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STATE OF HAWAII  
BUREAU OF CONVEYANCES  
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LAND COURT SYSTEM

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RESTATED BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
OF  
THE SANDS OF KAHANA

WHEREAS, HYADES BECHERT KIESEL, as "Owner", MYRON A. RESNICK, as "Lessee", and WEST MAUI SHORE INVESTORS, a Hawaii limited partnership, as "Developer", did execute that certain Declaration of Condominium Property Regime Under Chapter 514A, Hawaii Revised Statutes (formerly known as a "Declaration of Horizontal Property Regime Under Chapter 528A, Hawaii Revised Statutes") and By-Laws for THE SANDS OF KAHANA dated October 14, 1980, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15060, Page 527 (herein called the "Declaration");

WHEREAS, concurrently with said Declaration, plans were submitted and filed in said Bureau of Conveyances of the State of Hawaii as Condominium Map No. 703, and later final plans were submitted and filed in said Bureau of Conveyances of the State of Hawaii as Condominium Map No. 763, as evidenced by the verified statement of Barry A. Rank, the registered architect for the Project, a copy of which is attached to the Restated Declaration of even date herewith, as Exhibit "B";

WHEREAS, the operation of The Sands At Kahana is governed by the By-Laws of the Association of Apartment Owners of The Sands of Kahana, a Condominium Property Regime (hereinafter referred to as the "By-Laws" which was initially attached to and made a part of the Declaration;

WHEREAS, a First Amendment to the Declaration of Horizontal Property Regime under Chapter 514A, Hawaii Revised Statutes, for The Sands At Kahana, dated February 23, 1981, was recorded in said Bureau of Conveyances of the State of Hawaii in Liber 15399, Page 351;

WHEREAS, a Second Amendment to the Declaration of Horizontal Property Regime under Chapter 514A, Hawaii Revised Statutes, for The Sands At Kahana, dated July 6, 1982, was recorded in said Bureau of Conveyances of the State of Hawaii in Liber 16575, Page 474;

WHEREAS, an Amendment of Declaration of Horizontal Property Regime and Bylaws of Association of Apartment Owners The Sands of Kahana Condominium Project, dated September 10, 1983, was recorded in said Bureau of Conveyances of the State of Hawaii in Liber 17322, Page 680;

WHEREAS, an Amendment of the Declaration of Horizontal Property Regime and Bylaws of The Sands At Kahana, dated December 17, 1984, was recorded in said Bureau of Conveyances of the state of Hawaii in Liber 18359, Page 326;

WHEREAS, an Amendment of Bylaws of The Sands At Kahana, dated March 23, 1993, was recorded in said Bureau of Conveyances of the State of Hawaii as Document No. 93-061935;

WHEREAS, an Amendment to the Bylaws of The Association of Apartment Owners of The Sands At Kahana, dated March 21, 1994, was recorded in said Bureau of Conveyances of the State of Hawaii as Document No. 94-056991;

WHEREAS, an Amendment to the Bylaws of The Association of Apartment Owners of the Sands At Kahana, dated March 18, 1997, was recorded in said Bureau of Conveyances of the State of Hawaii as Document No. 97-086977;

WHEREAS, pursuant to Article X, Section 4 of the By-Laws, the Association of Apartment Owners of The Sands of Kahana elected to form The Sands of Kahana, Inc., a non-profit Hawaii corporation, to exercise and enforce all of the rights, powers, obligations and duties of said Association of Apartment Owners, and said corporation was thus created effective November 17, 1995;

WHEREAS, Section 514B-82.2, Hawaii Revised Statutes, empowers boards of directors of condominium associations to restate

their By-Laws to set forth amendments thereto, and to conform with the provisions thereof to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by such boards; and

WHEREAS, at a meeting duly held on August 10, 1996, the Board of Directors of The Sands of Kahana, Inc. (hereinafter referred to as the "Association") resolved to restate the By-Laws, pursuant to Section 514A-82.2, Hawaii Revised Statutes, in the manner set forth herein,

NOW, THEREFORE, the By-Laws are hereby restated to read as follows:

ARTICLE I  
INTRODUCTORY PROVISIONS

SECTION 1. Definitions. The terms used herein shall have the meanings given to them in said Chapter 514A, except as expressly otherwise provided herein. The term "common elements" means those elements designated in the aforesaid Declaration as common elements and limited common elements, if any. The term "Property" shall include the Land, the buildings and all other improvements thereon (including the apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term "Rules and Regulations" refers to the Rules and Regulations for the conduct of occupants of the buildings adopted by the Board of Directors as hereinafter provided. "Owner" and "Apartment Owner" mean a person owning severally or as a co-tenant an apartment and the common interest appertaining thereto, to the extent of such interest so owned. The terms "Apartment Owners Association of Owners, Association ( and similar terms mean and refer to (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners. "Project" means the Property comprising The Sands of Kahana.

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

SECTION 3. Application. All present and future owners, mortgagees, tenants and occupants of apartments and their employees, and any other persons who may use the said property in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations. The acceptance of an assignment of lease or conveyance or the entering into of a lease or the act of occupancy of an apartment shall constitute an agreement that these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

ARTICLE II  
ASSOCIATION OF OWNERS

SECTION 1. Annual Meetings. Promptly after apartments to which fifty percent (50%) or more of the common interest is appurtenant have been acquired by persons other than the Developer, the Developer shall notify all Apartment Owners thereof, and the first annual meeting of the Apartment Owners shall be held within thirty (30) days after such notice on a call issued by the Developer, provided, however, that such first annual meeting shall be held not later than one hundred eighty (180) days after the first conveyance of an apartment in the Project if forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one (1) year, an annual meeting shall be called if ten percent (10%) of the Owners so request. At such meeting the Apartment Owners shall elect a Board of Directors. Thereafter, the annual meetings of the Apartment Owners shall be held on the first Monday of February of each succeeding year or at such other time as the Board of Directors may designate. At such meetings the Board of Directors shall be elected by ballot of the Apartment Owners in accordance with the requirements of Section 4 of ARTICLE III of these By-Laws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

SECTION 2. Place of Meetings. Meetings of the Apartment Owners shall be held at the address of the condominium project or elsewhere within the State as determined by the Board of Directors.

SECTION 3. Special Meetings. Special meetings of the Owners of the apartments may be held at any time upon the call of the President or any three (3) Directors, or upon the written request

of not less than forty percent (40%) of the Owners.

