Act, as amended, and in the Declaration, except as otherwise expressly prohibited.

(B) The Board shall be the exclusive agent for the Association in the exercise of the management and control of the common elements.

(C) The Board shall have the exclusive power to contract for all goods and services, payment for which shall constitute common expenses; provided, however, the Association may, by resolution adopted at a meeting duly called for the purpose, prohibit any proposed action by the Board which has not yet imposed an enforceable obligation on the Board or the Association.

(D) The Board shall not give away or sell any of the real property submitted to the aforesaid Condominium Property Regime or intended for use in connection therewith.

(E) The Board shall enforce the provisions of the Declaration and these By-Laws and may, from time to time, adopt, amend, repeal and enforce administrative rules and regulations governing the details of the operation and use of the common elements and facilities owned or controlled by the Association; provided, however, that no such administrative rules or regulations shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for the purpose; and provided, further, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving administrative rules and regulations adopted by the Board. The Association may adopt Rules and Regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit which violates the Declaration or these By-Laws;

(2) Regulate any behavior in or occupancy of a unit which violates the Declaration or these By-Laws or unreasonably interferes with the use and enjoyment of other units or the common elements by other owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages;

(F) The Board shall acquire for the benefit of the apartment owners, and shall pay for, out of the funds collected pursuant to Article IX all things necessary or proper for the operation of the Project and, in addition, shall pay for all expenses incurred which are designated common expenses by these By-Laws, the Act or the Declaration, including, without limitation, the following:

(1) Water, sewer, garbage, electricity, telephone and gas and other necessary utility services for the common elements (if not separately metered or charged to the apartment units), and maintenance and gardening services for the common elements.

(2) Unless otherwise expressly provided, painting, maintenance and repair of the common elements (but not including the interior surfaces of the apartment units, which the owner shall paint, maintain and repair) and such furnishings and equipment for the

common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive rights and duty to acquire the same for the common elements.

(3) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these By-Laws or the Declaration or which, in its opinion, shall be necessary or proper for the proper operation of the Project, or common elements, or for the enforcement of these By-Laws; provided, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for a single apartment, the costs thereof shall be separately assessed to the owner of such apartment unit.

(4) Maintenance and repair of any apartment unit if such maintenance and repair is necessary, in the discretion of the Board, to protect the common elements or any other portion of the Project, and if the owner or owners of said apartment unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to said owner or owners; provided, that the Board shall levy a special assessment against such apartment unit for the cost of said maintenance or repair and attorneys' fees and other expenses incurred in levying or collecting such special assessment which shall constitute a lien on the owner's apartment subject to foreclosure.

(5) Policies of insurance for the property as required by the Declaration.

(6) Workmen's compensation insurance to the extent necessary to comply with any applicable law.

To the extent deemed advisable by the Board, the Board may engage such other personnel as the Board shall determine to be necessary or proper for the operation of the Project whether such personnel are employed directly by the Board or are furnished by the Managing Agent.

(7) Legal and accounting services necessary or proper in the operation of the Project or the common elements or the enforcement of these By-Laws.

(8) The Board shall secure for all directors, officers, employees and agents of the Association handling or responsible for funds belonging to or administered by the Association adequate fidelity bonds in favor of the Association. The premium for such bonds shall be paid by the Association. Each such bond shall in no event be in an amount less than the minimum amount required by the Act, and every such bond shall:

(a) Provide that the bond may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board and any other person in interest who shall have requested such notice; and

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

(9) The Board shall also pay any amount necessary to discharge any lien or encumbrance which may, in the opinion of the Board, constitute a lien against the Project or against the common elements rather than merely against the interest therein of a particular owner or owners. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging the same.

(G) The Board shall annually employ a responsible Hawaii Managing Agent, who may be any person retained as an independent contractor, for the purpose of managing the operation of the Project (hereinafter collectively referred to as the "Managing Agent") who has the qualifications required by the Act and these By-Laws for Managing Agents, to manage and control the Project subject at all times to direction by the Board, and subject to the terms of the Declaration and these By-Laws, and with such other powers and duties and at such compensation as the Board may establish from time to time. The Board may delegate any of its duties, powers or functions to the Managing Agent, except as provided by law, the Declaration or these By-Laws. Any such delegation shall be revoked on notice to the Managing Agent by the Board. The Board may engage such other personnel as the Board from time to time shall determine to be necessary or proper for the operation of the Project whether such personnel are employed directly by the Association or are furnished by the Managing Agent. Any employment contract with a Managing Agent shall provide that it may be terminated by either party with or without cause upon no more than sixty (60) days' prior written notice, that in no event shall a termination fee be due and owing to the Managing Agent in the event of such termination and, that the term shall not exceed one (1) year.

Every such employment contract with any Managing Agent shall further provide:

(1) That 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 the foregoing sentence, lease rent collections and rental operations shall not include either the rental or leasing of common elements that is conducted on behalf of the Association.

(2) That the Managing Agent shall not contract for any expenditure of any funds of the Association in excess of \$5,000.00 without the express approval of the Board (except in cases of emergency involving manifest danger to life or property or other emergencies as defined in the Managing Agent's agreement with the Association), and without having solicited whenever possible in advance not less than three (3) written bids for the expenditure (unless time does not permit in the Managing Agent's judgment), detailed and accurate written records of which shall be kept by the Managing Agent for the Board.

(3) That the Managing Agent shall not dispose of any Project records that are less than five (5) years old, and if the Managing Agent retains any records of the Project such records shall be kept for at least five (5) years, except for tax records which shall be kept for seven (7) years, and if the Managing Agent proposes to dispose of records of the Project that are more than five years old, the Managing Agent shall first provide the Board with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board within sixty (60) days, which notice shall include an itemized list of the records which the Managing Agent intends to dispose of, and shall provide that the foregoing terms shall survive the expiration or termination of the contract.

(H) The Board may enter any apartment when reasonably necessary in connection with the maintenance or repair or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the owner as is practical.

(1) Each apartment owner shall afford to the Association and the other apartment owners, and to employees, independent contractors, or agents of the Association or other apartment owners, during reasonable hours, access through the owner's apartment reasonably necessary for those purposes. Unless entry is made pursuant to subsection (b), if damage is inflicted on the common elements or on any apartment through which access is taken, the apartment owner responsible for the damage, or the Association, if it is responsible, is liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

(2) The Association shall have the irrevocable right, to be exercised by the Board, to have access to each apartment at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another apartment or apartments.

(I) The Board is authorized from time to time to purchase, lease or rent appropriate living quarters for use by the Managing Agent or other employees, with or without charge, and to enforce, modify and make agreements with respect to any purchase, lease or tenancy of any portions of the common elements on behalf of the apartment owners.

(J) The Board is prohibited from making any loans (as lender) except pursuant to these By-Laws or to authority expressly granted by a resolution of the Association at a meeting duly called for such purpose.

