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BY-LAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF
LALEA AT HAWAII KAI - PHASE III

THIS DOCUMENT CONTAINS 60 PAGES

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NOT FOR REAL ESTATE TRANSACTIONS

The following By-Laws shall apply to the LALEA at Hawaii Kai - Phase III condominium project (herein sometimes called the "Project"), as described in and created by the Declaration of Condominium Property Regime of LALEA at Hawaii Kai - Phase III (hereinafter called the "Declaration") to be recorded in the Bureau of Conveyances of the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the Project and all other persons who shall at any time use the Project:

ARTICLE I

INTRODUCTORY PROVISION

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Declaration and in Chapter 514A, Hawaii Revised Statutes, as amended (hereinafter called the "Condominium Property Act"), except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in these By-Laws, shall be given the following meanings:

(A) "Apartment" as used herein means an apartment in the Project, within the meaning of that term as used in the Condominium Property Act, as designated and described in the Declaration.

(B) "Apartment conveyance" means an apartment deed conveying an apartment in the Project, together with the common interest appurtenant thereto, to an apartment owner.

(C) "Association" means the Association of Apartment Owners of the Project; provided, however, that in the event the Project is merged with a condominium project or projects located or to be located on lands adjacent to the Land of the Project, as part of the same incremental plan of development of the Project, in accordance with the Declaration of Merger referred to in Section S of the Declaration, all references to "Association" in these By-Laws shall mean and refer to the merged Association of Apartment Owners of the entire Project, as reconstituted by any such merger or mergers of the Project and the additional phases.

(D) "Association property" shall have the meaning ascribed thereto in Article II, Section 2(B).

(E) "Board" means the Board of Directors of the Association.

(F) "Capital expenditure" shall have the meaning ascribed thereto in Article VII, Section 1(g) below.

(G) "Cash flow plan" shall have the meaning ascribed thereto in Article VII, Section 1(g) below.

(H) "Common elements" means those elements designated in the Declaration as common elements, including limited common elements.

(I) "Common expenses" includes the expenses designated as common expenses in Section 1 of Article VII of these By-Laws and all other sums designated as common expenses under the Condominium Property Act or the Declaration.

(J) "Cumulative voting" shall have the meaning ascribed thereto in Article III, Section 2 below.

(K) "Declaration of Merger" means that certain Declaration of Merger of Condominium Phases recorded or to be recorded in the Bureau of Conveyances of the State of Hawaii concurrently herewith, as it may be amended from time to time.

(L) "Developer" means Castle & Cooke Homes Hawaii, Inc., a Hawaii corporation, its successors and assigns.

(M) "Emergency situation" shall have the meaning ascribed thereto in Article VII, Section 1(g) below.

(N) "Land" means the land designated and described in the Declaration.

(O) "Limited common elements" means those elements designated in the Declaration as limited common elements.

(P) "Major maintenance" shall have the meaning ascribed thereto in Article VII, Section 1(g) below.

(Q) "Majority of the owners" shall have the meaning ascribed thereto in Article II, Section 6 below.

(R) "Majority of the owners present at any meeting" shall have the meaning ascribed thereto in Article II, Section 6 below.

(S) "Managing Agent" means the managing agent of the Project.

(T) "Owner" or "apartment owner" means a person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto, to the extent of such ownership; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by lease recorded in the Bureau of Conveyances of the State of Hawaii, the lessee of an apartment or interest therein shall be deemed to be the owner of such apartment, and provided further that the purchaser of an apartment pursuant to an agreement of sale recorded as aforesaid shall have all the rights of an apartment owner, including the right to vote, provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the apartment" as that term is used in the Condominium Property Act.

(U) "Project" means and includes 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 with respect to which a Condominium Property Regime shall exist from time to time pursuant to the Declaration; provided, however, that in the event that the Project is merged with a condominium project or projects located or to be located on lands adjacent to the Land of the Project, as part of the same incremental plan of development of the Project, in accordance with the Declaration of Merger referred to in Section S of the Declaration, all references to the "Project" in these By-Laws shall mean and refer to the entire Project, as reconstituted by any such merger or mergers of the Project and the additional phases.

(V) "Replacement reserves" shall have the meaning ascribed thereto in Article VII, Section 1(g) below.

(W) "Rules and Regulations" refers to the Rules and Regulations or House Rules for the conduct of owners, occupants and guests of apartments in the Project adopted as hereinafter provided.

(X) "Yard Area" means each of the yard areas within the Project, designated on the Condominium Map as Yard Areas Y162 to Y164, inclusive, Y167, Y170, Y173 to Y177, inclusive, Y180 to Y182, inclusive, Y185, Y188, Y191 to Y194, inclusive, Y197, Y200, Y203 to Y206, inclusive, Y209, Y212, Y215 to Y217, Y220, Y223 and Y226.

(Y) "Sold and recorded" shall have the meaning ascribed thereto in Article II, Section 3.

Section 2. Gender. All pronouns used herein shall include the male, female and neuter genders and shall include the singular or plural numbers, as the case may be.

Section 3. Conflicts. These By-Laws are set forth to comply with the requirements of the Condominium Property Act. In case any of these By-Laws conflict with the provisions of the Condominium Property Act or the Declaration, the provisions of the Condominium Property Act or the Declaration, as the case may be, shall control.

Section 4. Application. All present and future owners, lessees, mortgagees, vendees under agreements of sale, tenants and occupants of apartments and their invitees, licensees, guests and employees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration, the Rules and Regulations, and the Declaration of Merger, as each may be amended from time to time. The acceptance of an apartment conveyance, mortgage, agreement of sale, or rental agreement of an apartment or the act of occupying an apartment, shall constitute an agreement that these By-Laws, the Declaration, the Rules and Regulations, and the Declaration of Merger, as they may be amended from time to time, are accepted, ratified and will be strictly complied with.

ARTICLE II

ASSOCIATION OF APARTMENT OWNERS

Section 1. Membership. All owners of apartments in the Project shall constitute the Association. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 2. Powers of the Association. The Association shall have all of the powers with respect to the operation and regulation of the Project conferred upon the Association by, or which may be conferred upon the association of apartment owners of a condominium project pursuant to the provisions of, the Condominium Property Act, including without limiting the generality of the foregoing:

(A) The election of a Board of Directors.

(B) The management, maintenance, acquisition, construction and care of the Association property. As used herein, the term "Association property" includes the common elements of the Project, property held by the Association, property commonly held by its members, property within the Project privately held by its members but which may be subject to a common maintenance assessment by the Association for such purposes as insurance, and property owned by any governmental agency or private or public utility and used for the benefit of the Association's members.

(C) The collection of common expenses and limited common expenses from the owners.

(D) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(E) The establishment of such restrictions and requirements not inconsistent with the Declaration, the Condominium Property Act or these By-Laws regarding the use and maintenance of the apartments and the use of the common elements.

(F) The amendment of these By-Laws in accordance with the Declaration, Section 11 of Article IX hereof and the Condominium Property Act.

(G) Any and all powers not inconsistent with any law or the Declaration, which are reasonably incidental to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration, or are reasonably incidental to the exercise of the Association's powers as set forth in the Declaration or herein.

Nothing in this Section 2 shall prohibit the delegation by the Association of any of its powers in accordance with these By-Laws, as amended from time to time. Notwithstanding anything to the contrary provided herein, until the

Board of Directors of the Association is elected at the first annual meeting of the Association, the Developer will have the right to exercise all of the powers of the Association and the Board of Directors and officers of the Association, including voting. Thereafter, the Developer, as the owner of any unsold Apartments, shall be entitled to vote the interest of each such Apartment.