SECTION 4. Notice of Meetings and Other Notices. Written notice of all meetings, annual or special, stating the place, day and hour of the meeting and whether it is annual or special and stating the items on the agenda for such meeting and containing a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these By-Laws shall be given by personal delivery or mailing such notice, postage prepaid, at least fourteen (14) days before the date assigned for the meeting, to the Owners of the apartments at their address at the property or at the address given to the Board for the purpose of service of such notices. Upon written request for notices delivered to the Board the holder of any duly recorded mortgage or deed of trust from any Owner of an apartment may obtain a copy of any and all notices permitted or required to be given to the Owner of an apartment, whose interest is subject to said mortgage or deed of trust. Upon notice being given in accordance with the provisions hereof, the failure of any Owner of an apartment to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each such Owner shall keep the Board informed of any changes in address.

SECTION 5. Adjournment of Meetings. If any meeting of Apartment Owners cannot be held because a quorum has not attended, a majority in common interest of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

SECTION 6. (a) Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association, the percentage of vote for any apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment. An owner who has failed to pay his/her common

expense, late fees, special assessments, attorney's fees and costs or any other assessment charged to said owner by the Association shall not be permitted to vote.<sup>1</sup>

(b) Proxies and Pledges. Each apartment owner may give his proxy to another person, or to the Board as an entity, to represent him at meetings of the Association. Each proxy must be delivered to the Secretary or the Managing Agent, at least two business days 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, the printed name and signature of the apartment owner giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments and may be limited as the apartment owner desires and indicates.

Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.<sup>2</sup>

No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(i) 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

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

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.<sup>3</sup>

SECTION 7. Order of Business. The order of business at all annual meetings of the Apartment Owners shall be as follows:

- (a) Roll Call;
- (b) Proof of Notice of Meeting;
- (c) Reading of Minutes of Preceding Meeting;
- (d) Reports of Officers;
- (e) Report of Board of Directors;
- (f) Reports of Committees;
- (g) Election of Inspectors of Election (when so required);
- (h) Election of Members of the Board of Directors (when so required);
- (i) Unfinished Business; and
- (j) New Business.<sup>4</sup>

SECTION 8. Cumulative Voting. If not less than forty-eight (48) hours prior to the time fixed for any meeting of the Association for the election of Directors, not less than ten percent (10%) of the Owners shall deliver to any officer of the Association a request in writing that the election of the Directors to be elected be by cumulative voting, then each Owner shall cumulate his votes, and may cast for any one or more nominees to the Board of Directors a vote equivalent to the votes which such Owner is entitled to multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as he 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, shall be deemed elected.

SECTION 9. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of Owners having

one-half (1/2) of the total authorized votes of all Apartment Owners shall constitute a quorum at all meetings of the Apartment Owners.

SECTION 10. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding upon all Apartment Owners for all purposes except where in the Declaration or these By-Laws or by law, a higher percentage vote is required.

SECTION 11. Majority of Apartment Owners. As used in these By-Laws, the term "majority of Apartment Owners" shall mean those Apartment Owners having more than fifty percent (50%) of the total authorized votes present at any meeting of the Apartment Owners, and any specified percentage of the Owners mean Owners having the specified percentage of the total votes.

SECTION 12. List of Members. The Resident Manager or Managing Agent or the Board of Directors shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under an Agreement of Sale, if any. The list shall be maintained at a place designated by the Board of Directors.

SECTION 13. Audit. The members of the Association may require, by vote at the annual meeting, a yearly audit of the books of the Association by a certified public accountant.

### ARTICLE III BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of five (5) persons, all of whom shall be Owners, Co-Owners, vendees under an Agreement of Sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. No Resident Manager of the Project shall serve on the Board of Directors.

Notwithstanding the foregoing, no Owner, Co-Owner, vendee under an Agreement of Sale, officer of any corporate owner or partner of a general or limited partnership shall be eligible to be nominated or to seek election to serve on the Board of

Directors if the Owner, Co-Owner, Vendee under an Agreement of Sale, corporate owner or partnership owner is more than ninety (90) days delinquent in the payment of common expenses attributable to his apartment.6

SECTION 2. Powers and Duties The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Directors by the Apartment Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the common elements;

(b) Preparation annually of a budget of the common expenses required for the affairs of the Association, including, without limitation, the operation and maintenance of the property;

(c) Collection of the common expenses from the Apartment Owners;

(d) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;

(e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the property;

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

(g) Obtaining of insurance for the property, including the apartments, pursuant to the provisions of ARTICLE VII hereof;

(h) Making of repairs, additions and improvements to or alterations of the property and repairs to and restoration of the property in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(i) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these

By-Laws;

(j) Purchasing of any other materials, supplies, furniture, labor and services, the making of repairs and structural alterations, and the payment of all insurance, taxes or assessments and other common expenses which the Board is required to secure, make or pay for pursuant to the terms of these By-Laws or by law or which in its opinion shall be necessary or proper for the operation of the buildings as apartment buildings for the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, or assessments are required because of the particular actions or negligence of the Owners of particular apartments, the cost thereof shall be specially assessed to the Owners of such apartments;

(k) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a lien against the property or against the common elements or limited common elements or limited common elements rather than merely against the interest therein of particular 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 it and costs incurred by the Board by reason of such lien or liens; and

(l) Maintenance and repair of any apartment if such maintenance or repair is necessary, in the discretion of the Board to protect the common elements and limited common elements or any other portion of the buildings, and the Owner or Owners of said apartment shall 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 delivered by the Board to said Owner or Owners, provided that the Board shall levy a special assessment against such Apartment for the cost of said maintenance or repair and attorney's fees and other expenses incurred in collecting this special assessment.

SECTION 3. Managing Agent and Manager. Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible individual or corporation as Managing Agent to manage and control the property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Board. The compensation of the

Managing Agent shall be such as shall be specified from time to time by the Board.

The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration of the common elements and any additions or alterations thereto, (c) purchase, maintenance and replacement of any equipment, (d) provision for service of all utilities to the buildings and the various apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, purchase of such insurance as is contemplated by the By-Laws, (i) custody and control of all funds and maintenance of books and records and preparation of financial reports.

The Board of Directors may in its discretion limit any of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent.

Upon written request of any Apartment Owner the Managing Agent shall deliver a written statement of the status of the account of such Apartment Owner.

No employee of the association shall engage in selling or renting apartments in the Project except association-owned units if any, unless such activity is approved by an affirmative vote of sixty-five per cent of the Apartment Owners.<sup>7</sup>

SECTION 4. Election and Terms of Office. At the first annual meeting of the Apartment Owners, the term of office of three (3) members of the Board of Directors shall be fixed at two (2) years and the term of office of two (2) members of the Board of Directors shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board of Directors shall be elected to serve for a term of two (2) years. Each member of the Board of Directors shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners.

SECTION 5. Removal of Members of the Board of Directors. At

any regular or special meeting of Apartment Owners, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Apartment Owners and a successor may then and there or thereafter be elected for the remainder of the term to fill the vacancy thus created; provided that an individual Director shall not be removed, unless the entire Board is removed, if Owners having sufficient votes to elect one (1) Director by cumulative voting present at such meeting shall vote against his removal. Any member of the Board of Directors whose removal has been proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting. In addition, if any director shall fail to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a majority vote of the other members may remove him and select a replacement to serve his unexpired term.