(K) The Board may, on behalf of all apartment owners, acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:

(1) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the Declaration or these By-Laws shall require the approval of at least sixty-seven percent of the apartment owners; and

(2) The requirements of this section shall not apply to the purchase of an apartment for a Resident Manager, which may be purchased with the approval of the Board;

(L) The Board, or its designee, shall keep an accurate and current list of the names and addresses of the members of the Association and the names and addresses of any vendees of an apartment under an agreement of sale. The list shall be maintained at the address of the Project, or such other place designated by the Board, and shall be available for inspection by apartment owners at all reasonable times to any member who furnishes to the Managing Agent or Board a duly executed and acknowledged affidavit stating that the list will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters and shall not be used by such owner or furnished to anyone else for any other purpose.

(M) The Board shall designate the place at which minutes of meetings of the Board and of the Association shall be available for examination by apartment owners' at all convenient times.

(N) The Board shall have the right to make such elections under the tax laws of the United States and of the State of Hawaii as shall be deemed in the best interests of the Association, specifically including, without limitation, any election available under Section 528 of the Internal Revenue Code of 1954, as amended, or any successor or State tax provision of similar import.

(O) Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of the owners, or any of them, or the Association; provided that the foregoing provision shall not be construed to prevent use of the Project common elements or apartments in compliance with Section J of the Declaration or other use provisions therein, or in these By-Laws or the Rules and Regulations.

(P) Subject to Section 514B-38, the Board shall have the right from time to time to grant easements leases, licenses, and concessions through, over or across the common elements and permit encroachments on the common elements for any reasonable purpose, which shall include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance and repair of any apartment, the common elements or any limited common elements. The grant of such easements by the Board shall not be withheld unreasonably.

(Q) Provided the Board obtains the prior approval of owners having not less than sixty-seven (67%) of the common interests, the Board may change the use of the common elements; provided that subject to subsection 514B-140(c), HRS:

(1) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the Declaration; and

(2) Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished

without substantial impact on the interests of other owners in the common elements, as reasonably determined by the Board.

(R) The Board shall have the right, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the Board; provided that unless the approval of the owners of sixty-seven percent (67%) of the common interests is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice.

(S) The Board may lease or otherwise use for the benefit of the Association those common elements not falling within subsection (R) above upon obtaining (i) the approval of the owners of sixty-seven percent (67%) of the common interests, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of a limited common element and (ii) approval of all Mortgagees of record on apartments with respect to which owner approval is required by (i) above if such lease or use would be in derogation of the interest of such Mortgagees.

(T) Subject to any approval requirements and spending limits contained in the Declaration or these By-Laws, borrowing money on behalf of the Association for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the Project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all owners and owners representing fifty percent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the Board may grant to the lender the right to assess and collect monthly or special assessments from the owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the Project. For purposes of this section, the financing of insurance premiums by the Association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the Association may purchase the leased equipment for its fair market value.

(U) Subject to any spending limits contained in the Declaration or By-Laws, the Board may authorize the installation of meters to determine the use by the individual units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage. The cost of metered utilities shall be paid by the owners of the units based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities.

(V) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in Section 514B 35(2) and (4), and for services provided to apartment owners.

(W) If a tenant of an owner violates the Declaration, these By-Laws, or the House Rules of the Association, in addition to exercising any of its powers against the owner, the Association may:

(1) Exercise directly against the tenant the powers described in subsection (j);

(2) After giving notice to the tenant and the owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that an owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the Declaration, these By-Laws, or House Rules of the Association against the tenant; and

(3) Enforce any other rights against the tenant for the violation which the owner as landlord could lawfully have exercised under the lease, including eviction, or which the Association could lawfully have exercised directly against the owner, or both.

The rights granted under this subsection (3) above may only be exercised if the tenant or owner fails to cure the violation within ten days after the Association notifies the tenant and owner of that violation; provided that no notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of Section 521-51(1) or 521-51(6), Hawaii Revised Statutes.

Unless a lease otherwise provides, this subsection does not:

(1) Affect rights that the owner has to enforce the lease or that the Association has under other law; or

(2) Permit the Association to enforce a lease to which it is not a party in the absence of a violation of the Declaration, these By-Laws, or House Rules.

(X) Impose reasonable charges for the preparation and recordation of amendments to the Declaration, documents requested for resale of apartments, or statements of unpaid assessments.

(Y) Provide for the indemnification of its officers, Board, committee members, and agents, and maintain directors' and officers' liability insurance.

(Z) Assign its right to future income, including the right to receive common expense assessments, but only to the extent Section 514B 105(e) expressly so provides.

(AA) Exercise any other powers conferred by the Declaration or these By-Laws.

(BB) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association, except to the extent inconsistent with the Act.

(CC) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 12. Conflicts of Interest. No director shall cast any proxy vote at any Board meeting nor shall a director vote at any Board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue shall disclose the nature of such conflict of interest, if any, prior to a vote at the Board meeting on that issue, and the minutes of the meeting shall record the fact that a disclosure was made. "Conflict of interest," as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the Association.

Section 13. Compensation. The Association shall not pay compensation to members of the Board for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Board member to be reimbursed for expenses incurred in carrying on the business of the Association. Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses; 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. The 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. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements herein.

Section 14. Documents. The Association at its own expense shall provide all Board members with a current copy of the Association's Declaration, By-Laws, House Rules, and, annually, a copy of the Condominium Property Act.

ARTICLE V OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by and, in the case of the President, from, the Board of Directors. All officers shall be members of the Association. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board at its annual meeting or at any special meeting called for such purpose and shall hold office at the pleasure of the Board.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board, and his or her successor shall be elected at any regular meeting of the Board or at any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board he or she shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He or she shall also have such other powers and duties as may be provided by these By-Laws or assigned to him or her from time to time by the Board.

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

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided for by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary and all other duties as may be assigned to him or her from time to time by the Board or by the President. The Secretary shall keep the minute book wherein resolutions of the Association and of the Board shall be recorded and shall make the minutes of such meetings available for examination by apartment owners at convenient hours at a place designated by the Board.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer in general shall perform all the duties incident to the office of Treasurer and all other duties as may be assigned to him or her from time to time by the Board.

Section 8. Auditor. The Association shall by majority vote at any annual or special meeting 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 apartment, to audit the books and financial records of the Association as required by the law or by these By-Laws or as directed additionally by the Board.

Section 9. Managing Agent. The Managing Agent shall act under the authority of and as agent for the Board. The Managing Agent shall be appointed by the Board in accordance with

these By-Laws. The Managing Agent is hereby designated the person to accept service of process on behalf of the Association, the Board, or two (2) or more apartment owners, as the case may be, in any action relating to the common elements or to more than one (1) apartment.

The Managing Agent shall perform such duties as the Board shall direct. Unless otherwise so directed, the Managing Agent shall:

(A) Collect assessments to discharge common expenses and pay said common expenses in accordance with these By-Laws;

(B) Establish and maintain such reserve funds as may be necessary for the proper operation and management of the common elements. Subject to the provisions of Article IX, Section 1, hereof, each apartment owner shall have an interest in such reserves equal to his or her common interest;

(C) Keep (i) detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred; and (ii) monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses, all as required by the Act or by any other successor law. All records, the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board, and shall be available for examination by the apartment owners at convenient hours of weekdays; and

(D) Institute, defend, or intervene in litigation or administrative proceedings in the name of the Association on behalf of the Association or two or more apartment owners on matters affecting the Association. For the purposes of actions under Chapter 480, the Association shall be deemed to be "consumers."