Section 3. Meetings. The first meeting of the Association shall be held upon the call of the Developer as soon as practicable after the recordation of the Declaration and these By-Laws in the Bureau of Conveyances of the State of Hawaii, but in any event not later than one hundred eighty (180) days after recordation of the first apartment conveyance, if forty percent (40%) or more of the apartments in the Project have been sold and recorded. If forty percent (40%) or more of the apartments in the Project have not been sold and recorded at the end of one (1) year, an annual meeting shall be called, provided at least ten percent (10%) of the owners so request. The term "sold and recorded" shall mean and refer to the sale of apartments in the Project, and the recordation of apartment conveyances transferring interests in the apartments from the Developer to parties not signatory to the Declaration. Thereafter, annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association as selected by the Board of Directors, on such date as the Board of Directors may designate, or if the Board of Directors shall fail to designate such date by the forty-fifth (45th) day following the close of said fiscal year, then on the third Tuesday in the third calendar month following the close of said fiscal year. Each annual meeting shall be a general meeting, and at such meeting any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration or these By-Laws. Special meetings of the Association may be called at any time by the President or upon the call of any two (2) directors or upon the request of the owners of twenty-five percent (25%) of the common interests. At any special meeting only such business shall be transacted as shall have been indicated by a specific or general description in the notice of such meeting. All meetings of the Association shall be held at the address of the Project or such other suitable place within the State of Hawaii as may be designated by the Board of Directors.

Section 4. Special Meeting Upon Merger. Notwithstanding anything to the contrary contained in these By-Laws, in the event that the Project is merged with an

additional phase or phases in accordance with the Declaration of Merger referred to in Section S of the Declaration, a special meeting of the Association shall be called and held within sixty (60) days following the date of any such merger. At such meeting, a new Board of Directors for the Association, as reconstituted by any such merger, shall be elected to replace the existing Board.

Section 5. Notice of Meetings. Any notices permitted or required to be given herein must be in writing and may be delivered either personally or by mail. The notice of every meeting of the Association shall state whether it is an annual or special meeting, the authority for the call of the meeting, and shall contain at least the date, time and place of the meeting, the items on the agenda for the meeting and a standard proxy form authorized by the Association, if any. Notices of all Association meetings, whether annual or special, shall be given at least fourteen (14) days before the date of the meeting. If delivery is made by mail, the notice shall be deemed to have been given twenty-four (24) hours after a copy of it has been deposited in the United States mail, postage prepaid, addressed to the person to whom the notice is to be given at the address given by such person to the Board of Directors from time to time, in writing, or to the apartment which such person owns if no address has been given to the Board of Directors. Upon written request for notice delivered to the Board of Directors, the holder of any duly recorded mortgage against any apartment shall promptly be furnished a copy of any and all notices permitted or required herein to be made to the owner or owners whose apartment is subject to such mortgage and which notices are specifically requested by the holder of such mortgage. Said request for notice need not be renewed and shall entitle the holder of such mortgage requesting such notice to receive all notices sent to the owner or owners whose apartment is subject to said mortgage from and after the date of said request until said request is withdrawn or the mortgage is discharged of record. If notice is given pursuant to the provisions of this Section, the failure of any apartment owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of all owners, in person or by proxy, at any meeting shall render the same a valid meeting notwithstanding that notice thereof was not given or was improper, unless any owner shall at the opening of such meeting object to the holding of such meeting because of the failure to comply with the provisions of this Section.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of the owners shall constitute a quorum, and the acts of a majority of the owners present at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of the owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration, or, in the event of an ownership merger of the Project with an additional phase or phases, as set forth in the Certificate of Ownership Merger, as provided in the Declaration of Merger referred to in Section S of the Declaration. The term "majority of the owners present at any meeting" shall mean owners of apartments to which are appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to apartments owned by those present at the meeting. Any other specified percentage of the owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. All owners shall be members of the Association and shall be entitled to vote at meetings thereof. Voting shall be on a percentage basis with the percentage of the total vote to which each apartment is entitled being the same as the percentage of the common interests assigned to such apartment in the Declaration, or, in the event of an ownership merger of the Project with an additional phase or phases, as set forth in the Certificate of Ownership Merger, as provided in the Declaration of Merger referred to in Section S of the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. A personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The purchaser of an apartment under any agreement of sale recorded in said Bureau of Conveyances shall have all the rights of an owner, including the right to vote, unless the seller under such agreement of sale retains the right to vote pursuant to Section 514A-83 of the Condominium Property Act. The vote for any apartment owned of record by two or more persons may be exercised either collectively by all co-owners, or individually by any one of them present at any meeting in the absence of

protest by the other co-owner or co-owners. In no event, however, shall the percentage of vote for any apartment be fractionalized.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing. A proxy, to be valid, must: (a) be delivered to the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (b) contain at least the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, and the date that the proxy is given; (c) contain boxes wherein the owner has indicated that the proxy is given: (i) for quorum purposes only; (ii) to the individual whose name is printed on a line next to this box; (iii) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Board; or (iv) to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. No officer of the Board of Directors shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising the officer's rights as an apartment owner under Section 514A-82(b)(4) of the Condominium Property Act. Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment. 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.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any

business may be transacted which might have been transacted by a quorum at the meeting as originally called.

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

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

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

Section 12. Financial Statements, Minutes of Meetings, Financial Records, Proxies and Ballots. The Association's most current financial statement shall be available to any owner at no cost or on twenty-four hour loan, at a convenient location designated by the Board of Directors. The minutes of meetings of the Association shall be approved at the next succeeding meeting. The minutes of all meetings of the Association shall be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting. The minutes of meetings of the Association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the Board of Directors. Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by apartment owners at convenient hours at a place designated by the Board of Directors, provided that (a) the Board of Directors may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested

in good faith for the protection of the interests of the Association or its members or both, and (b) the owners pay for administrative costs in excess of eight (8) hours per year. Copies of these financial records shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty (30) days following any Association meeting, provided that (a) the Board of Directors may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both, and (b) the owners pay for administrative costs in excess of eight (8) hours per year. Proxies and ballots may be destroyed following the thirty (30) day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

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

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of five (5) directors; provided, however, that if the Project is merged with an additional phase or phases pursuant to the terms of the Declaration of Merger referred to in Section S of the Declaration, upon such merger, the Board of Directors shall consist of nine (9) directors unless not less than sixty-five percent (65%) of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of

directors. Each of the directors shall be the owner or co-owner of record of an apartment or the purchaser of an apartment under an agreement of sale, or an officer of a 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 such purpose. There shall not be more than one representative on the Board of Directors from any one apartment. No resident manager or employee of the Managing Agent shall serve on the Board of Directors.

Section 2. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and each special meeting called for that purpose. Directors shall hold office for a period not to exceed two (2) years and until their respective successors have been elected, subject to removal as herein provided. Directors shall be elected at each annual meeting to fill the vacancy in the office of director occurring as of the time of such meeting. The term "cumulative voting" as used herein means that each owner may cast for any one or more nominees to the Board a vote equivalent to the vote which such owner is entitled to multiplied by the number of directors to be elected, and 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 3. Vacancies. Any vacancies in the Board of Directors other than a vacancy caused by the natural expiration of the term of a director or the removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall serve until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his ceasing to be the owner or co-owner of an apartment or the purchaser of an apartment under an agreement of sale or the officer of a corporate owner of an apartment or a partner in a general partnership or a general partner in a limited partnership which owns an apartment or has purchased an apartment under an agreement of sale, shall cause his office to become vacant.