SECTION 6. Vacancies. Vacancies in the Board of Directors caused by reason other than the removal of a member thereof by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Directors for the remainder of the term of the member whose vacancy he filled and until a successor shall be elected at the next annual meeting of the Apartment Owners. Death, incapacity or resignation of any Director or his continuous absence from the State of Hawaii for more than six (6) months or his ceasing to be the Owner or Co-Owner of an apartment or his failure to pay common expenses for a period exceeding ninety (90) days, shall cause his office to become vacant.<sup>8</sup>

SECTION 7. Organization Meetings. The first meeting of the Board of Directors following the annual meeting of the Apartment Owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the Apartment Owners at the meeting at which such Board of Directors shall have been elected, and no notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present thereat. Notice of the annual meeting of the Board of Directors shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting and may be included with any notice of the annual meeting of the Association.

SECTION 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Board of Directors, but at least one (1) such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors, personally or by mail, telephone or telegraph at least fourteen (14) days prior to the date of such meeting. Both regular and special Board meetings may be conducted by means of telephone conference calls.g Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.10

SECTION 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each member of the Board of Directors, given personally or by mail or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice by the written request of at least three (3) members of the Board of Directors. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.11

SECTION 10. Waiver of Notice. Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION 11. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum pre-

sent, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

SECTION 12. Fidelity Bonds. The Board of Directors shall obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a common expense.

SECTION 13. Compensation, No member of the Board of Directors shall receive any compensation from the Association for acting as such. Directors shall not expend association funds for their travel, and per diem, unless all Apartment Owners are informed and a majority approve of these expenses.<sup>12</sup> The Association at its own expense shall provide all members of the Board of Directors with a current copy of the Declaration, By-Laws Rules and Regulations, and annually, a copy of Chapter 514A Hawaii Revised Statutes, as amended.<sup>13</sup> The Board of Directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget 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 section shall be subject to the requirements of §514A- 82(b) (10), Hawaii Revised Statutes.<sup>14</sup>

SECTION 14. Liability and Indemnity of the Board of Directors. The members of the Board of Directors shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association of Owners shall indemnify each Director of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action suit, proceeding, investigation or inquiry hereafter made instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such Director, whether or not he continues to be such

Director at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such Director. As to whether or not a Director was liable by reason of gross negligence or willful misconduct toward the Association in the performance of his duties as such Director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each Director may conclusively rely upon an opinion of legal counsel selected by or in the manner designed by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such Director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such Director.

SECTION 15. Conflict of Interest. A Director shall not vote or cast proxy at any board meeting on any issue in which he has a conflict of interest. A Director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.<sup>15</sup>

#### ARTICLE IV OFFICERS

SECTION 1. Designation. The principal officers of the Association shall be the President, the Vice President the Secretary, the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board of Directors.<sup>16</sup> An Apartment Owner shall not act as an officer and an employee of the managing agent.<sup>17</sup>

Notwithstanding the foregoing, no person may be elected to serve as an officer if he is more than ninety (90) days delinquent in the payment of common expenses attributable to his apartment.<sup>18</sup>

SECTION 2. Election of Officers. The officers of the

Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

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

Moreover, an officer who fails to pay common expenses for a period exceeding ninety (90) days shall cause his office to become vacant and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.<sup>19</sup>

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

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

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

SECTION 7. Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of

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

SECTION 8. Agreements, Contracts. Deeds. Checks. Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the By-Laws as hereafter provided, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board of Directors.

SECTION 9. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

#### ARTICLE V

#### USE, MAINTENANCE AND ALTERATION OF THE PROJECT

SECTION 1. Use of Apartments.

(a) Each apartment shall at all times be used as a private dwelling for the Owner, his family, tenants and social guests, or as a time share unit as that term is defined in Section 514E-1, Hawaii Revised Statutes, and for such other purposes which are compatible with the applicable zoning ordinances. The owners of the respective apartments may rent or lease their apartments on any long-term or short-term (including daily) basis for such residential use. The apartments shall not be used as an office or for any other commercial purpose; provided, however, that the Developer may use any of the apartments for sales or display purposes prior to the sale thereof. The owner of each apartment may utilize the apartment solely in accordance with the foregoing provisions of this paragraph utilizing the established ways and means provided for ingress and egress thereto, and for such other purposes and in such manner as shall be permitted in these By-Laws and the Rules and Regulations.20

(b) The Owner of an apartment shall not use the same for any purpose which will injure the reputation of the Project. Such Owner shall not suffer anything to be done or kept in the apart-

ment beyond those customarily done or kept for uses set forth in Section 1 of this Article V or which will jeopardize the soundness of the buildings in the Project, or which will interfere with or unreasonably disturb the rights of other Owners, or which will obstruct any public halls or stairways of any such buildings, or which will increase the rate of fire insurance on such buildings or the contents thereof, or which will reduce the value of the Project.

(c) The Owner of an apartment shall not, without the prior written consent of the Board or the Managing Agent, display any sign or any other device in or upon any door, window, wall or other portion of the apartment, or otherwise so as to be visible from the exterior; provided, however that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of apartments in the Project.

(d) No waterbeds shall be permitted in any apartment. The manager or any member of the Board of Directors shall have the right to enter an apartment at any time to abate violations of these By-Laws or the House Rules without being deemed guilty of any trespass.

## SECTION 2. Maintenance of Project.

(a) Each Owner of an apartment shall, at the Owner's expense, keep the apartment and all appurtenances and equipment in good order, condition and repair and in a clean and sanitary condition and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his apartment. In addition to decorating and keeping his apartment in good repair, the Owner of the apartment shall be responsible for the maintenance, repair and replacement of any plumbing fixtures water heaters, heating or cooling equipment, lighting fixtures, refrigerators, dishwasher, garbage disposals and compactors, ranges or similar equipment that may be described in the Declaration as being in the apartment.

(b) Without limiting the generality of the foregoing, each Owner shall be responsible for the care and maintenance of any lanais which are included in his apartment or are limited common elements appurtenant thereto. An Owner may not, however paint or otherwise decorate his lanais or any portion of the limited common elements appurtenant to his apartment without the prior written approval of the same by the Board of Directors. It is intended that the exterior of all buildings and other structures

in the Project shall represent a uniform appearance, and to effect that end each owner hereby agrees that the Board may require the painting of each lanai or exterior wall or other part of the apartment or its appurtenant limited common elements visible from the common elements and regulate the type and color of the paint to be used. The Board is authorized to contract for the painting of all such areas and to make payment therefor out of the maintenance fund. No awnings, shades, jalousies or other device shall be erected or placed on the lanais or any portion of the apartment or limited common elements so as to be visible from any portion of the Project unless written permission shall have been obtained from the Board of Directors. No Apartment Owner may plant in any garden area any shrub, tree, bush or other thing, or construct or place anything therein, which would detract from the Project or constitute a nuisance to, or an unreasonable interference with the rights of, other Apartment Owners to use and enjoy their apartments and the common elements.