(E) The Managing Agent shall keep at the Managing Agent's office an accurate copy of the Declaration, the By-Laws, the Rules and Regulations, the master lease, if any, a sample original conveyance document, all public reports and any amendments thereto. The Managing Agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge, as determined by the Board, to defray any administrative or duplicating costs. In the event that the Project is not managed by a Managing Agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association, to whom this function is delegated.

(F) The Managing Agent shall be licensed as a real estate broker in compliance with Chapter 467 of the Hawaii Revised Statutes and the rules of the Real Estate Commission or be an entity authorized to do business under Article 8 of Chapter 412 of the Hawaii Revised Statutes and shall register with the Real Estate Commission as required by the Act. The Managing Agent shall also have secured a fidelity bond in a minimum amount equal to \$500.00 multiplied by the aggregate number of units covered by all of such Managing Agent's condominium management contracts; provided that the minimum amount of bond required

hereunder shall not be less than \$20,000.00 or greater than \$100,000.00 or such higher minimum amount as may be required by the Act or agreed to by the Managing Agent, conditioned upon the faithful performance of all of the Managing Agent's obligations under its property management contract with the Board on behalf of the Association for the full term thereof. The Managing Agent or Board shall not transfer by telephone Association funds between accounts, including, but not limited to, the general operating account and reserve fund account.

Section 10. Compensation. No officer shall receive any compensation from the Association for services performed in the conduct of the Association's business, provided, however, that the Board may cause an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

ARTICLE VI EXECUTION OF INSTRUMENTS

Section 1. Proper Officers. All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments shall be signed, executed and delivered by any two (2) officers of the Association, as may be designated by the Board; provided, however, that the Board may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by one (1) or more officers, agents, or employees of the Association, as shall be provided by general or special resolution.

Section 2. Facsimile Signatures. The Board may from time to time by resolution provide for the execution of any instrument or document of the Association or the Board by a mechanical device or machine, or by the use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board.

ARTICLE VII INDEMNIFICATION

Section 1. Indemnity -- Matters Other Than Actions By or In Right of Association. The Association shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and any expenses of establishing a right to indemnification hereunder), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Indemnity -- Actions By or In Right of Association. The Association shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and any expenses of establishing a right to indemnification hereunder) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty to the Association unless and only to the extent that the court in which such action or suit was brought or any other court having jurisdiction in the premises shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 3. Expenses in Successful Defense. To the extent that a person who is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or Section 2 of this Article, or in defense of any claim,

issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Determination of Indemnity. Any indemnification under this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer or employee is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a disinterested quorum is not obtainable, or even if obtainable if a majority of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Association, such independent legal counsel to be chosen by a majority of a quorum of the Association or (c) by a majority vote of the members.

Section 5. Advances of Expenses. Expenses incurred in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in a particular case upon receipt of an undertaking by or on behalf of the director, officer or employee to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article.

Section 6. Nonexclusive Continuing Indemnity. Any indemnification pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled, shall continue as to a person who has ceased to be a director, officer or employee of the Association, and shall inure to the benefit of the heirs and personal representatives of such a person.

Section 7. Insurance. The Association shall have the power to purchase and maintain insurance (in such amount as shall be determined by the Board) on behalf of any person who is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power or be required to indemnify him or her against such liability under the provisions of this Article. Premiums for such insurance shall be common expenses.

ARTICLE VIII REPAIR, MAINTENANCE AND USE

Section 1. Repair and Maintenance.

(A) Every owner shall perform promptly all repairs, maintenance and alteration work within his or her apartment, the omission of which would adversely affect any common element or any other apartment and shall be responsible for all loss and damage caused by his or her failure to do so.

(B) All repairs of internal installations within each apartment, such as those for water, light, gas, power, sewage, telephone, air conditioning, or sanitation, and all doors, windows, lanai awnings (if permitted), lamps, and all other fixtures and accessories belonging to such apartment, including interior walls and partitions and the inner decorated or finished surfaces of the walls, floors, and ceilings of such apartment, shall be at the owner's expense; except that any repairs of common elements located within any apartment shall be a common expense.

(C) Repair and Maintenance. Every owner shall reimburse the Association for any expenditure incurred in repairing or replacing any common elements, furniture, furnishings, and equipment thereof damaged or lost through the fault of such owner or any person using the Project under him, or her and shall give prompt notice to the Managing Agent of any such damage, loss, or other defect when discovered. If the owner fails to reimburse the Association, the amount due will become a lien on the owner's apartment subject to foreclosure.

(D) No owner shall use or keep anything on the grounds or any other common elements which would in any way hinder the full use and enjoyment thereof by any other owner or occupant. Every owner shall be responsible for the care and maintenance including any costs of such care and maintenance of any lanai adjacent to and for the use of his or her apartment, as well as the care and maintenance of any fence or railing which adjoins a lanai. It is intended that the building shall present a uniform appearance, and to affect that end the Board may require the painting or repair of all lanais, patios, outside doors, windows, trim, fences, railings, and other exposed portions of the building and regulate the type and color of paint to be used. The Board is authorized to contract for said painting and repair and to assess each owner for his or her proportionate share of such painting and repair.

(E) High-Risk Components.

(1) The Board, after notice to all apartment owners and an opportunity for owner comment, may determine that certain portions of the apartments, or certain objects or appliances within the apartments such as washing machine hoses and water heaters, pose a particular risk of damage to other apartments or the common elements if they are not properly inspected, maintained, repaired, or replaced by owners. Those items determined by the Board to pose a particular risk are "high-risk components" for the purposes of this section.

(2) With regard to items designated as high-risk components, the Board may require any or all of the following:

(a) Inspection:

(i) At specified intervals; or

(ii) Upon replacement or repair by the Association or by inspectors designated by the Association;

(b) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and

(c) Replacement or repair:

(i) Meeting particular standards or specifications established by the board;

(ii) Including additional components or installations specified by the board; or

(iii) Using contractors with specific licensing, training, or certification approved by the board.

(3) The imposition of requirements by the Board under subsection (2) shall not relieve apartment owners of obligations regarding high-risk components as set forth in the Declaration or these By-Laws including, without limitation, the obligation to maintain, repair, and replace the components.

(4) If an apartment owner fails to follow requirements imposed by the Board pursuant to this section, the Association, after reasonable notice, may enter the apartment to perform the requirements with regard to such high-risk components at the sole cost and expense of the apartment owner, which costs and expenses shall be a lien on the apartment as provided in Section 514B-146. Nothing in this section shall be deemed to limit the remedies of the Association for damages, or injunctive relief, or both.

(F) Disposition of Unclaimed Possessions.

(1) When personal property in or on the common elements of the Project has been abandoned, the Board may sell the personal property in a commercially reasonable manner, store the personal property at the expense of its owner, donate the personal property to a charitable organization, or otherwise dispose of the personal property in its sole discretion; provided that no sale, storage, or donation shall occur until sixty days after the Board complies with the following:

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

(i) The identity and location of the personal property; and

(ii) The Board's intent to so sell, store, donate, or dispose of the personal property.