Section 4. Removal of Directors. At any annual or special meeting of the Association duly called, any one

or more of the directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in these By-Laws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If removal and replacement is to occur at a special Association meeting, the call for the meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership; provided that if the Secretary or the Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-Laws. Except as otherwise provided in this Section 4, the meeting for the removal and replacement of directors shall be scheduled, noticed and conducted in accordance with these By-Laws. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

Any director who shall miss three (3) consecutive meetings of the Board may be removed by vote of a majority of the remaining directors, even though they may constitute less than a quorum; provided, however, that this right of removal shall be without prejudice to the apartment owners' right to remove directors as provided in this Section 4. Upon removal of a director by the remaining directors of the Board, the President shall schedule a special Association meeting to elect a replacement director within ninety (90) days from the date of the former director's removal. If the President fails to schedule a special Association meeting within said 90-day period, the call for such meeting shall be made by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership, as hereinabove provided in this Section 4. The replacement of the director removed by the Board shall be in accordance with all applicable requirements and procedures in these By-Laws for the replacement of directors including, but not limited to, any provisions relating to cumulative voting. Any director removed by the Board shall not be eligible for reelection to the Board for a period of one (1) year after such director's removal.

Section 5. Organizational Meetings. The first meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year. In the event that the Project is merged with an additional phase or phases as provided in the Declaration of Merger referred to in Section 5 of the Declaration, the first meeting of the Board of Directors of the Association as reconstituted by any such merger, shall be held at the place of and immediately following the special meeting of the Association called and held pursuant to Section 4 of Article II of these By-Laws, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting, the new Board shall elect the officers of the Association for the ensuing year or portion thereof.

Section 6. Regular Meetings. The Board of Directors shall meet at least once a year. 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 directors, but at least one such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each director in a reasonable manner at least fourteen (14) days, if practicable, prior to the date of the meeting.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least three (3) days' notice to each director, given personally or by telephone, telegraph or facsimile transmission, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

Section 8. Conduct of Meetings. All meetings of the Board of Directors (whether organizational, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion, other

than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. Notices; Waiver of Notice. Notice of all Board meetings and other notices to the directors shall be given to each director by the Secretary or the person or persons calling the meeting. Whenever practicable, notice of all Board meetings shall be posted by the resident manager or an employee of the Managing Agent or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors. Before or at any meeting of the Board of Directors, any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

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

Section 11. Powers and Duties of the Board. 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 or things set forth in the Condominium Property Act, the Declaration and these By-Laws to be done by the Board of Directors, except as otherwise expressly prohibited.

Section 12. Reconstitution of Board Upon Merger. Notwithstanding anything to the contrary contained in these By-Laws, in the event that the Project is merged with an additional phase or phases as provided in the Declaration of Merger referred to in Section S of the Declaration, a new Board of Directors of the Association as reconstituted by such merger, shall be elected to replace the existing Board, at the meeting called and held pursuant to Section 4 of Article II of these By-Laws. The Board to be elected shall be elected by the members of the Association as reconstituted by such merger in the manner provided in Section 2 of this Article III.

Section 13. Fidelity Bonds. The Board of Directors shall obtain or cause to be obtained fidelity bonds covering the Managing Agent and all directors, officers, trustees, employees and volunteers responsible for handling funds belonging to or administered by the Association, naming the Association as the insured and providing coverage in such amounts as the Board deems adequate, but in no event in any amount less than any minimum amount required under the Condominium Property Act. The premiums on such bonds shall constitute a common expense and every such bond shall:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board, the first mortgagees of record with respect to any apartment and every other person in interest who shall have requested such notice; and

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

Section 14. Conflicts of Interest. A director shall not cast any proxy vote at any Board meeting, nor shall a director vote at any Board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue 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. A majority of the directors (excluding the director or directors alleged to be involved in a

conflict of interest) shall determine the existence or nonexistence of such a conflict.

Section 15. Minutes of Meetings. The minutes of the meetings of the Board of Directors shall: (a) be approved no later than the second succeeding meeting; (b) be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session; (c) be available for examination by the apartment owners at no cost or on twenty-four (24) hour loan, at convenient hours at a convenient location designated by the Board of Directors; and (d) shall include the recorded vote of each Board member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

Section 16. Action by Directors Without Meeting. Any action required or permitted to be taken at any meeting of the directors or of a committee of the directors may be taken without a meeting if all of the directors or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the directors' meetings or committee meetings as the case may be and shall have the same effect as a unanimous vote.

Section 17. Directors' Telephone Meetings. Subject to the notice requirements contained in these By-Laws, members of the Board of Directors or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

Section 18. Proxies. No member of the Board who uses Association funds to solicit proxies shall cast any of the 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 (30) days prior to its solicitation of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any apartment owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all apartment owners either: (a) a proxy form containing either the names of all apartment owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (b) a proxy form containing no names, but accompanied by a list of names of all apartment owners who have requested the use of Association funds for soliciting proxies and their statements. The statement shall not exceed one hundred (100) words and shall indicate the apartment owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

Section 19. Duty of Directors. Each member of the Board of Directors shall owe to the Association a fiduciary duty in the performance of the Board member's responsibilities.

Section 20. Expenditure of Association Funds.

(a) Members of the Board of Directors shall not expend Association funds for their travel, director's fees, and per diem, unless the owners are informed of the expenditures and a majority of the owners approves of these expenses.

(b) Members of the Board of Directors may expend Association funds, which shall not be deemed to be compensation to the Board members, to educate and train themselves in subject areas directly related to their duties and responsibilities as Board members; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii, all other travel expenses incurred under this subsection shall be subject to the requirements of the foregoing paragraph (a) of this Section 20.

ARTICLE IV

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President shall, but no other officers need be, members of the Board. Except as specifically authorized by the Association at an annual or special meeting, no officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer. An owner shall not act as both an officer of the Association and an employee of the Managing Agent.

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

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

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

Section 5. Vice President. The Vice President shall perform all of the duties and exercise all of the powers and rights of the President provided by these By-Laws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, maintain and keep the minute book wherein resolutions shall be recorded, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary and all other duties assigned by the Board.