(c) All maintenance, repairs and replacements to the common or limited common elements, whether located inside or outside of the apartments, shall be made by the Board of Directors. The expense of the common elements shall be charged to all Apartment Owners as a common expense, unless the expense was necessitated by the negligence, misuse or neglect of an Apartment Owner, in which case such expense shall be charged to such Apartment Owner. The expense of the limited common elements shall be charged to the Owner of the apartment to which the limited common element is appurtenant.

### SECTION 3. Alteration of the Project.

(a) Additions, alterations or improvements to the common or limited common elements of the Project may be made only by or at the direction of the Board of Directors. No Apartment Owner may, except with the written permission of the Board of Directors, make any alteration, addition or improvement to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his apartment, except that such approval shall not be required for additions, alterations or improvements required by law.

(b) Whenever in the judgment of the Board of Directors the common or limited common elements shall require additions, alterations or improvements with a total cost of less than Ten Thousand Dollars (\$10,000.00), the Board of Directors may proceed with such additions, alterations or improvements and shall assess

all Owners for the cost thereof as a common expense. Any additions, alterations or improvements costing in excess of Ten Thousand Dollars (\$10,000.00) may be made by the Board of Directors only after obtaining approval of Owners of apartments to which are appurtenant not less than eighty percent (80%) of the common interests of the Project, except that such approval shall not be required for additions, alterations or improvements required by law. The expense of the common elements shall constitute part of the common expenses of the Project. The expense of the limited common elements shall be charged to the Owner of the apartment to which the limited common element is appurtenant.21

(c) Unless otherwise prohibited by the provisions of the Declaration or these By-Laws, an Apartment Owner may make additions, alterations or improvements to his apartment at his sole cost and expense.

(d) Except as otherwise provided in the Declaration or these By-Laws, any addition to, removal from or change in (such addition, removal or change hereinafter "alteration") any portion of the Project which would render any description of the Project in the Declaration, or any depiction thereof on the Condominium Map inaccurate or less than complete, may not be made or done by any Apartment Owner, group of Apartment Owners or the Board of Directors unless:

(i) Such alteration is undertaken and completed in accordance with plans and specifications including detailed drawings which, prior to the commencement of such alteration have been approved in writing by (w) the Land Owner, (x) the Lessee, (y) the Board, and (z) Owners of apartments to which are appurtenant eighty per cent (80%) of the common interests in the Project; and

(ii) Promptly upon completion of such alteration, the Board shall duly record (x) an amendment to the Declaration and the Condominium Map accurately describing and depicting the Project as changed by the alteration, and (y) if the alteration composes in whole or in part a structure, the erection of which requires a building permit, a certificate of a registered professional architect or engineer stating that the plans showing the alteration depict the alteration as approved by the officer of the County of Maul having jurisdiction over the issuance of building permits.

(e) In the event the alteration is in whole or in part to

an apartment and the Owner has requested such alteration, each and every provision of the foregoing paragraph shall apply except that:

(i) The approval of Owners of Apartments to which are appurtenant eighty percent (80%) of the common interest of the Project shall not be necessary for such part of the alteration as comprises an alteration to an apartment;

(ii) The Board of Directors shall give its written consent to the alteration of the apartment and shall execute the amendment to the Declaration and Condominium Map in respect thereof unless the Board delivers to the Apartment Owner a written statement detailing its objection to the proposed alteration. The Board shall make no objection to the proposal for the alteration of an apartment if such alteration has no effect on the integrity, use and enjoyment of the common elements or other apartments in the Project by the Owners of those apartments; and

(iii) The Owner of the apartment shall bear all costs of compliance with the requirements of (i) and (ii) attributable to alteration of the apartment.

(f) Notwithstanding anything to the contrary contained in this Article V or any other provision of these Bylaws, no consent of the Apartment Owners (including any consent otherwise required under Section 3(b) above) or the Land Owner or the Lessee (including any consent otherwise required under Section 3(d)(i) above), shall be required to any additions, alterations or improvements to any portion of the Project made by the Board pursuant to paragraph 16 of the Declaration, regardless of whether such additions, alterations or improvements would cost in excess of \$10,000.00 or render any description of the Project in the Declaration or depiction thereof on the Condominium Map inaccurate or less than complete; provided, however, that the Board shall comply with the provisions of Section 3(d) (ii) above.22

## ARTICLE VI COMMON EXPENSES, APARTMENT EXPENSES AND TAXES

SECTION 1. Common Expenses. The Owner of each apartment shall be liable for and pay a share of the common expenses in proportion to his interest in the common elements appurtenant to his apartment. Common expenses shall include all charges for

taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, 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 of upkeep, maintenance, management and operation actually incurred on or for the common elements, and the cost of all utility services, including water, electricity and gas, garbage disposal and any other similar services, unless separately metered in which case the amounts charged to each apartment shall be payable by the Owner of the apartment. The common expenses may also include such amounts as the Board of Directors may deem proper to make up any deficit in the common expenses for any prior year and a reserve fund for the operation and maintenance of the property, including, without limitation, anticipated needs for working capital of the Project, and for replacements, repairs and contingencies. 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. The expense of the limited common elements shall be charged to the Owner of the apartment to which the limited common element is appurtenant.

SECTION 2. Payment of Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses. The Board, on behalf of all owners, will maintain or cause to be maintained 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. All records and vouchers authorizing the payments 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. The Board will annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year, which statement may be certified by an independent certified public accountant. Each Owner, shall be liable for and pay his share, determined as aforesaid, of all common expenses and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be made by the Owner. The

Board 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 3. Taxes and Assessments. Each Owner of an apartment shall be obligated to have the real property taxes for his 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 assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire 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 for assessments may be 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 4 of this ARTICLE VI.

SECTION 4. 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. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies hereby or by law provided, the Board of Directors 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 at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Manager if the latter is so authorized in writing. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include, where permis-

sible under any law, a sum for reasonable attorney's fees in such amount as the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor, an appropriate satisfaction thereof.

(b) At any time within ninety (90) days after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) 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 of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the apartment of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the apartment against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and of Chapter 514A, Hawaii Revised Statutes, as amended, and (5) that a lien is claimed against said described apartment in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Upon recordation of a duly executed original or copy of such claim of lien with the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii, as the case may be, the Board shall have all remedies provided in Section 514A-90, Hawaii Revised Statutes, as amended. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be entitled to actual expenses and such fees, including attorney's fees, as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the person conducting the sale.