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

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

(2) The proceeds of any sale or disposition of personal property under subsection (a), after deduction of any accrued costs of mailing, advertising, storage, and sale, shall be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the Association.

Section 2. Use.

(A) No owner or occupant of an apartment shall post any advertisement, bill, poster, or other sign on or about the Project.

(B) All owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants, including, without prejudice to the generality of the foregoing, noises caused by any person residing or visiting in apartments.

(C) No owner or occupant shall permit any person who is residing or visiting with him or her to loiter in or use the stairways, corridors, or parking areas for recreational use or in, on or about the common elements or other areas of the Project not intended for such recreational use.

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

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

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

(G) No owner or occupant shall place, store or maintain on walkways, roadways, grounds or other common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

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

(I) Unless otherwise expressly permitted by the Declaration, no owner or occupant shall erect or place in the Property any building or structure including fences and walls, nor make any additions or alterations to any exterior common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in compliance with the Declaration and in accordance with plans and specifications (including detailed plot plan) prepared by a licensed architect if so required by the Board and the Wailea Covenants and approved by the Board, the Wailea Design Committee and a majority of Apartment Owners (or such larger percentage required by law or the Declaration), which majority shall include all owners of apartments thereby directly affected. When an action is otherwise properly approved under this paragraph (I), the negative vote of an owner who is directly affected by such action shall not prevent implementation of such action unless such owner shows with reasonable certainty, to the satisfaction of the Board, that such owner would be unreasonably and adversely affected by the implementation of the action.

(J) No owner or occupant shall decorate or landscape any entrance of his or her apartment or any other portion of the Project except in accordance with standards therefor established by the Board or specific plans approved in writing by the Board.

(K) No owner or occupant shall without the written approval of the Board install any wiring for electrical or telephone installations, machines or air conditioning units, or other equipment fixtures, appliances, or appurtenances whatsoever on the exterior of the Project or protruding through the walls, windows or roofs thereof or that are visible from outside such owner's or occupant's apartment.

(L) No owner or occupant, without the prior approval of the Board or pursuant to the Antenna Policy adopted by the Board of Directors, shall erect, place or maintain any television or other antennas on said Project visible from any point outside of the Project.

(M) Each owner and occupant shall at all times observe and comply with the terms and provisions of the Wailea Covenants.

(N) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project, PROVIDED, HOWEVER, a handicapped occupant of the Project may keep a guide dog as defined in Chapter 515, Hawai'i Revised Statutes, signal dog as defined in Chapter 515, Hawai'i Revised Statutes, or service animal as defined in Chapter 515, Hawai'i Revised Statutes, required because of the occupant's disability. In addition, a handicapped guest of an apartment owner or occupant may bring a guide dog as defined in Chapter 515, Hawai'i Revised Statutes, signal dog as defined in Chapter 515, Hawai'i Revised Statutes, or service animal as defined in Chapter 515, Hawai'i Revised Statutes, required for assistance to the Project. If such animal causes a nuisance or unreasonable disturbance, the handicapped owner thereof will be given an opportunity to rectify the problem by measures which fall short of ejectment of the animal from the Project. Ejectment of such animal shall be required only if less drastic alternatives prove unsuccessful or would be futile.

(O) No owner shall make interior modifications to his or her unit that adversely affect the quality of life of adjacent homeowners, including, but not limited to,

installation of tile or other hard surfaced flooring materials in upstairs units, other than the kitchen, entry way and bathroom.

ARTICLE IX COMMON EXPENSES, UNIT EXPENSES AND TAXES

Section 1. Budgets and Reserves.

(A) At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the Association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association;
- (5) A general explanation of how the estimated replacement reserves are computed; and
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.
- (7) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subsection (4).

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

(C) The estimated replacement reserves shall be computed by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include:

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

(2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed Ten Thousand and No/100 Dollars (\$10,000.00). Parts of the property for which capital expenditures or major maintenance will not exceed Ten Thousand and No/100 Dollars (\$10,000.00) may be aggregated in a single designated reserve.

(D) No Association or apartment owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

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

(F) The requirements of this section shall override any requirements in the Association's Declaration, these By-Laws, or any other Association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, and expenditures from reserves with the exception of:

(1) Any requirements in the Association's Declaration, these By-Laws, or any other Association documents which require the Association to collect more than fifty percent of reserve requirements; or

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

(G) Subject to the procedures of Section 514B-157 and any rules adopted by the Real Estate Commission, any apartment owner whose Association Board fails to comply with Section 514B-157 may enforce compliance by the Board. In any proceeding to enforce compliance, the Board that has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with Section 514B-157.

(H) As used herein:

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

(2) "Cash flow plan" means a minimum twenty-year projection of the Association's future income and expense requirements to fund fully its replacement reserves

requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

(3) "Emergency situation" means extraordinary expenses:

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

(4) "Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one (1) year.

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

Section 2. Common Expenses. The owner of each apartment shall be liable for and pay a share of the common expenses in proportion to the percentage interest in the common elements appurtenant to his or her apartment, and the same shall be deemed to be common expenses, as the term is herein used. Common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including, without limitation, all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner), assessments, insurance, including fire and other casualty and liability insurance, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any fire, accident or nuisance thereon, cost of repair, reinstatement, rebuilding and replacement of the premises, yard, janitorial, and other similar services, wages, accounting and legal fees, management fees, and other necessary expenses for upkeep, maintenance, management and operation actually incurred on or for the common elements, including the cost of all utility services, including water, electricity, and gas, garbage disposal and any other similar services, unless separately metered or otherwise separately

attributable to an apartment or group of apartments in which case the amounts charged or attributable to each apartment or group of apartments, as determined by the Board with the advice of a Certified Public Accountant, shall not be common expenses of the Project and no payments thereof shall be payments of such common expenses and shall be payable by the owner or owners of such apartment or apartments as the case may be; provided that all costs of every kind pertaining to each limited common element, including but not limited to costs of maintenance, repair, replacements, additions and improvements, shall be charged to and borne entirely by the owner of the apartment to which it is appurtenant. The common expenses may also include (a) such amounts as the Board may deem proper to make up any deficit in the common expenses for any prior year, and shall include reserves for the operation and maintenance of and capital improvements to the Project, including, without limitation, anticipated needs for working capital of the Project, and for replacements, repairs and contingencies, and (b) the assessments payable by the apartment owners to the Wailea Community Association (or its successors and assigns) under the Wailea Covenants. Except as may otherwise be permitted in the Declaration or herein, payments of common expenses shall be made to the Board, as agent of the owners of the apartments, and the Board shall transmit said payments on behalf of each such owner to the third person entitled to said payments from each owner. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for common expenses of the Project, the Association, by a majority vote of its members, may determine that such excess shall be:

- (A) Applied in whole or in part to reduce the assessments for the immediately subsequent year.
- (B) Designated in whole or in part as a capital, contribution to the Association to be used for future capital improvements and replacements; or
- (C) Segregated and held in whole or in part as a custodial fund to be expended solely for specifically designated capital improvements and replacements.