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

ARTICLE V

ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the Project and have such powers and duties as may be necessary or proper therefor including without limitation the following:

(a) Supervision of its immediate management and operation;

(b) Operation, care, upkeep, maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;

(c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements;

(d) Provision at each apartment of all water, electricity, cable television, and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;

(e) Designation, employment, supervision and removal of such personnel as may be necessary for the

operation, repair and maintenance of the common elements and the Project, including without limitation, a resident manager;

(f) Making contracts and incurring liabilities in connection with the exercise of any of the powers and duties of the Board;

(g) Purchasing or providing or causing to be provided all other materials, supplies, furniture, goods and services required by these By-Laws, or by law, or which the Board, in its discretion, deems necessary or appropriate for the proper operation and maintenance of the Project, or which are used in common or jointly by the common elements and apartments, in each case to the extent such goods and services shall not be otherwise provided;

(h) Payment of all common expenses and limited common expenses which the Association is required to pay for pursuant to the Declaration, these By-Laws, or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project or for the enforcement of these By-Laws, provided that if any such payment is 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;

(i) Opening of bank accounts on behalf of the Association and designating the signatories thereof;

(j) Delegation of its powers and duties to committees, agents, officers, representatives and employees;

(k) From time to time to adopt and/or amend the Rules and Regulations which govern the details of the operation and use of the Project; provided, however, that no such Rules and Regulations shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for such purpose; provided, further, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving Rules and Regulations adopted by the Board of Directors; provided further, however, that the initial Rules and Regulations may be adopted by the Developer;

(l) Within sixty (60) days prior to the beginning of each fiscal year, to cause to be prepared and

to approve a budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintenance and operating expenses, the wages of the resident manager, if any, the cost of leasing the resident manager's apartment, if any, and all other charges and outgoings of any description for which the Association or its property may be assessed or become liable, plus the reserves established by these By-Laws and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any. In addition, the Board of Directors shall prepare and approve a schedule of monthly assessments against each apartment owner for his proportionate share of such estimated cost of maintaining and operating the Project for such ensuing year;

(m) Levy and collection of all monthly and special assessments of the common expenses, all assessments of limited common expenses and other charges payable by the apartment owners;

(n) Purchase and maintain in effect of all policies of casualty and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration, these By-Laws or the Board;

(o) Maintain custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

(p) Keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred, and keeping of monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses and limited common expenses. All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board of Directors. The Managing Agent may dispose of records which are more than five (5) years old without liability if the Managing Agent first provides the Board of Directors with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board of Directors within

sixty (60) days, which notice shall include an itemized list of the records which the Managing Agent intends to dispose of. No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of the Managing Agent or the Association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of the Managing Agent or the Association. The Board or the Managing Agent shall not transfer by telephone Association funds between accounts, including but not limited to the general operating account and the replacement reserves account;

(q) Notify all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such apartment;

(r) Make additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the provisions of the Declaration or the Condominium Property Act after damage or destruction by fire or other casualty or as a result of condemnation;

(s) Procure legal and accounting services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of the Declaration, these By-Laws and any other material documents affecting the Project;

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

(u) Maintain and repair of any apartment if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements, the limited common elements or any other portion of the buildings and if the owner or owners of said apartment shall have failed or refused to perform said maintenance or repair within a reasonable time in the circumstances after written notice of the necessity of the same shall have been delivered by the Board to said owner or owners, provided that if the

owner or owners of an apartment have failed or refused to perform the same, the Board shall levy a special assessment against such apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(v) From time to time to enforce, modify and make agreements with respect to any lease or tenancy of any portions of the common elements on behalf of the apartment owners;

(w) Provided it obtains the prior approval of owners having not less than seventy-five percent (75%) of the common interests, purchase any apartment of the Project from the owner thereof or at foreclosure or other judicial sale, on behalf and in the name of the Association or its nominee, corporate or otherwise, and thereafter sell, lease, mortgage, vote the common interests appurtenant to and otherwise deal with such apartment; provided, however, that the Association's employees shall not engage in selling or renting apartments in the Project except Association-owned units, unless such activity is approved by not less than sixty-five percent (65%) of the common interests;

(x) Enforce the provisions of the Declaration, these By-Laws and the Rules and Regulations;

(y) Provided it obtains the prior approval of owners having not less than seventy-five percent (75%) of the common interests, change the use of the common elements;

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

(bb) To lease or otherwise use for the benefit of the Association those common elements not falling within subsection (aa) above, upon obtaining (1) the approval of the owners of seventy-five percent (75%) of the common interests, including all directly affected owners

and all owners of apartments to which such common elements are appurtenant in the case of a limited common element, and (2) approval of all mortgagees of record on apartments with respect to which owner approval is required by (1) above, if such lease or use would be in derogation of the interest of such mortgagees;

(cc) When personalty in or on the common elements has been abandoned, sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board of Directors complies with the following: (1) The Board of Directors notifies the apartment owner in writing of (i) the identity and location of the personalty, and (ii) the Board of Directors' intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested, to the apartment owner's address as shown by the records of the Association or to an address designated by the apartment owner for the purpose of notification or, if neither of these is available, to the apartment owner's last known address, if any; or (2) If the identity or address of the apartment owner is unknown, the Board of Directors shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located. The proceeds of any sale or disposition of personalty under this section shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the apartment owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association; and

(dd) On behalf of the Association, lease for the benefit of the Association those boat parking apartments, if any, owned on behalf and in the name of the Association or its nominee.

Nothing herein contained shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the owners, or any of them, or the Association.

Notwithstanding anything to the contrary contained herein, the Board shall have no power to impair the use and enjoyment of an apartment or the limited common

elements appurtenant thereto in a manner inconsistent with the Declaration or these By-Laws.

Section 2. Managing Agent. Except as otherwise provided in the Declaration with respect to the initial Managing Agent, the Board of Directors (on behalf of the Association) shall at all times employ a responsible corporation authorized to do business in the State of Hawaii, registered with the Real Estate Commission of the State of Hawaii pursuant to the Condominium Property Act, as Managing Agent to manage the operation of the Project, subject at all times to direction by the Board, with all the administrative functions and duties set forth specifically in the preceding Section 1 and in the Declaration and such other powers and duties and at such compensation as the Board may establish. In addition to the required qualifications set forth above and in the Declaration, any such Managing Agent employed by the Board shall meet the following qualifications at the time of employment: (a) such Managing Agent shall be licensed as a real estate broker in compliance with Chapter 467 of the Hawaii Revised Statutes and the rules of the Real Estate Commission or be a corporation authorized to do business under article 8 of Chapter 412 of the Hawaii Revised Statutes, and (b) such Managing Agent shall have secured a fidelity bond in a minimum amount equal to \$500.00 multiplied by the aggregate number of apartments of the association of apartment owners managed by the Managing Agent; provided that the minimum amount of bond required hereunder shall not be less than \$20,000.00 nor greater than \$100,000.00, or such higher minimum amount as may be required by the Condominium Property Act, conditioned upon the faithful performance of all of its obligations under its property management contract with the Board on behalf of the Association for the full term thereof. Every such property management contract between the Board on behalf of the Association and the Managing Agent (a) shall provide (i) that the Managing Agent shall not contract for any expenditure of any funds of the Association in excess of \$1,000.00 without the express approval of the Board (except in cases of emergency requiring prompt action to avoid further loss or involving manifest danger to life or property) and without having solicited whenever possible in advance not less than three (3) written bids for the expenditure, detailed and accurate written records of which shall be kept by the Managing Agent for the Board in accordance with paragraph (p) of Section 1 above, (ii) that the Managing Agent shall not commingle any Association funds with its own funds, (iii) that in the event the contract is amended, renewed or extended, the fidelity bond mentioned above shall also be

amended, if necessary, to cover such amendment, renewal or extension, and (iv) that the contract may be terminated by the Board, at its option with or without cause on no more than sixty (60) days' written notice and without any further liability thereunder (other than for any indebtedness to or unreimbursed advances made by the Managing Agent on behalf of the Association or other liabilities or claims, which are in existence or which shall have accrued or arisen prior to such termination) and without any obligation to pay any termination fee therefor; and (b) shall contain such other terms and conditions as the Board shall determine to be in the best interests of the Association. The Managing Agent or the resident manager, if any, shall not solicit, for use by the Managing Agent or the resident manager, if any, any proxies from any apartment owner, nor shall the Managing Agent or the resident manager, if any, cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two (2) or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements, or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such action, suits and proceedings without prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two (2) or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

Section 5. Record of Ownership.