(c) For the purposes of this Section 4, 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 shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00). In the event any claims of liens 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 successor, and payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Board, acting by any two (2) members, shall execute and acknowledge (in the manner provided above), a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Land Court document number of the claim of lien or the liber and page where such lien is recorded in the said Bureau of Conveyances, 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 successor upon payment of the fee.

(d) If an Owner shall fail to pay any monthly assessment or special assessment when due, then such Owner shall pay a late fee for each such default or defaults. Such late fee shall, as determined by the Board of Directors from time to time, take the form of either a specified amount determined by the Board of Directors or interest at the rate of twelve percent (12%) per annum on all delinquent assessments from the date of such default until paid. Such late fees shall not be appealable under Article X, Section 2(c), pertaining to penalties.

(e) If an Owner shall fail to pay an assessment when due, the Board of Directors may, in its discretion, upon ten (10) days written notice to the Owner, declare due and owing the entire unpaid balance of such Owner's anticipated common expense assessments for the fiscal year in which the default occurs. the Board of Directors subsequently makes adjustments in the aggregate amount of common expense assessments for the relevant fiscal year causing either an increase or decrease in the monthly assessments owed by such Owner, that Owner shall pay the deficiency or receive a credit for the adjusted amount of the assessments within thirty (30) days after the date of transmittal of notice thereof.

(f) All late fees, expenses, costs, attorneys' fees, and penalties (except penalties for which an appeal to the Board of

Directors is pending or for which the appeal period under Article X, Section Z(c) has not yet expired) assessed against an Owner, shall constitute a lien on such Owner's apartment which may be foreclosed by action by the Board of Directors, acting on behalf of the Owners, in the like manner as a mortgage of real property and such Owner shall be liable for all costs and expenses, including attorneys' fees, thereby incurred. In any action by the Board of Directors to foreclose the lien of the Association, the Owner shall be required to pay a reasonable rental for the apartment and the Association shall be entitled to the appointment of a receiver to collect the same.

(g) All late fees, penalties (except penalties for which an appeal to the Board of Directors is pending or for which the appeal period under Article X, Section 2(c) has not yet expired), expenses, costs, and attorneys' fees assessed against an Owner, shall be promptly paid on demand to the Association by the Owner. The Board of Directors shall be authorized to adopt a policy whereby payments received from owners may be applied toward the indebtedness of such Owners to the Association in such order as the Board of Directors may specify. For example, the Board of Directors may adopt a policy whereby payments from Owners shall be applied in the following manner: first, toward the payment of expenses, costs, and attorneys' fees assessed against the Owner; second, toward the payment of late fees and penalties (subject to the aforementioned exceptions) assessed against the Owner; and third, the balance remaining, if any, toward the payment of common expense assessments. Such acceptance and application of payments shall not be construed as a waiver of any rights the Association shall have against such Owner for any and all outstanding amounts due and owing to the Association and the Board of Directors at its sole discretion may refuse acceptance of any payment or payments which may be insufficient to satisfy all amounts due and owing to the Association.<sup>23</sup>

Section 5. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such

breach, and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 6. Collection from Tenant and Rental Agent. If the Owner shall at any time rent or lease his 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 or in the payment of late fees, penalties (except penalties for which an appeal to the Board of Directors is pending or for which the appeal period under Article X, Section 2(c) has not yet expired), expenses, costs, or attorneys' fees assessed against such Owner, 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 or from any rental agent of such Owner that is in receipt of proceeds from the rental or lease of 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, late fees, penalties (subject to the aforementioned exceptions), expenses, costs, and attorneys' fees, if any, and any such payment of such rent to the Board by the lessee or rental agent 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 or rental agent 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 or rental agent as aforesaid, the lessee or rental agent 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; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure or if a mortgagee exercises any other rights it may have to collect and receive the rent.<sup>24</sup>

ARTICLE VII  
INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance. The Board

shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsement or such broader forms of protection as the Board shall determine, for an amount as nearly as practicable equal to the replacement cost without deduction for depreciation, covering the apartments and fixtures therein and the buildings, fixtures and building service equipment, but excluding any improvements made by an Owner which the Owner himself may insure and excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Association of Apartment Owners. Such Policy:

(a) Shall cover the common elements and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings, in accordance with the as-built condominium plans and specifications;

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

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

(d) Shall provide that the policy may not be canceled by the insurer except by giving to the Board and to the Owner and/or mortgagee of each apartment who shall have requested such notice of the insurer in writing addressed to the insurer at the Project, thirty (30) days' prior written notice of such cancellation;

(e) Shall contain a provision -waiving any right of the insurer to repair, rebuild or replace, if a decision is made

pursuant to Section 5 of this ARTICLE VII not to repair, restate, rebuild or restore the damage or destruction;

(f) Shall provide that any loss shall be adjusted with the insured and the Owner and the mortgagee of any apartment directly affected by the loss;

(g) Shall contain a standard mortgage clause which:

(i) Shall name the holder of any mortgage affecting any apartment whose name shall have been furnished to the Board and to the insurer;

(ii) Shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board or the Owner or tenant of any apartment;

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

(iv) shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause if in excess of Ten Thousand Dollars (\$10,000.00) shall be payable to a corporate trustee selected by the Board who shall be a bank or trust company or real estate management company doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000.00), herein referred to as the "Insurance Trustee" or "Trustee";

(v) Shall provide that any reference to a mortgagee in

the Policy shall include all mortgagees on any apartment, in order of preference;

(h) Shall provide flood insurance coverage under the provisions of the Federal Flood Disaster Protection Act of 1973, if the Project is located in an identified flood hazard area as designated by the Federal Department of Housing and Urban Development;

(i) Shall provide for payment of the proceeds to the Insurance Trustee if the proceeds are in excess of \$10,000.00;

(j) Shall contain an "Agreed Amount Endorsement" or 100% replacement value coverage with an "Inflation Guard Endorsement" and, if deemed necessary by the Board of Directors, a "Demolition Endorsement", an "Increased Cost of Construction Endorsement" a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalents and shall afford protection against at least the following:

(i) loss or damage by fire and other hazards covered by sprinkler leakage, debris removal cost of demolition, vandalism, malicious mischief, windstorm, and weather damage; and

(ii) in the event the condominium project contains a steam boiler, a broad form policy of repair and replacement boiler and machinery insurance in the amount of at least \$50,000 per accident per location; and

(iii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use; and

(k) Shall require the insurer at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Board shall provide this information to each Apartment Owner.