The proportionate interest of each owner in said capital contributions or custodial or maintenance fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created shall be terminated or waived, said capital contributions or, custodial or maintenance fund remaining after full payment of all common expenses of the Association shall be distributed to all owners in their respective proportionate shares, except for the owners of any apartments then reconstituted as a new Condominium Property Regime.

The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any apartment by the Board or its nominee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these By-Laws.

Section 3. Allocation of Common Expenses. For the purpose of fixing and determining the payments of the common expenses to be made as provided in Article IX, Section 2, above, the Board:

(A) Not less than sixty (60) days prior to the beginning of each fiscal year shall cause to be prepared a pro forma operating statement (budget) covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Condominium Property Regime during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintenance and operating expenses, and all other charges and outgoings of any description to which the Association, or its property, may be assessed or become liable, plus the reserves established by these By-Laws and other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any. In addition to the budget, the Board shall prepare a schedule of monthly assessments against each apartment owner for his or her proportionate share of such estimated cost of maintaining and operating the property of the Condominium Property Regime for such ensuing year, in accordance with the provisions of Article IX of these By-Laws.

(B) Shall allocate the common expenses among the owners in accordance with terms and conditions of Article IX, Section 1, above;

(C) May, on behalf of the owners, from time to time during each year make reasonable adjustments in said estimated aggregate amount of common expenses on the basis of actual costs incurred in prior months or periods; and

(D) May from time to time during any year increase the regular assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board shall send to all apartment owners thereby affected written notice of any such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment.

Provided, however, as to any special assessments, as follows:

(1) If an annual assessment proves inadequate for any reason, the Board may levy a special assessment against all owners; provided, however, that if the assessment would exceed 20% of the operating budget, except in an emergency situation, the owners representing 50% of the common interest must approve.

(2) Except in the case of assessments with respect to limited common elements and as provided in (3) of this proviso, and as otherwise provided by applicable law, every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments, which shall be upon the basis of the common interest appurtenant to the apartment subject to such special assessment;

(3) A special assessment may be levied by the Board against an association member as a remedy utilized by the Board to reimburse the Association for costs incurred in bringing such member and his or her apartment into compliance with provisions of the instruments governing the Association, and such assessment shall not be a common expense.

Each owner's share of said allocated amounts of the estimated common expenses, as determined from time to time by the Board, shall be payable by the owner in monthly

installments in advance on or before the 10th day of each month. Any omission or delay in determining and allocating the common expenses for any period shall not relieve the owner therefrom. In such event, the owner, pending the determination and allocation thereof, shall continue to pay the same common expenses that the owner had been paying during the last preceding period and shall pay the deficiency, if any, upon the determination and allocation of the proper common expenses within ten (10) days after notice thereof. Said installments transmitted to the Board, as agent of all owners, shall then be transmitted by the Board to the third person entitled to payment of the same from each owner.

Any portion of an owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the owners to the Association and shall be credited by the Association upon its books as paid in surplus.

Section 4. Assessments.

(A) Assessments shall be made based on the budget adopted and distributed or made available to apartment owners at least annually by the Board.

(B) Except for assessments under (D), (E) and (F) below, all common expenses shall be assessed against all the apartments in accordance with the allocations under Section 514B-41. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the Association, provided that the rate shall not exceed eighteen percent per year.

(C) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on the apartment with priority over all other liens, except:

(1) Liens for taxes and assessments lawfully imposed by governmental authority against the unit; and

(2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the Association may be foreclosed by action or by non-judicial or power of sale foreclosure procedures set forth in chapter 667, by the Managing Agent or Board, acting on behalf of the Association, in like manner as a mortgage of real property. In any such foreclosure, the owner shall be required to pay a reasonable rental for the apartment, if so provided in the By-Laws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The Managing Agent or Board, acting on behalf of the Association, unless prohibited by the Declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money

judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(D) Assessments to pay a judgment against the Association under Section 514B-147(a) may be made only against the apartments in the Project at the time the judgment was entered, in proportion to their common expense allocations under Section 514B-41.

(E) If any common expense is caused by the misconduct of any apartment owner, the Association may assess that expense exclusively against such owner's apartment.

(F) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(G) In the case of a voluntary conveyance, the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee is, however, entitled to a statement from the Board, either directly or through its Managing Agent or Resident Manager, setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the apartment conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

(H) No apartment owner may exempt the apartment owner from liability for the apartment owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the apartment owner's apartment. Subject to such terms and conditions as may be specified in the Declaration or these By-Laws, any apartment owner, by conveying his or her apartment and common interest to the Association on behalf of all other apartment owners, may exempt himself or herself from common expenses thereafter accruing.

Section 5. Payment as Agent. The Board will pay or cause to be paid, on behalf of the owners, all common expenses, will maintain or cause to be maintained separate books of account of common expenses in accordance with recognized accounting practices, and will have such books of account available for inspection by each owner or his or her authorized representative at reasonable business hours. The Board will annually render or cause to be rendered a statement to each owner of all receipts and disbursements during the preceding year, as required by these By-Laws. Each owner, as principal, shall be liable for and pay his or her share, determined as aforesaid, of all common expenses; the Board shall be responsible, as agent for each owner, only to transmit the payments made by the owner to third persons to whom such payments must be made by the owner. The Board or Managing Agent collecting the common expenses shall not be liable for payment of said common expenses as a principal but only as the

agent of all owners to transmit said payments to third persons to whom such payments must be made by the owner.

Section 6. Taxes and Assessments. Each apartment owner shall be obligated to have the real property taxes for his or her own apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner. Each owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and other taxes and assessments. Each owner shall be obligated to pay to the Board his or her proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments are or could become a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 5 of this Article IX.

Section 7. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the owner against whom the same are assessed. If an owner shall fail to pay his or her assessment when due, such owner shall pay a late fee in an amount not to exceed five percent (5%) of the average monthly fee for each such failure; all delinquent assessments shall bear interest at the rate of 1% per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments then, in addition to any other remedies herein or by law provided, the Board may enforce each such obligation as follows:

(A) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized, by a majority of the Board as part of a collection policy or otherwise at a regular or special meeting thereof and any such suit may be instituted by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought in the name of the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorneys' fees in such amount as the Court may adjudge against such defaulting owner. Upon full satisfaction of any such judgment, and payment of a reasonable amount to cover expenses, it shall be the duty of the Board to authorize any two (2) 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 any such default, the Board may give a notice to the defaulting owner, with a copy to the Mortgagee of such owner, if such Mortgagee has furnished its name and address to the Board, which said notice shall state the date and amount of the delinquency and shall make a demand for payment thereof. If such delinquency is not paid within ten (10) days after such notice, the Board may record a notice of lien against the

apartment of such delinquent owner; provided that the Board may proceed in any court of competent jurisdiction for an order authorizing the recording of such notice of lien. Such notice of lien shall state by sworn affidavit of a person with personal knowledge of the facts required, the following: (1) the name of the delinquent owner or reputed owner; (2) a description of the apartment against which notice of lien is made; (3) the amount claimed to be due and owing (with any proper offset allowed); (4) that the notice of lien is made by the Board pursuant to the terms of these By-Laws and the Act; and (5) that a lien is claimed against said described apartment in an amount equal to the amount of the stated delinquency. Any such notices of lien shall be signed and acknowledged by any two (2) or more members of the Board, by the Managing Agent or the attorney for the Association acting on the direction of the Board and shall be dated as of the date of the execution by the last such Board member to execute said notice of lien or a lien. Each default shall constitute a separate basis for a notice of lien. Such lien shall have priority and may be enforced as set forth in the Act, as amended.