(a) Every apartment owner shall promptly cause to be duly recorded the apartment conveyance, agreement of sale or other conveyance to him of such apartment or other evidence of his title thereto and shall file such document with and present such other evidence of his title to the Board of Directors through the Managing Agent and

shall also file a copy of any mortgage affecting his interest in such apartment and the note secured thereby and provide such other information in connection therewith as provided in Article VIII, Section 1 hereof.

(b) The Managing Agent or the Board shall keep an accurate and current list of all members of the Association and their current addresses, the names and addresses of each vendee under an agreement of sale covering an apartment providing that the vendee thereunder shall be deemed to be the owner of the apartment, and the names and addresses of all lessees or sublessees of apartments. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association as provided in the Declaration, these By-Laws or the Rules and Regulations or, in any case, to any member who furnishes to the Managing Agent or the Board, a duly executed and acknowledged affidavit stating that the list (i) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters, and (ii) shall not be used by such owner or furnished to anyone else for any other purpose. The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by apartment owners; provided that the Board of Directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations. Every owner shall pay to the Association or the Managing Agent on demand a reasonable fee or service charge for the registration on the records of the Association of any change of ownership of an apartment.

Section 6. Availability of Project Documents.

An accurate copy of the Declaration, these By-Laws, the Rules and Regulations, a sample original apartment conveyance, and all public reports on the Project issued by the Real Estate Commission of the State of Hawaii and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of those documents to apartment owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

Section 7. Copies of Documents. The Association at its expense shall provide all Board members with a current copy of the Declaration, By-Laws, Rules and Regulations, and, annually, a copy of the Condominium Property Act.

Section 8. Registration, etc. The Association shall comply with the requirements of Section 514A-95.1 of the Condominium Property Act.

Section 9. Audits, etc.

(a) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant. Any holder of a first mortgage on any apartment or any interest therein may request and the Association shall provide said mortgagee with a copy of any such annual financial statement within ninety (90) days following the end of any fiscal year of the Association, upon payment by the mortgagee of a fee equal to the cost of reproduction and postage for mailing of such statement.

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

- (1) An unaudited year end financial statement for the fiscal year to each apartment owner at least thirty (30) days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's

fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

ARTICLE VI

MAINTENANCE AND USE OF PROJECT

Section 1. Maintenance and Repair of Apartments.

Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all doors, sliding glass doors (if any), windows, window fixtures, and all internal installations within the apartment such as water, electricity, gas (if any), telephone, sanitation, lights, and all other fixtures and accessories belonging to such apartment, if any, and the interior decorated or finished surfaces of all walls, partitions, floors, ceilings and roofs of such apartment, if any, with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent.

In addition, each apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep the Yard Area, if any, appurtenant to and reserved for the exclusive use of such owner's apartment, in good order and condition, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work, and in case of such owner's failure after reasonable notice to keep the Yard Area, if any, as aforesaid, the Association (through the Board of Directors or the Managing Agent) shall have the right (but not the obligation) to perform any such work and the cost thereof shall be charged to such apartment owner as a special assessment constituting a lien against his interest in his apartment which may be foreclosed by the Board or Managing Agent in the same manner as provided in the Condominium Property Act for unpaid common expenses.

Section 2. Maintenance and Repair of Common Elements. Except as hereinabove expressly provided in Section 1 to the contrary, all maintenance, repairs and replacements to the common elements, whether located inside or outside of the apartments, shall be made by the Board

and be charged to all the owners as a common expense or a limited common expense; provided, however, that any such maintenance, repair or replacement necessitated by the negligence, misuse or neglect of an apartment owner or occupant or any person under either of them, shall be charged to such apartment owner or the apartment owner of the apartment of such occupant, as a special assessment constituting a lien against his interest in his apartment which may be foreclosed by the Board or Managing Agent in the same manner as provided in the Condominium Property Act for unpaid common expenses. Without limitation of the generality of the foregoing, every apartment owner shall reimburse the Association promptly on demand for all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or any occupant of his apartment or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

Section 3. Use of Project

(a) All of the apartments in the Project shall be used only for such purposes stated in the Declaration.

(b) All common elements of the Project shall be used only for their respective purposes as designed.

(c) No apartment owner or occupant shall place, store or maintain in the roadways, walkways, grounds or other common elements of similar nature (other than the Yard Areas) any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

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

(e) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the limited common elements appurtenant thereto or of the Project.

(f) No apartment owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any exterior additions or alterations to the apartments, limited common elements or any common elements of the Project, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect if so required by the Board, and approved by the Board, and in accordance with all provisions of the Declaration and apartment conveyances; provided, however, that lanais, patios, paved surfaces or wood decks may be installed within the Yard Areas with the written approval of the Board and shall not require an amendment to the Declaration or filing of a complete set of floor plans of the Project as so altered.

(g) No garments, rugs or other objects shall be hung from the windows or facades of the Project.

(h) No apartment owner or occupant shall permit any person who is residing or visiting with him to loiter or play in any common areas of the Project which the Board may designate as a nonplay or hazardous area.

(i) [RESERVED].

(j) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna, machines, or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of any building in the Project or protruding through the walls, windows or roofs thereof; provided, however, that an apartment owner or occupant may install air-conditioning units in accordance with (i) plans and specifications prepared by the Project architect, Design Partners Incorporated (for which Board approval shall not be required) or (ii) plans and specifications prepared by a licensed architect (if so required by the Board) that are submitted to and approved by the Board, all in accordance with all provisions of the Declaration. Condensate from air conditioning units installed in second floor apartments should be drained via an exterior mounted tube, painted the same color(s) as the exterior of the building in which the air conditioning unit is located, which may terminate at wall/roof intersections. All tubing terminating at the ground level and discharging condensate toward a Yard Area or common area landscaping shall extend down to the finished grade and shall extend out twelve (12) inches from the building. All tubing terminating at the ground level and discharging condensate toward a concrete area shall

terminate one (1) inch below the finished siding of the building.

(k) Nothing shall be allowed, done or kept in any apartment or common element (including the garages, Yard Areas and other limited common elements) of the Project which would overload or impair the floors, walls or roofs thereof, or cause the cancellation or invalidation of any insurance thereon maintained by or for the Association, nor shall any noxious or offensive activity or nuisance be made or suffered therein or thereon.

(l) Window coverings shall be white, off-white, beige or of neutral color.

(m) No highly reflective finish, other than glass (which, however, may not be tinted or mirrored), shall be used on the exterior of any building in the Project; provided, however, that a gray film tint without visible purple tinge (as approved by the Board) may be installed by an apartment owner on the glass located along the perimeter of his apartment.

(n) No apartment owner may lease or rent his apartment for a period of less than thirty (30) days.

(o) Except as otherwise permitted by the Declaration or these By-Laws, no alteration or addition to an apartment nor any alteration or addition to the common elements may be made without the prior written approval of the Board.

(p) Notwithstanding anything to the contrary contained in these By-Laws, the Declaration or the Rules and Regulations, owners with disabilities shall be permitted to make reasonable modifications to their apartments and/or limited common elements, at their expense (including the cost of obtaining any bonds required by the Declaration, these By-Laws or the Condominium Property Act), if such modifications are necessary to enable them to use and enjoy their apartments and/or the limited common elements appurtenant thereto, as the case may be, provided that any owner with a disability desiring to make such modifications shall make such request, in writing, to the Board. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications. The Board shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45)

days of the Board's receipt thereof, or within forty-five (45) days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall last occur. Nothing contained herein shall exempt an owner from making all amendments to these By-Laws, the Declaration or the Condominium Map necessitated by any changes permitted under this paragraph (p) of this Section 3.