SECTION 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary to procure the required coverage, from other companies) a policy or policies

(herein called the "Policy") of Public Liability Insurance to insure the Board, the Developer, the Owner of the Land in the case of a leasehold condominium each Apartment Owner, and the Managing Agent and other employees of the Association of Apartment Owners against claims for personal injury, death and property damage arising out of the condition of the property or activities thereon or construction work under a Comprehensive General Liability form. Said insurance shall be for such limits as the Board may decide but not less than those reasonably required by the terms of any leases covering apartments from the Owner of the fee thereof. Such Policy:

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

(b) Shall provide that the policy may not be canceled by the insurer except by giving to the Board and to the Owner of each apartment and any mortgagee, who shall have requested such notice of the insurer in writing, thirty (30) days' prior written notice of such cancellation.

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

SECTION 4. Miscellaneous Insurance Provisions. The Board shall review at appropriate intervals in time the adequacy of its insurance program. At the request of any mortgagee of any apartment, the Board shall furnish to such mortgagee a copy of the Policy described in Section 1 of this Article and of any other Policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Board shall be available for inspection by an Apartment Owner (or purchaser holding a contract to purchase an interest in an apartment) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Owners of apartments to insure such apartments and the contents thereof for their own benefit at their own expense.

SECTION 5. Damage and Destruction. If a building is damaged

by fire or other casualty which is insured against and said damage is limited to a single apartment, the insurance proceeds shall be used by the Board or the Trustee for payment of the contractor retained by the Board to rebuild or repair such apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If the insurance proceeds are insufficient to pay all costs of repair, the remaining deficiency shall be paid from the maintenance fund. If the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on all the owners of apartments in proportion to their respective common interests. If such damage extends to two or more apartments or extends to any part of the limited common elements, if any, or to the common elements:

(a) If the Owners of the apartments do not within sixty (60) days after such casualty or if by such date the insurance loss has not been finally adjusted then within thirty (30) days thereafter, agree in writing in accordance with the provisions of the Declaration and this Section 5 that the building or any portion thereof need not be rebuilt or repaired, or if the Owners at an earlier date agree to rebuild immediately, THEN:

(i) The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all apartments so damaged, as well as common elements, in accordance with plans and specifications therefor, which will restore the same in conformity with the design immediately prior to the destruction, or

(ii) If reconstruction in accordance with said design is not permissible under the laws then in force, the Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all apartments so damaged, as well as common elements, in accordance with such modified plan as shall be approved by the Board, provided that in the event said modified plan eliminates any apartment and such apartment is not reconstructed, the Insurance Trustee shall pay to the Owner of said apartment the portion of said insurance proceeds allocable to said apartment (less the proportionate share of said apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the Contractor employed for such work in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance

proceeds are insufficient to pay all the costs of repairing and rebuilding all damaged apartments as well as the common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of apartments in proportion to their respective common interests. The special assessment shall be secured by the lien created under Section 4 of ARTICLE VI hereof.

If a decision is made in accordance with the Declaration, this section and Hawaii Revised Statutes, Chapter 514A, not to repair or rebuild all of any lesser number of damaged or destroyed apartments, insurance proceeds allocable to any apartment which is not to be rebuilt (hereinafter "eliminated apartments") (less cost of debris removal) shall be paid to the Owner and any mortgagee of the eliminated apartment. Remaining insurance proceeds shall be paid to the Insurance Trustee who shall apply such moneys to repair and rebuild any portion of the building that is to be reconstructed in accordance with this section. If a decision is made to eliminate an apartment, the common interests and other rights of remaining Apartment Owners in the Project shall be adjusted by amendment of the Declaration pursuant to Hawaii Revised Statutes, 514A-13(b) and Section 14 of the Declaration; provided, however, that the common interest of any owner shall not be altered without his consent. The Owner of any such eliminated apartment shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, in the event the Declaration is not amended so as to discharge the owners of eliminated apartments of all obligations to the Project and so as to equitably adjust the common interests appurtenant to those apartments not eliminated, pursuant to Hawaii Revised Statutes, 514A-92, the Owner of any eliminated apartment may convey his interest to the Board of Directors on behalf of all other Apartment Owners and thereby be discharged of all obligations to the Project. The Owner of any eliminated apartment may, in addition to his allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate.

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

(i) An architect or engineer (who may be an employee of the Board) shall be in charge of the work;

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

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record;

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

(v) The fees and expenses of the Trustee as determined by the Board and the Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee;

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

(c) Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners of the apartments (or to the mortgagee or lessor of an apartment if there be a mortgage or if the lessor is entitled by the lease to share in the proceeds) in proportion to their respective common interests.

(d) To the extent that any loss, damage or destruction to

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

SECTION 6. Disposition of Buildings. In the event the common elements of the Project suffer substantial damage, as provided for in section 514A-21(a) (2), Hawaii Revised Statutes, and if Apartment Owners holding seventy-five percent (75%) of the common interest of the Project shall agree in writing that the Project need not be rebuilt, the insurance proceeds shall be used to remove any remaining improvements on the Land included in the Project, and the balance, if any, shall be allocated among the Apartment Owners and their mortgagees, in accordance with the interest in the common elements appurtenant to each apartment.

ARTICLE VIII  
MORTGAGES

SECTION 1. Notice of Unpaid Common Expenses. The Board of Directors, whenever so requested in writing by a purchaser or mortgagee of an interest in an apartment, shall promptly report any then unpaid assessments for common expenses due from the Owner of the apartment involved.

SECTION 2. Notice of Default. The Board of Directors, when giving notice to an Apartment Owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such apartment or interest therein whose name and address has theretofore been furnished to the Board of Directors.

SECTION 3. Examination of Books. Each mortgagee of an apartment shall be permitted to examine the books of account of the Project at reasonable times on business days.

SECTION 4. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon an apartment and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage of such interests made for value, provided that after the foreclosure on any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such apartment if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Section 4 of ARTICLE VI hereof.

(b) No amendment to this Section 4 shall affect the rights of the holder of any such mortgage filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii prior to the filing of such amendment who does not join in the execution thereof.

#### ARTICLE IX CONDEMNATION

In the event of a taking in condemnation or by eminent domain of part or all of the Project, the proceeds of any award of compensation payable for or on account of the taking of any building or improvements on the Land shall be payable to a condemnation trustee ("Trustee") which shall be a bank, trust company or real estate management company designated by the Board doing business in Hawaii and having net assets of not less than Five Million Dollars (\$5,000,000.00).

In the event all or any of the apartments are taken and there is not a final judicial determination of the amount of condemnation proceeds allocable to each apartment so taken, the amount of condemnation proceeds allocable to each apartment (including the apartment's appurtenant interest in the common elements and any limited common elements but exclusive of such portion thereof as shall be allocable to the interests of such apartment in the Land) shall be determined by a real estate appraiser ("Appraiser") who is a member of the American Institute of Real Estate Appraisers, or any successor organization, and who shall have acted on behalf of the Apartment Owners in the condemnation proceedings, or if no such Appraiser acted on behalf of the Apartment Owners or if more than one (1) Appraiser acted on

behalf of the Apartment Owners, then an Appraiser with such qualifications shall be selected by the Board of Directors to determine the amount of condemnation proceeds allocable to each apartment.