(C) For the purposes of this Section 7 a certificate executed and acknowledged or made under penalty of perjury by any two (2) members of the Board shall be conclusive upon the Board and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any owner and any mortgagee of such owner who has provided such mortgagee's name and address to the Board shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his or her apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee established by the Board; provided, however, the amount of any subsequently dishonored checks included as having been received shall not be conclusive on the Board. In the event any notices of lien have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the owner or his or her successor, and payment of a reasonable fee established by the Board, the Board, acting by any two members or by the Managing Agent or by the attorney for the Association, shall execute and acknowledge (in the manner provided above) a release of lien, stating the date of the original notice of lien, the amount claimed, the date, the filing data of the notice of lien in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the owner or his or her successor upon payment of the fee.

(D) In conjunction with or as an alternative to foreclosure proceedings, where a unit is owner occupied, the Association may authorize its Managing Agent or Board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(E) Before the Board or Managing Agent may take the actions permitted under subsection (D), the Board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the Association or by the written consent of a majority of the unit owners.

Section 8. Collection from Tenant.

(A) If the owner shall at any time rent or lease his or her apartment and shall default for a period of thirty (30) days or more in the payment of the owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the owner occupying the apartment, the rent due or becoming due from such lessee to the owner up to an amount sufficient to pay all sums due from the owner, including interest, if any, and any such payment of such rent to the Board by the lessee shall be sufficient discharge of such lessee, as between such lessee and the owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the owner or a release or discharge of any of the obligations of the owner hereunder or an acknowledgment of surrender of any rights or duties hereunder. In the event that the Board makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make such demand but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid.

(B) The Board may not demand payment from the tenant pursuant to this section if:

(1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;

(2) A mortgagee is in possession pending a mortgage foreclosure; or

(3) The tenant is served with a court order directing payment to a third party.

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

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

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

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

(D) The apartment owner shall not take any retaliatory action against the tenant for payments made under this section.

(E) The payment of any portion of the apartment's share of common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of

the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the apartment owner against a tenant.

Section 9. Late Fees.

(A) The Association may deduct and apply portions of common expense payments and limited common expense payments received from an apartment owner to unpaid late fees only in accordance with the Act.

(B) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist. Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment.

Section 10. Assessment Disputes.

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

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

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

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

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

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

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

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(B) An apartment owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve

any disputes concerning the amount or validity of the Association's claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 514B-162; provided that an apartment owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the apartment owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all Association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the thirty-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

Section 11. Waiver. The failure of the Board to insist in any one (1) or more instances upon a strict performance of or compliance with any of the covenants of the owner hereunder, to exercise any right or option herein contained, 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; 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 the owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board.

ARTICLE X MORTGAGES

Section 1. Mortgagee's Rights. Notwithstanding anything in these By-Laws to the contrary, each Mortgagee shall have the following rights:

(A) Upon written request of the Mortgagee to the Board, the Mortgagee, upon payment of a reasonable charge to defray any administrative or duplicating costs, such charge to be determined from time to time by the Board, shall be entitled to all of the following:

(1) Any audited financial statement of the Project prepared pursuant to Article XI, Section 8, if such audit is not waived as provided in that section. If prepared, the audit will be provided to the requesting Mortgagee within a reasonable time following the end of any fiscal year of the Project;

(2) The annual budget and schedule of assessments and such other statements or reports prepared for the Association, the Board, or the owners by the Managing Agent or other party hereunder;

(3) The right to inspect the books and records of the Project during normal business hours as required by the Act.

(B) No apartment shall be partitioned or subdivided without the prior written consent of the Mortgagee of such apartment.

(C) In the event of (i) any distribution of insurance proceeds hereunder as a result of substantial damage to or destruction of any part of the Project or (ii) any distribution of condemnation proceeds as a result of condemnation or eminent domain proceedings with respect to any part of the Project, any such distribution shall be made to the owners and their respective Mortgagees, as their interests may appear, and no owner or other party shall be entitled to priority over the Mortgagee of an apartment with respect to any such distribution to, or with respect to, such apartment; provided that nothing in this paragraph (G) shall be construed to deny to the Association the right to apply any such proceeds to the repair or replacement of damaged portions of the Project or to restore what remains of the Project after condemnation or taking by eminent domain of a part of the Project.

Section 2. Mortgagee Approval. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage held) of owners, of the individual apartments have given their prior written approval, the Association shall not be entitled to:

(A) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this clause).

(B) Use hazard insurance proceeds for losses to the Project or any part thereof (whether to apartments or to common elements) for other than the repair, replacement or reconstruction of the same, except as otherwise provided by these By-Laws, the Declaration or the Act.

Section 3. Mortgage Protection. Notwithstanding all other provisions hereof:

(A) The liens created pursuant to these By-Laws upon any apartment and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by, any mortgage of such interests made for value and recorded prior to recording such liens; provided, however, that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such apartment if falling due after the date such purchaser acquires title pursuant to such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Article IX hereof; and provided further that the unpaid share of common expenses or assessments which became due prior to such acquisition shall be deemed to be common expenses collectible from such purchaser and his or her successors and assigns, together with all the other apartment owners.

(B) No amendment to this Section 3 shall affect the rights of the holder of any such mortgage that has been filed or recorded of record in the Bureau of Conveyances or the Office of the Assistant Registrar of the Land Court, whichever is appropriate, prior to the filing or recording of such amendment if the holder of such mortgage does not join in the execution thereof.

ARTICLE XI GENERAL PROVISIONS

Section 1. Rules and Regulations. Each owner recognizes the right of the Board from time to time (after giving notice to all apartment owners in the manner provided herein for the giving of notice for meetings and an opportunity to be heard thereon) to establish and amend such uniform Rules and Regulations as the Board may deem necessary for the management and control of the apartments, the common elements, and limited common elements, and each owner agrees that the owner's rights under this instrument shall be in all respects subject to the appropriate Rules and Regulations, which shall be taken to be a part hereof; and each owner further agrees to obey all such Rules and Regulations as the same now are or may from time to time be amended, and to see that the same are faithfully observed by the household members, invitees, licensees, guests, employees and tenants of the owner and agrees that the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the apartments. The Association may adopt Rules and Regulations that affect the use of or behavior in units that may be used for residential purposes only to:

- (A) Prevent any use of a unit which violates the Declaration or these By-Laws;
- (B) Regulate any behavior in or occupancy of a unit which violates the Declaration or these By-Laws or unreasonably interferes with the use and enjoyment of other units or the common elements by other owners; or
- (C) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Section 2. Abatement and Enjoinment of Violations by Apartment Owners. The violation of any rule or regulation adopted by the Board, the breach of any By-Law contained herein, or the breach of any provision of the Declaration or the Wailea Covenants shall, without prejudice to any other remedies available to the Board at law or in equity:

- (A) Give the Board the right, in addition to any other rights set forth in these By-Laws, to enter the apartment and limited common elements in which, or as to which, such violation or breach exists and to abate and remove summarily, at the expense of the defaulting apartment owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; and

(B) Give rise to a cause of action in the Association, the Board, or any aggrieved apartment owner for:

- (1) recovery of damages, or
- (2) injunctive relief to abate the continuance of any such breach, or both.