(q) Yard Areas.

(i) Each owner shall landscape the Yard Area assigned to his apartment, if any, within ninety (90) days after the closing of the purchase of the apartment (unless the Yard Area has already been completely landscaped). Before commencing any Yard Area landscaping, each owner shall submit to the Board a landscape plan (which shall include, without limitation, the location of any proposed lanais, patios, paved surfaces or wood decks within the Yard Area and a proposed plant list) for the Board's review and written approval, which approval shall not be unreasonably withheld or delayed.

(ii) One or more trees may have been planted in an owner's Yard Area by the Developer (the "Project Trees") and each owner will use such owner's best efforts to maintain any Project Trees within such owner's Yard Area. Each owner will replace any Project Tree in such Owner's Yard Area that is seriously damaged or fails to survive with a similar, healthy tree. No owner will remove or relocate a Project Tree in such Owner's Yard Area without the written approval of the Board.

(iii) Large trees shall not be placed within the Yard Area.

(iv) Vine-type plants shall remain within the Yard Area and shall not be attached to the fence, if any, surrounding the Yard Area.

(r) Project Landscaping, including Yard Areas.

(i) Trees, plants, irrigation lines, spray/bubbler heads, plastic sheets or any material that promotes moisture build-up beneath the surface should not be placed within thirty (30) inches (the "Dry Area") of any building. Any spray or bubbler head shall be adjusted so as not to throw water onto the exterior of any building or the Dry Area.

(ii) Trees and plants shall not be planted under building eaves and must be planted so as not to damage or impair any buildings, fences, drainage swales or utility easements.

(iii) A minimum two percent (2%) slope away from all buildings shall be maintained at all times to ensure proper drainage and to prevent water from ponding.

(iv) Plants susceptible to termite infestation or with invasive or aggressive root systems shall not be used.

ARTICLE VII

COMMON EXPENSES, APARTMENT EXPENSES, BUDGETS AND RESERVES, AND TAXES

Section 1. Common Expenses, Budgets and Reserves.

(a) The Association shall assess each apartment owner for, and each apartment owner shall be liable for and pay, a share of the common expenses in proportion to the common interest appurtenant to his apartment. In addition to the items otherwise designated in these By-Laws as common expenses, the common expenses of the Project shall include all sums designated as common expenses in Section K of the Declaration. The common expenses may also include such amounts as the Board of Directors may deem appropriate to make up any deficit in the common expenses for any prior year and a replacement reserves fund for the Project. The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any apartment by the Board or its nominee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these By-Laws.

Assessments of common expenses shall be payable in monthly installments on the first day of each month, commencing with respect to each apartment on the first day of the first month following the issuance by the appropriate county agencies of a temporary or permanent certificate of occupancy for such apartment (or if no certificate of occupancy will be issued, the first day of the first month following the date that the Developer determines that such apartment is complete enough to be occupied). Payments of assessments for common expenses shall be made to the Board

(through the Managing Agent). The Developer shall fix the rate of monthly installments of common expenses until such rate shall be redetermined by the Board of Directors. The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board or Managing Agent shall send to all apartment owners thereby affected written notice of any such increase or special assessment not less than thirty (30) days before the effective date of such increase or assessment. Assessments of limited common expenses shall be payable on the first day of the month following the month in which the notice of the assessment is given to the owner of the apartment subject to such assessment.

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

The Developer may assume all the actual common expenses of the Project by stating in the Disclosure Abstract required by Section 514A-6 of the Condominium Property Act that the apartment owner shall not be obligated for the payment of his share of the common expenses until such time the Developer files an amended Disclosure Abstract with the Real Estate Commission in accordance with Section 514A-15(b) of the Condominium Property Act. If the Developer elects to assume the actual common expenses of the Project as aforesaid, then, notwithstanding any other provisions in these By-Laws to the contrary, the Developer shall have no obligation to pay for any replacement reserves or any other reserve amounts with respect to or attributable to the period during which the Developer assumes the actual common expenses of the Project.

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

- (1) The estimated revenues and operating expenses of the Association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;

- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association, including the estimated replacement reserves the Association will require for capital expenditures and for major maintenance;
- (5) A general explanation and schedule of how the estimated replacement reserves are computed;
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(c) As part of the assessment for common expenses, the Association shall assess the apartment owners to either fund a minimum of fifty percent (50%) of the estimated replacement reserves or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan; provided that the Association need not collect estimated replacement reserves until the fiscal year which begins after the Association's first annual meeting. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year, as determined by the Association's plan except that the Association may, in accordance with rules adopted by the Real Estate Commission of the State of Hawaii, fund in increments, over three (3) years, estimated replacement reserves that have been substantially depleted by an emergency.

The Association shall compute the estimated replacement reserves by a formula which is based on the

estimated life and the estimated capital expenditure or major maintenance required for each part of the Project. The estimated replacement reserves shall include:

- (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) Neither the Association, nor the Developer, nor any apartment owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

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

(f) The requirements of sections 1(b), 1(c), 1(d), 1(e), 1(f) and 1(g) of this Article VII shall override any requirements in the Declaration, these By-Laws or any other Association documents relating to preparation of budgets, calculations of reserve requirements, assessments and funding of reserves, with the exception of:

- (1) Any provisions relating to the repair and maintenance of the Project;
- (2) Any requirements in the Declaration, these By-Laws or any other Association documents which require the Association

to collect more than fifty percent (50%) of reserve requirements; or

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

(g) As used in this Section:

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

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

"Emergency situation" means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered; or
- (3) Necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or
- (4) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

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

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

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

(h) The funds in the general operating account and the replacement reserves shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the Managing Agent commingle any Association funds with its own funds. For purposes of this paragraph (h), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Board of Directors.

Section 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the owners, all common expenses and limited common expenses. Each owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these By-Laws, of all such 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 payment must be made by the owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as principal but only as the agent of all owners to transmit said payments to third persons to whom such payments must be made by the owners.

Section 3. Taxes and Assessments. Each owner of an apartment shall be obligated to have the real property taxes for such apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of 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 Project or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Project or any part of the common elements, the Board may pay such taxes or assessments as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Section 4 of this Article VII.

Section 4. Default in Payment of Assessments.

Each monthly assessment, each limited common expense assessment, and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the owner against whom the same are assessed and, in the case of an apartment owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment not paid within ten (10) days after the due date thereof shall bear interest at the rate of one percent (1%) per month from such due date until paid and also shall be subject to a late payment charge in such amount as shall be established from time to time by the Board of Directors. The Board of Directors may adopt a policy whereby payments received from apartment owners shall be applied toward the indebtedness of such apartment owners to the Association in such order as the Board of Directors shall determine. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one (1) member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought by the Board in the name of the Board and the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include, where permissible under any law, a sum for attorneys' 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 (2) members thereof, acting in the name of the Board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board (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) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may record a claim of lien against the apartment of such delinquent owner. Such claim of lien shall state (i) the name of the delinquent owner, (ii) a designation of the apartment against which the claim of lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper offset), (iv) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and the Condominium Property Act, and (v) that a lien is claimed against such apartment in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of enforcement, including attorneys' fees, if any. Any such claim of lien shall be signed and acknowledged by any two (2) or more members of the Board, by the attorney for the Association or by the Managing Agent and shall be dated as of the date of the execution by such attorney or the Managing Agent or the last such Board member to execute such claim of lien. Upon recordation of a duly executed original or copy of such claim of lien in the Bureau of Conveyances of the State of Hawaii, the Board shall have all remedies provided in the Condominium Property Act. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be recorded with respect to more than one default. The owner of an apartment against which such lien of the Association is foreclosed shall pay a reasonable rental for such apartment and the plaintiff in such a foreclosure shall be entitled to a receiver to collect the same.