In the event that the entire Project is taken, the Trustee shall pay to each Apartment Owner the portion of the condemnation proceeds determined by the Appraiser to be allocable to the Owner's apartment.

In the event of a partial taking of the Project in which (i) any apartment is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the apartment and to the Board of Directors, then such apartment shall be removed from the Project and the Trustee shall disburse to the owner and any mortgagee of such apartment in full satisfaction of the Owner's interest in the apartment the portion of the proceeds of such award allocable to said eliminated or removed apartment after deducting the proportionate share of said apartment in the cost of debris removal.

In the event of any partial taking of the Project the Board shall, subject to the provisions of the preceding sentence concerning removal of any apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of each apartment in the Project remaining after such taking. Such work shall be undertaken, and the disbursements therefor shall be made, in the manner prescribed in ARTICLE VII, Section 5(b). In the event the sums held by the Trustee are insufficient to pay the cost for such repair and restoration, the Board is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of the remaining apartments in proportion to their common interests. The special assessment shall be secured by the lien created under Section 4 of ARTICLE VI hereof.

In the event sums received as a result of a partial condemnation exceed the total of any amount payable to the Owner of a removed apartment and the amount of costs for repair and restora-

tion of the remaining buildings and improvements, such excess shall be divided among the Apartment Owners in accordance with their interest in the common elements.

ARTICLE X  
GENERAL PROVISIONS

SECTION 1. Rules and Regulations. The Board of Directors, upon giving notice to all Apartment Owners in the same manner as herein provided for notice of meeting of the Association and opportunity to be heard thereon, may adopt and amend such uniform rules and regulations (herein called "Rules and Regulations") as the Board may deem necessary for the operation and use of the common elements and limited common elements, not inconsistent with any provision of law, the Declaration or these By-Laws, and the 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 the Owner agrees to obey all such Rules and Regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees, and tenants of the Owner; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the apartments.

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

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

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

(c) To impose monetary penalties upon Owners, tenants, and

employees of an Owner, and any other persons using the property for any purpose whatsoever and, at its discretion, to establish a schedule of the penalties to be imposed. In the event that such a schedule is established, the Board of Directors may authorize the Managing Agent or resident manager, if any, to impose the aforementioned penalties in accordance with such schedule.

1. Appeal Procedure. The person penalized may appeal from the penalty imposed by the Board of Directors, the Managing Agent, or the resident manager, if any, as follows:

i. Notice of Appeal. By filing with the Secretary, within thirty (30) days after receiving notice of such penalty, a written notice of his or her appeal and the reasons therefor. The filing of a notice of appeal shall not halt the accrual of any ongoing penalties imposed for the violation which is the subject of the appeal. However, the Board of Directors may waive or rescind all or part of the aforesaid penalties at the time of the hearing of such appeal.

ii. Time for Hearing Appeal. All appeals shall be heard at a meeting of the Board of Directors within ninety (90) days after notice of appeal has been filed with the Secretary.

iii. Procedure. The cause of the penalty shall be reported in writing by the Board of Directors, the Managing Agent, or the resident manager, if any, at such meeting, with a statement of the facts on which the penalty was based, a copy of which shall be furnished to the appellant at least ten (10) days before the meeting, at which time a copy thereof shall also be filed with the Secretary. The appellant shall then present his or her defense in writing, to which the Board or its designee may reply orally. The appellant or any one Owner or other person on the appellant's behalf may then respond, and the Board or its designee may again speak in support of the penalty imposed. Thereafter, no further discussion, except among the Board itself, shall be allowed.

iv. Disposition of Appeal. The Board of Directors shall vote as to whether the penalty shall be affirmed. If a majority of those directors present vote in the affirmative, the penalty shall stand and shall be remitted by the appellant in full, within seven (7) days of the date that the appellant is notified of the decision of the Board of Directors. If less than a majority of those present vote in the affirmative, then the penalty shall thereby be rescinded.

(d) To recover any damages, expenses, costs, attorneys' fees, and penalties (except penalties for which an appeal to the Board of Directors is pending or for which the appeal period under Article X, Section 2(c) has not yet expired) assessed against an owner by the Association as the result of such Owner's violation of the Declaration, these By-Laws, or any rule or regulation adopted by the Board of Directors.<sup>25</sup>

SECTION 3. Right of Access. An Apartment Owner shall grant a right of access to his apartment to the Manager and/or the Managing Agent and/or any other person authorized by the Board of Directors, the Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition existing in his apartment and threatening another apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his apartment or elsewhere in the buildings, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the Owner is present at the time or not.

SECTION 4. Owners May Incorporate. All of the rights powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Owners. Said corporation shall be formed upon the written approval of a majority of the voting Owners. 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 said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

SECTION 5. Notices. All notices hereunder shall be mailed or delivered to the Board of Directors c/o the Managing Agent, or if there be no Managing Agent, to the office of the Board of Directors or to such other address as the Board of Directors 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 mailed or delivered to the building or to such other address as may have been designated by him from time

to time, in writing, to the Board of Directors. Any notices to mortgagees of apartments shall be sent by mail to their respective addresses, as designated by them from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

SECTION 6. 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 provision hereof.

SECTION 7. Gender. The use of any gender in these By-Laws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

SECTION 8. 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 9. Interpretation. The provisions of these By-Laws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

SECTION 10. Amendment. The provisions of these By-Laws may be amended by the vote or written consent of Apartment Owners owning at least sixty-five percent (65%) of the common interest in the common elements, and evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association of Apartment Owners, which amendment shall be effective upon filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii in the case of registered property or upon recordation in the Bureau of Conveyances of the State of Hawaii in the case of unregistered property.<sup>26</sup>

Any proposed By-Laws with the rationale for the proposal may be submitted by the board or directors or by a volunteer Apartment Owner's committee. If submitted by such committee, it shall be accompanied by a petition signed by not less than twenty-four per cent of the Apartment Owners as shown on the

Association's record of ownership. The proposed By-Laws, rational, and ballots for voting on any proposed By-Law shall be mailed by the Board of Directors to the Apartment Owners at the expense of the Association for vote or written consent without change within thirty days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed By-Laws shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. The committee shall be precluded from submitting a petition for a proposed By-Law that is substantially similar to that which has been previously mailed to the Apartment Owners within one year after the original petition was submitted to the Board. This section shall not preclude any Apartment Owner or voluntary committee from proposing any By-Law amendment at any annual association meeting.<sup>27</sup>

SECTION 11. Robert's Rules of Order. All meetings of the Association of Apartment Owners and the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order.<sup>28</sup>

SECTION 12. Examination of Minutes. The minutes of all meetings of the Board of Directors and the Association of Apartment Owners shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board.