Section 3. Fines for Violations. The violation by any apartment owner of any of the covenants, conditions and restrictions set forth in the Declaration, the By-Laws or the Rules and Regulations adopted pursuant thereto shall give the Board the right, in addition to any other rights set forth in the By-Laws, to assess a reasonable fine against such owner; provided that if any such violation continues for a period of ten (10) 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 fines. The unpaid amount of such fines against any apartment owner shall constitute a lien against his or her interest in his or her apartment which may be foreclosed by the Board or the Managing Agent in the same manner and according to the same priority as provided in the Act for common expenses. No penalty may be imposed under this Section until the apartment owner accused of any such violation 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 apartment owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson at any such hearing.

Section 4. Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against any owner's apartment, in foreclosing any lien thereon, or in enforcing any provision of the Declaration, these By-Laws, the Rules and Regulations, the rules and regulations of the Real Estate Commission of the State of Hawaii, or the Act against any owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Project, shall be paid promptly on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association shall be paid promptly on demand to such person or persons by the Association. The unpaid amount of such costs and expenses payable by any apartment owner shall constitute a lien against his or her interest in his or her apartment which may be foreclosed by the Board or the Managing Agent in the same manner and according to the same priority as provided in the Act for common expenses. The owner of the apartment against which such a lien of the Association is foreclosed shall pay a reasonable rental for such apartment, and the plaintiff in such a foreclosure shall be entitled to the appointment of a receiver to collect the same.

If any claim by an apartment owner is substantiated in any action against the Association, any officer or director of the Association, or the Board to enforce any provision of the Declaration, By-Laws, Rules and Regulations, or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such apartment owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless (a) the

apartment owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or (b) the apartment owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or its Board to enforce any provision of the Declaration, By-Laws, House Rules, or the Act, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under the Act, and made a good faith effort to resolve the dispute under any of those procedures.

Section 5. Right of Access.

(A) The apartment owners shall have the irrevocable right, to be exercised by the Board of Directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments. To facilitate exercise of such right, an apartment owner shall grant a right of access to his or her apartment to the Managing Agent and/or any other person authorized by the Board for the purpose of making inspections or for the purpose of correcting any condition originating in his or her apartment or the limited common elements appurtenant thereto and threatening another apartment, common element, or limited common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his or her apartment or elsewhere in the Project, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the owner; provided, however, in case of an emergency, or a situation that is reasonably believed to be an emergency, such right of entry shall be deemed granted, to be effective immediately, whether or not the owner is present at the time.

(B) Each apartment owner shall afford to the Association and the other apartment owners, and to employees, independent contractors, or agents of the Association or other apartment owners, during reasonable hours, access through the owner's apartment reasonably necessary for those purposes. Unless entry is made pursuant to subsection (C), if damage is inflicted on the common elements or on any apartment through which access is taken, the apartment owner responsible for the damage, or the Association, if it is responsible, is liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

(C) The Association shall have the irrevocable right, to be exercised by the Board, to have access to each apartment at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another apartment or apartments.

Section 6. Inspection of Association's Books and Records. The membership register, books of account, and minutes of meetings of the Association, of the Board and of committees of the Board shall be made available for inspection and duplication by any member of the

Association or by his or her duly appointed representative at convenient hours and at a convenient location at the Project, to be determined by the Board. The Board shall establish reasonable rules with respect to:

- (1) Notice to be given to the custodian of the records by the member desiring to make the inspection.
- (2) Hours and days of the week when such an inspection may be made.
- (3) Payment of a reasonable charge to defray any related administrative or duplicating costs, such charge to be determined from time to time by the Board, however, there shall be no costs charged to an owner who merely inspects said documents.

No unit 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 unit owner that it intends to charge the unit owner for the reasonable cost. The Association shall notify the unit owner in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the Association's governing documents.

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Section 7. Copies of Documents. Upon the request of any apartment owner, mortgagee or other interested party, the Secretary or the Managing Agent shall furnish such party with copies of these By-Laws and the Declaration as amended and shall certify that such copies are current to the date of such certification; provided, however, that the requesting party shall pay a reasonable charge to defray any administrative or duplicating costs, such charge to be determined from time to time by the Board pursuant to the Condominium Act. This Section 7 is in addition to the duties of the Managing Agent stated in Article V, Section 9, herein.

Section 8. Audits.

(A) The Association shall require a yearly audit of the Association's financial accounts and no less than one (1) yearly unannounced verification of the Association's cash balance by a public accountant. Any holder of a first mortgage on any apartment or any interest therein or on any apartment conveyance covering the same may request and the Association shall provide said mortgagee with a copy of any such audited financial statement within a reasonable

time following the end of any fiscal year of the Association, upon payment by the mortgagee of a fee equal to the cost of reproduction and postage for mailing of such statement.

(B) The Board shall make available a copy of the annual audit to each apartment owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year; provided, however, that the Board shall not be required to submit a copy of the annual audit report to an owner if the owner did not mark the box on an annual meeting proxy sent by the Association to the owner indicating that the owner wishes to obtain such a report. If the annual audit has not been completed by that date, the Board shall make available:

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

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

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

Section 9. Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a non-profit, membership corporation, formed under applicable laws for the purposes herein set forth by the Association. Said corporation shall be formed upon the approval of the Board of Directors. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles and By-Laws of said 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.

Section 10. Notices. Except as may otherwise be provided in these By-Laws, all notices hereunder to the Association or to the Board shall be sent by first class mail, postage prepaid, to the Board of Directors, c/o the Managing Agent or, if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time, by notice in writing to all owners and to all mortgagees of apartments. All notices to any owner shall be hand delivered or sent by first class mail, postage prepaid to the apartment owner's address at the Project or to such other address as may have been designated by him or her from time to time, in writing, to the Board. If an owner has agreed in writing, the notice of an annual or special Association meeting can be given by electronic transmission. All notices shall be deemed to have been effectively given when mailed or delivered, except notices of change of address, which shall be deemed to have been given when received. A copy of all notices sent to apartment owners shall be sent, by one of the methods prescribed for notices to the apartment owner, to each apartment owner's Mortgagee known to the Board.

Section 11. 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 By-Laws or the intent of any provisions thereof.