(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 or the Managing Agent 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 or service charge, in an amount fixed from time to time by the Board. If any claim of lien is recorded as aforesaid and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest and any costs of enforcement), then upon demand of the owner and payment of a reasonable fee, the Board, acting by any two (2) members, shall execute, acknowledge and deliver to the owner a release of lien, stating the date of the original claim of lien, the amount claimed, the date, and the Document Number where the claim of lien is recorded in the Bureau of Conveyances of the State of Hawaii, and that the lien is fully satisfied, released and discharged.

Section 5. Collection from Tenant. If an owner at any time rents or leases his apartment and defaults for a period of thirty (30) days or more in the payment of such owner's share of the common expenses or the limited common expenses, the Board may, so long as such default continues, demand and receive from any tenant or lessee (hereinafter in this paragraph referred to as "tenant") of the owner occupying the apartment or from the owner's rental agent, if any, the rent due or becoming due from such tenant to the owner up to an amount sufficient to pay all sums due from the owner, including interest and costs of enforcement, if any; and any such payment of such rent to the Board by the tenant or such rental agent shall be a full and sufficient discharge of such tenant and rental agent as between such tenant or rental agent and the owner to the extent of the amount so paid; but no such demand or acceptance of rent from any tenant or rental agent shall be deemed to be a consent to or approval of any rental agreement or lease by the owner or a release or discharge of any of the obligations of the owner hereunder remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. If the Board makes any such demand upon the tenant or rental agent, the tenant 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 such 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 or commissioner has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

Section 6. Late Fees. The Association may deduct and apply portions of common expense payments and limited common expense payments received from an apartment owner to unpaid late fees only in accordance with Section 514A-15.1 of the Condominium Property Act.

ARTICLE VIII

MORTGAGES AND MORTGAGEES

Section 1. Notice to Board of Directors. Any apartment owner who mortgages his interest in an apartment shall notify the Association (through the Board of Directors or the Managing Agent) of the name and address of his mortgagee and shall file a conformed copy of his mortgage with the Association within ten (10) days after the execution of same. The Association shall maintain such information in a book entitled "Mortgages of Apartments".

Section 2. Notice of Unpaid Common Expenses. The Association, whenever so requested in writing by an owner or mortgagee of an apartment and upon payment of a reasonable fee or service charge by the apartment owner, in an amount fixed from time to time by the Board, shall promptly report any then unpaid assessments of common expenses and limited common expenses due from the apartment owner involved, and if no request is made then notice shall be given as provided in Article V, Section 1(q) hereof.

Section 3. Notice of Default. The Board, when giving notice to an apartment owner of a default in paying common expenses or limited common expenses or any other default in performance of any obligations under the Declaration, these By-Laws, the Rules and Regulations or other document of the Association, shall send a copy of such notice to each mortgagee of such apartment whose name and address has theretofore been furnished to the Association.

Section 4. Examination of Books. Each mortgagee shall be permitted to examine the books and records of the Association at convenient hours of business days, but not more frequently than once a month.

Section 5. Right of Access. Each mortgagee and its agents shall have a right of access through the common elements (other than the limited common elements) of the Project for the purpose of passage to any apartment on which it holds a mortgage, provided that entry into any

such apartment or the limited common elements appurtenant thereto by the mortgagee or its agents shall be at the sole risk of the mortgagee and shall be made strictly in accordance with and subject to the terms of its mortgage.

Section 6. Mortgage Protection. Notwithstanding any other provision contained in these By-Laws or the Declaration:

(a) Liens in favor of the Association on any apartment and its appurtenant interest in the common elements created by the Declaration, these By-Laws or the Condominium Property Act, shall be subject and subordinate to the rights of the holder of any indebtedness secured by any recorded mortgage of such interests, made for value, that was recorded prior to the recordation of the notice or notices of such liens by the Association, provided that after the foreclosure of 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 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 Article VII, Section 4 hereof.

(b) All taxes, assessments and charges which may become liens prior to any first mortgage under the laws of the State of Hawaii shall relate only to the individual apartment units and not to the condominium project as a whole.

(c) The Declaration and By-Laws shall not affect the rights of an apartment owner with respect to the rights of first mortgagees of apartments pursuant to their mortgages in the case of a distribution made in accordance with the Declaration and By-Laws to apartment owners of insurance proceeds or condemnation awards for losses to or a taking of apartments and/or common elements.

(d) No amendment to this Article VIII shall affect the rights of the holder of any first mortgage recorded in the Bureau of Conveyances of the State of Hawaii who does not join in the execution thereof if such mortgage was recorded prior to the recordation of such amendment.

(e) Any holder or insurer of a duly recorded first mortgage of an apartment or any interest therein whose interest appears in the record of ownership

of or who has otherwise delivered a written request to the Association shall be entitled to:

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

(ii) Prior written notice of any proposed termination of the Condominium Property Regime;

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

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

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

(vi) Upon request therefor and the payment by the apartment owner or such person of the fee or service charge mentioned in Section 2 above, a statement of any then unpaid assessments for common expenses and limited common expenses due from the owner of the apartment involved;

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

(viii) Prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof; provided, however, that the granting of easements for public or private utilities or for public purposes consistent with the intended use of the common elements of the Project, the relocation of any easements appurtenant to the Project over other lands pursuant to the exercise of any right to relocate such easements by the owner of such other lands, and the merger of the Project with an additional phase or phases pursuant to the Declaration of Merger referred to in Section S of the Declaration, shall not be deemed a transfer within the meaning of this clause.

Section 7. Release of Information. To the extent permitted by applicable law, the Board of Directors may provide any information available to it pertaining to an apartment or the Project to the first mortgagee of such apartment and such mortgagee may provide any information to the Board of Directors regarding the mortgagor, the mortgagor's loan and the status of such loan.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Abatement and Enjoinment of Violations by Apartment Owners. The violation of any of the Rules and Regulations or the breach of any by-law contained herein or of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these By-Laws, (a) to enter the apartment and/or limited common elements appurtenant thereto 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 thereof or hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be borne by the defaulting apartment owner.

Section 2. Penalties for Violations. The violation by any apartment owner of any of the covenants, conditions and restrictions set forth in the Declaration, the By-Laws or the Rules and Regulations adopted pursuant thereto, shall give the Board the right, in addition to any other rights set forth in the By-Laws, to assess a reasonable fine against such owner; provided that if any such violation continues for a period of ten (10) days after notice of violation has been given to such owner, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties. The unpaid amount of such fines against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or the Managing Agent in the same manner as provided in the Condominium Property Act for unpaid common expenses. No penalty may be imposed under this Section until the apartment owner accused of any such violation has been afforded

the right to have a hearing before the Board of Directors or a committee designated by the Board to conduct such hearing, or has waived such right in writing. Each such apartment owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing.