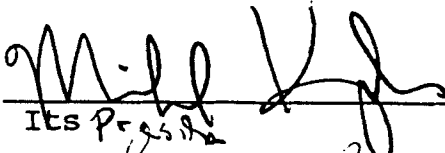
SECTION 13. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

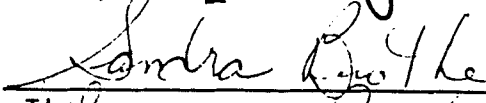

SECTION 14. Handicapped Occupants. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws, or any Rules or Regulations, and subject to reasonable administrative requirements as set forth in the administrative Rules and Regulations, handicapped occupants shall: (1) be permitted to make reasonable modifications to their apartments and/or the common elements, at their expense (including without limitation the cost of obtaining any bonds required by the Declaration or these Bylaws), if such modifications are necessary to enable them to use and enjoy their apartments and/or the common elements, as the case may be; and (2) be allowed reasonable exemptions from the Declaration, these Bylaws, and the Rules and Regulations, when necessary to enable them to use and enjoy their apartments and/or

the common elements.29

DATED: Maui, Hawaii, as of the 6th  
day of May, 1997.

THE SANDS OF KAHANA, INC.

By:   
Its President

By:   
Its  V.P.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

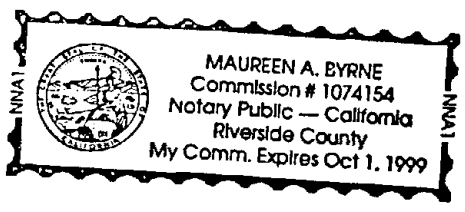
County of Riverside

On April 18, 1997 before me, Maureen A. Byrne, Notary Public  
Date Name and Title of Office (e.g., "Jane Doe, Notary Public")

personally appeared Sandra Booth  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Maureen A. Byrne  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Restated By-Laws of the Association of Apartment

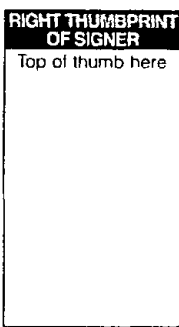
Document Date: Owners of the Sands of KAHANA Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

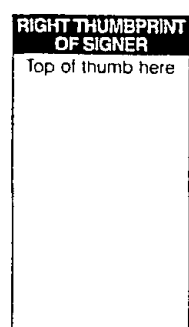
- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

STATE OF HAWAII )  
 )  
~~CITY AND~~ COUNTY OF MAUI ) SS:  
 )

On this 6TH day of MAY, 1997,  
before me personally appeared MICHAEL KAPLAN,  
to me personally known, who, being by me duly sworn, did say that  
he/~~she~~ is the PRESIDENT of THE SANDS OF KAHANA, INC.  
a Hawaii corporation; that said instrument was executed on behalf  
of the said corporation by authority of its Board of Directors; and  
the said PRESIDENT acknowledged that he/~~she~~  
executed said instrument as the free act and deed of the said  
corporation. Said corporation has no seal.

SHIRLEY JACKSON  
NOTARY PUBLIC  
STATE OF HAWAII

Shirley Jackson  
Notary Public, State of Hawaii

My commission expires: 8-1-99

## ENDNOTES

The following endnotes correspond to provisions in the Declaration of condominium Property Regime which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, the Federal Fair Housing Act (42 U.S.C. Sections 3601 et seq.), and Chapter 515, Hawaii Revised Statutes, and to integrate all amendments made to the Declaration of Condominium Property Regime. This Restated Declaration correctly sets forth without change the corresponding provisions of the original Declaration of Horizontal Property Regime and all prior amendments thereto. This Restatement was made solely for purposes of information and convenience. In the event of a conflict, the Restated Declaration of Condominium Property Regime shall be subordinate to the cited statutes.

1. This subsection was amended by that certain Amendment to the By-Laws of the Association of Apartment Owners of the Sands of Kahana, dated March 18, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-086977.

2. This subsection was amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

3. This portion of this section was added to conform to §514A- 82(b)(4), Hawaii Revised Statutes.

4. This section was amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

5. This portion of this section was amended by that certain Amendment of Bylaws of The Sands of Kahana, dated March 23, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-061935.

6. This section was amended by that certain Amendment of Bylaws of The Sands of Kahana, dated March 23, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-061935.

7. This portion of this section was added to conform to §514A- 82(b)8), Hawaii Revised Statutes.

8. This section was amended by that certain Amendment of Bylaws of The Sands of Kahana, dated March 23, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-061935. (Note: Said Amendment incorrectly referred to this section as Section 5 of Article III.)

9. This subsection was amended by that certain Amendment to the By-Laws of the Association of Apartment Owners of the Sands of Kahana, dated March 18, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-086977.

10. This portion of this section was added to conform to §514A-82(b)(9), Hawaii Revised Statutes.

11. This portion of this section was added to conform to §514A-82(b)(9), Hawaii Revised Statutes.

12. This portion of this section was added to conform to §514A-82(b) (10), Hawaii Revised Statutes.

13. This portion of this section was added to conform to §514A-82(b)(11), Hawaii Revised Statutes.

14. This portion of this section was added to conform to §514A-82(bU12), Hawaii Revised Statutes.

15. This portion of this section was added to conform to §514A-82(b)(5), Hawaii Revised Statutes.

16. This section was amended by that certain Amendment of By-Laws of The Sands of Kahana, dated March 23, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No.93-061935.

17. This portion of this section was added to conform to §514A-82(bU7), Hawaii Revised Statutes.

18. This portion of this section was added by that certain Amendment of By-Laws of The Sands of Kahana, dated March 23, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-061935.

19. This section was amended by that certain Amendment of Bylaws of The Sands of Kahana, dated March 23, 1993, recorded in the Bureau of Conveyances of the State or Hawaii as Document No.

93-061935.

20. This section was amended by that certain Amendment to the Bylaws of the Association of Apartment Owners of The Sands of Kahana, dated March 21, 1994, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-056991.

21. This subsection was amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

22. This subsection was added by that certain Amendment to Declaration of Horizontal Property Regime And Bylaws Of Association of Apartment Owners The Sands of Kahana Condominium Project, signed on September 15, 1983, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 17322, Page 680; and subsequently amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

23. These subsections were amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

24. This SECTION was amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17r 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

25. These subsections were added by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

26. This section was amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

27. This portion of this section was added to conform to S514A-82(b)(2), Hawaii Revised Statutes.

28. This section was amended by that certain Amendment of the Declaration of Horizontal Property Regime And Bylaws of The Sands of Kahana, dated December 17, 1984, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18359, Page 326.

29. This section was added to conform to the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et. seq.) and Chapter 515, Hawaii Revised Statutes, as amended, and Chapter 515, Hawaii Revised Statutes.