Section 12. Gender and Number. As used in these By-Laws, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

Section 13. Waiver. No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 14. Interpretation. The provisions of these By-Laws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex where the owners of apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

Section 15. Amendment. The provisions of these By-Laws may be amended by the owners of apartments to which are appurtenant not less than sixty-seven percent (67%) of the common interests, which amendment shall be effective upon the recording in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of an instrument in writing, signed and acknowledged by such owners or by the proper officers of the Association; provided that proposed amended By-Laws with the rationale for the proposal may be submitted by the Board or by a volunteer apartment owners' committee. If submitted by such committee, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners, as shown in the Association's record of ownership. The proposed By-Laws, rationale, and ballots for voting on the proposed By-Laws shall be mailed by the Board to the owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. Failure of the Board to comply with these provisions shall validate the vote taken by the volunteer apartment owners' committee provided the volunteer owners' committee has complied with all other applicable rules on voting for By-Law amendments. The vote or written consent must be obtained within three hundred sixty-five (365) days after mailing. In the event that the By-Law is duly adopted, then the Board shall cause the By-Law amendment to be recorded in the Bureau of Conveyances or in the Land Court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed By-Law that is substantially similar to one that has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any By-Law amendment at any annual Association meeting.

Section 16. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one (1) provision shall not affect the validity or enforceability of any other provision hereof.

Section 17. Registration. The Board shall register the Association as required by the Act.

Section 18. Remedies To Be Liberally Administered.

(A) The remedies provided by the Declaration, By-Laws and Chapter 514B, HRS shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.

(B) Any deed, Declaration, By-Law, or Condominium Map shall be liberally construed to facilitate the operation of the condominium property regime.

(C) Any right or obligation declared by this Section is enforceable by judicial proceeding.

IN WITNESS WHEREOF, the undersigned have executed these presents this 30 day of MARCH, 2012.

ASSOCIATION OF APARTMENT OWNERS
OF GRAND CHAMPIONS VILLAS

By: 

Its GARY Wilson Vice President

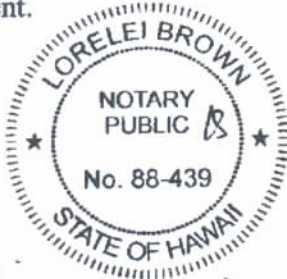
By: 

Its Diane Bellby, secretary

STATE OF Hawaii)
COUNTY OF Maui) : SS.

On this 30th day of MARCH, 2012, in the 2nd Circuit, State of Hawaii, before me personally appeared GARY WILSON, to me personally known, who being by me duly sworn, did say that he/she is the Vice President of the Board of Directors of the Association of Apartment Owners of Grand Champions Villas; that the foregoing instrument identified or described as Restated By-Laws of the Association of Apartment Owners of Grand Champions Villas was signed on behalf of said Association by authority of its Board of Directors, and acknowledged that he/she executed the same as the free act and deed of said Association.

The foregoing instrument is dated undated and contained 56 pages at the time of this acknowledgment.

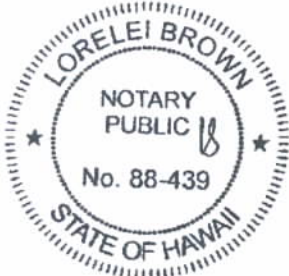


Lorelei Brown
Print Name: LORELEI BROWN
Notary Public, State of HAWAII
My Commission Expires: 4/30/14

STATE OF Hawaii)
COUNTY OF Maui) : SS.

On this 30th day of MARCH, 2012, in the 2nd Circuit, State of Hawaii, before me personally appeared DIONE BELBY, to me personally known, who being by me duly sworn, did say that he/she is the SECRETARY of the Board of Directors of the Association of Apartment Owners of Grand Champions Villas; that the foregoing instrument identified or described as Restated By-Laws of the Association of Apartment Owners of Grand Champions Villas was signed on behalf of said Association by authority of its Board of Directors, and acknowledged that he/she executed the same as the free act and deed of said Association.

The foregoing instrument is dated 3/30/12 and contained 56 pages at the time of this acknowledgment.



Lorelei Brown
Print Name: LORELEI BROWN
Notary Public, State of HAWAII
My Commission Expires: 4/30/14

Exhibit "A"

Grand Champions Villas - Phase I and II
Land Court Condo Map No. 685 and 737

Unit No.	TCT No.
1	358,530
2	945,808
3	358,532
4	1,014,592
5	660,487
6	661,798
7	771,990
8	700,656
9	833,945
10	405,142
11	670,591
12	963,778
13	1,037,239
14	863,352
15	1,016,968
16	737,195
17	974,134
18	358,547
19	626,730
20	1,038,918
21	893,771
22	972,311
23	571,740
24	466,069
25	495,193
26	624,674
27	593,991
28	863,926
29	859,670
30	655,191
31	782,801
32	995,105
33	370,540
34	942,756
35	488,830
36	828,018
37	987,170
38	1,018,507
39	358,568
40	731,536
41	710,533
42	767,767
43	421,540
44	680,157
45	700,344
46	750,281
47	573,940
48	774,746

Unit No.	TCT No.
49	944,817
50	819,802
51	1,019,828
52	1,006,060
53	847,014
54	606,197
55	916,492
56	691,515
57	586,424
58	755,496
59	545,247
60	869,096
61	973,275
62	405,604
63	358,592
64	486,422
65	543,996
66	637,896
67	761,141
68	452,966
69	803,395
70	517,388
71	601,281
72	961,102
73	488,720
74	577,011
75	578,594
76	529,361
77	941,794
78	358,607
79	1,030,498
80	846,692
81	601,655
82	987,466
83	358,612
84	551,485
85	1,020,825
86	1,006,351
87	991,401
88	591,874
89	471,391
90	753,270
91	897,895
92	446,636
93	358,622
94	397,674
95	665,480
96	833,813

Unit No.	TCT No.
97	372,688
98	979,852
99	657,928
100	708,643
101	737,913
102	532,529
103	1,036,735
104	983,145
105	562,140
106	553,316
107	649,999
108	980,671
109	833,482
110	1,019,148
111	1,040,096
112	687,409
113	590,786
114	406,300
115	590,278
116	358,645
117	1,002,510
118	691,409
119	774,703
120	629,051
121	699,635
122	438,629
123	500,716
124	625,210
125	771,564
126	691,152
127	529,087
128	1,037,169
129	753,157
130	798,195
131	1,031,862
132	846,691
133	637,222
134	575,818
135	521,347
136	358,665
137	1,037,222
138	900,570
139	1,009,972
140	662,429
141	986,571
142	471,838
143	473,031
144	1,016,902

Unit No.	TCT No.
145	715,418
146	680,424
147	694,099
148	970,477
149	800,692
150	815,251
151	733,688
152	567,776
153	858,039
154	981,641
155	694,349
156	775,070
157	736,351
158	987,753
159	564,597
160	964,015
161	978,309
162	604,019
163	970,476
164	895,473
165	960,859
166	824,463
167	865,177
168	988,280
169	940,635
170	550,035
171	891,235
172	510,032
173	645,349
174	993,918
175	559,864
176	803,936
177	527,552
178	801,662
179	553,872
180	767,284
181	448,244
182	817,977
183	620,797
184	816,372
185	899,177
186	909,128
187	1,002,518
188	699,285