Section 3. Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against any owner's apartment, in foreclosing any lien thereon, or in enforcing any provision of the Declaration, these By-Laws, the Rules and Regulations, the rules and regulations of the Real Estate Commission of the State of Hawaii, or the Condominium Property Act against any owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Project, shall be paid promptly on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be paid promptly on demand to such person or persons by the Association. The unpaid amount of such costs and expenses payable by any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or the Managing Agent in the same manner as provided in the Condominium Property Act for unpaid common expenses. The owner of the apartment against which such a lien of the Association is foreclosed shall pay a reasonable rental for such apartment and the plaintiff in such a foreclosure shall be entitled to the appointment of a receiver to collect the same.

If any claim by an apartment owner is substantiated in any action against the Association, any officer or director of the Association, or the Board to enforce any provision of the Declaration, By-Laws, Rules and Regulations, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such apartment owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless (a) the apartment owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or (b) the apartment owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

Section 4. Right of Access. The Managing Agent, the Board and/or any other person authorized by the Managing Agent or the Board shall have an irrevocable right of access to any owner's apartment and the limited common elements appurtenant thereto from time to time during reasonable hours, for the purpose of making inspections or for the purpose of correcting any condition originating in his apartment or the limited common elements appurtenant thereto and threatening another apartment or a common element, or for the purpose of performing any installations, alterations, maintenance or repairs to the common elements in his apartment or elsewhere in the buildings for which the Board is responsible, provided that requests for entry shall be 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. Such entry shall be made with as little inconvenience to the owner as is practicable, and except as otherwise provided in the Declaration or these By-Laws, any damage caused thereby shall be repaired by the Board of Directors at the expense of the Association, and such expense is hereby deemed a common expense.

Section 5. Copies of Documents. Upon the request of any apartment owner, mortgagee or other interested party, the Secretary or the Managing Agent shall furnish such party with copies of these By-Laws and the Declaration as amended and shall certify that such copies are current to the date of such certification; provided, however, that the requesting party shall pay a service charge and the cost of reproduction of such documents.

Section 6. Indemnity of Directors and Officers.

(a) The Association shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and any expenses of establishing a right to indemnification hereunder), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith

and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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

(c) To the extent that a person who is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph (a) or (b) of this Section 6, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses

(including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under this Section 6 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer or employee is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraph (a) or paragraph (b) of this Section 6. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Association or (3) by a majority vote of the members.

(e) Expenses incurred in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in a particular case upon receipt of an undertaking by or on behalf of the director, officer or employee to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Section 6.

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

(g) The Association shall have the power to purchase and maintain insurance (in such amount as shall be determined by the Board) on behalf of any person who is or was a director, officer or employee of the Association, or is or was serving at the request of the Association as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Section 6. Premiums for such insurance shall be common expenses.

Section 7. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the apartment 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 apartment 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 duly adopted resolution of the Board of Directors.

Section 8. Subordination. Except as otherwise provided herein, these By-Laws are subordinate and subject to all of the provisions of the Declaration and any amendments thereto and to all of the provisions of the Condominium Property Act, which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration and the Condominium Property Act.

Section 9. Notices. All notices to the Association or the Board shall be sent by first class mail, postage prepaid, to the Board, c/o the Managing Agent or, if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time. All notices to any owner shall be sent by first class mail, postage prepaid, to the post office address of such owner given by such owner to the Board of Directors from time to time, in writing, or to the apartment which such owner owns if no such address has been given to the Board of Directors. Except as otherwise expressly provided in these By-Laws, all notices to mortgagees of apartments shall be sent by first class mail, postage prepaid, to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 10. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws, or the intent of any provisions thereof.

Section 11. Amendment. Except as otherwise provided herein, the provisions of these By-Laws may be amended by the affirmative vote or written consent of the owners of apartments to which are appurtenant sixty-five percent (65%) of the common interests, which amendment shall be effective upon recordation in the Bureau of Conveyances of the State of Hawaii of an instrument setting forth such amendment and vote or written consent, duly executed and acknowledged by such owners or the proper officers of the Association; provided, however, that each one of the particulars set forth in Section 514A-82 of the Condominium Property Act shall always be embodied in these By-Laws; provided further, however, that the approval of eligible holders of first mortgages (as defined below) on apartments to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders are allocated shall be required to materially amend any provision herein, or to add any material provisions hereto, which establish, provide for, govern or regulate any of the following: (a) voting; (b) assessments, assessment liens or subordination of such liens; (c) reserves for maintenance, repair and replacement of the common elements; (d) insurance or fidelity bonds; (e) right to use of the common elements; (f) responsibility for maintenance and repair of the several portions of the Project; (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (h) boundaries of any apartment; (i) the interests in the common elements or limited common elements; (j) convertibility of apartments into common elements or of common elements into apartments; (k) leasing of apartments; and (l) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her apartment; and provided further that proposed by-laws with the rationale for the proposal may be submitted by the Board or by a volunteer apartment owners' committee. If submitted by such a committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership. The proposed by-laws, rationale, and ballots for voting on any proposed by-law shall be mailed by the Board to the apartment owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed by-law shall be sixty-five percent (65%) of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the by-law is adopted, then the Board shall

cause the By-Laws amendment to be recorded in said Bureau of Conveyances. The volunteer apartment owners' 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 (1) year after the original petition was submitted to the Board. Nothing in this Section shall preclude any apartment owner or volunteer apartment owners' committee from proposing any amendment to these By-Laws at any annual meeting of the Association. To qualify as an "eligible holder of first mortgage", a first mortgagee must have made a written request to the Association for timely written notice of proposed amendments to the condominium instruments. In the event that an eligible holder of first mortgage fails to appear at a meeting of the Association at which amendments to these By-Laws are proposed and considered, or fails to file a written response with the Association within thirty (30) days after it receives proper notice of the proposed amendment, delivered by certified or registered mail, with a "return receipt" requested, then and in any such event the approval of such amendments by such eligible holder of first mortgage shall be conclusively assumed.

Section 12. 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 by the owners under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the written approval of owners having no less than sixty-five percent (65%) of the common interests. The formation of such corporation shall in no way alter the terms, covenants and conditions herein set forth, and the Articles and By-Laws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

Section 13. 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 management of the Project as a mutually beneficial and efficient establishment. Nothing in these By-Laws shall be deemed or construed to authorize the Association or the Board to conduct or engage in active business for profit on behalf of any or all of the apartment owners.

Section 14. Severability. If any provision of these By-Laws is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of these By-Laws, and these By-Laws shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

CERTIFICATE OF ADOPTION

The undersigned Developer and owner of all apartments of the Project hereby adopts the foregoing By-Laws of the Association of Apartment Owners of LALEA AT HAWAII KAI - PHASE III this 26th day of March, 1998.

CASTLE & COOKE HOMES HAWAII, INC.

By Roland Kim
Its Vice President ROLAND KIM

By Michael Y. W. Lum
Its Vice President MICHAEL Y. W. LUM

Developer

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

On this 26th day of March, 1998, before
me appeared ROLAND KIM and

MICHAEL Y. W. LUM, to me personally
known, who, being by me duly sworn, did say that they are

Vice President and Vice President,
respectively, of CASTLE & COOKE HOMES HAWAII, INC., a
Hawaii corporation; that said instrument was signed in
behalf of said corporation by authority of its Board of
Directors; and said officers acknowledged the instrument to
be the free act and deed of said corporation.

Cynthia Kadelman
Notary Public, State of Hawaii

My commission expires: 3/22/2002

NOT FOR REAL ESTATE TRANSACTIONS