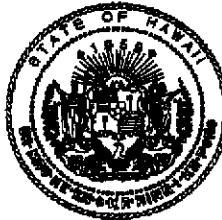


NT
Eco



R-887 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 12, 2006 09:00 AM
Doc No(s) 2006-127951



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

60 3/3 Z9

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup (X) To:
Castle & Cooke Land Company
for Castle & Cooke Waikoloa, LLC
P. O. Box 898900
Mililani, HI 96789-8900
C. Kurasaki (548-2909)

0

This document contains 60 pages.

3
R/S

Tax Map Key No.: (3) 6-8-02-27 (por.)
Condominium Map No. 4294

BY-LAWS OF THE
ASSOCIATION OF UNIT OWNERS OF
MAKANA KAI AT WEHILANI - PHASE I

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I INTRODUCTORY PROVISION.....	6
Section 1. Definitions.....	6
Section 2. Gender.....	8
Section 3. Conflicts.....	8
Section 4. Application.....	8
ARTICLE II ASSOCIATION OF UNIT OWNERS.....	9
Section 1. Membership.....	9
Section 2. Powers of the Association.....	9
Section 3. Meetings.....	10
Section 4. Special Meeting Upon Merger.....	11
Section 5. Notice of Meetings.....	11
Section 6. Quorum.....	12
Section 7. Voting.....	12
Section 8. Proxies and Pledges.....	13
Section 9. Adjournment.....	14
Section 10. Order of Business.....	14
Section 11. Conduct of Meetings.....	15
Section 12. Minutes of Meetings.....	15
Section 13. Committees.....	15
ARTICLE III BOARD OF DIRECTORS.....	15
Section 1. Number and Qualifications.....	15
Section 2. Election and Term.....	16
Section 3. Vacancies.....	16
Section 4. Removal of Directors.....	16
Section 5. Organizational Meetings.....	17
Section 6. Regular Meetings.....	17
Section 7. Special Meetings.....	17
Section 8. Conduct of Meetings.....	17

Section 9.	Notices; Waiver of Notice	18
Section 10.	Quorum of Board	18
Section 11.	Powers and Duties of the Board	18
Section 12.	Reconstitution of Board Upon Merger	18
Section 13.	Conflicts of Interest	19
Section 14.	Minutes of Meetings	19
Section 15.	Action By Directors Without Meeting	19
Section 16.	Directors' Telephone Meetings	19
Section 17.	Duty of Directors	19
Section 18.	Copies of Documents.....	20
Section 19.	Expenditure of Association Funds.....	20
ARTICLE IV OFFICERS		20
Section 1.	Designation	20
Section 2.	Election and Term.....	20
Section 3.	Duty of Officers	20
Section 4.	Removal	21
Section 5.	President.....	21
Section 6.	Vice President.....	21
Section 7.	Secretary	21
Section 8.	Treasurer	21
ARTICLE V ADMINISTRATION		21
Section 1.	Management.....	21
Section 2.	Managing Agent	26
Section 3.	Representation	27
Section 4.	Execution of Instruments	27
Section 5.	Record of Ownership.....	27
Section 6.	Association Records	28
Section 7.	Association Records to be Maintained	28
Section 8.	Copies of Documents.....	29
Section 9.	Availability and Disposal of Association Records	29
Section 10.	Notice of Cost of Providing Information.....	31

Section 11. Registration, etc.	31
Section 12. Audits, etc.	31
ARTICLE VI MAINTENANCE AND USE OF PROJECT	32
Section 1. Maintenance and Repair of Units	32
Section 2. Maintenance and Repair of Common Elements	32
Section 3. Right of Access	33
Section 4. High-Risk Components in Units.....	33
Section 5. Use of Project.....	34
ARTICLE VII COMMON EXPENSES, UNIT EXPENSES, BUDGETS AND RESERVES, AND TAXES	40
Section 1. Common Expenses, Budgets and Reserves	40
Section 2. Payment as Agent	45
Section 3. Taxes and Assessments.....	45
Section 4. Default in Payment of Assessments	46
Section 5. Collection from Tenant.....	48
Section 6. Late Fees, Legal Fees, Fines and Interest	49
ARTICLE VIII MORTGAGES AND MORTGAGEES	49
Section 1. Notice to Board of Directors.....	49
Section 2. Notice of Unpaid Common Expenses.....	49
Section 3. Notice of Default	50
Section 4. Examination of Books	50
Section 5. Right of Access	50
Section 6. Mortgage Protection	50
Section 7. Release of Information.....	52
ARTICLE IX GENERAL PROVISIONS	52
Section 1. Abatement and Enjoinment of Violations by Unit Owners.....	52
Section 2. Penalties for Violations.....	52
Section 3. Expenses of Enforcement	53
Section 4. Indemnity of Directors and Officers.....	54
Section 5. Waiver.....	55
Section 6. Subordination.....	56

Section 7.	Notices	56
Section 8.	Captions	56
Section 9.	Amendment.....	56
Section 10.	Owners May Incorporate	58
Section 11.	Interpretation.....	58
Section 12.	Severability	58
CERTIFICATE OF ADOPTION.....		59

The following By-Laws shall apply to the Makana Kai at Wehilani - Phase I condominium project (herein sometimes called the "Project"), as described in and created by the Declaration of Condominium Property Regime of Makana Kai at Wehilani - Phase I (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 units 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, and any successor statute, 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) "Association" means the Association of Unit 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 in the vicinity of 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 Unit Owners of the entire Project, as reconstituted by any such merger or mergers of the Project and the additional phases.

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

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

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

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

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

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

(h) "Developer" means Castle & Cooke Waikoloa, LLC, a Hawaii limited liability company, its successors and assigns.

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

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

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

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

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

(n) "Owner" or "unit owner" means a person owning, or the persons owning jointly or in common, a unit 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 a unit or interest therein shall be deemed to be the owner of such unit, and provided further that the purchaser of a unit pursuant to an agreement of sale recorded as aforesaid shall have all the rights of a unit 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 unit, including but not limited to, the right to vote on: (i) any partition of all or part of the Project; (ii) the nature and amount of any insurance covering the Project and the disposition of any proceeds thereof; (iii) the manner in which any condemnation of the Project shall be defended or settled and the disposition of any award or settlement in connection therewith; (iv) the payment of any amount in excess of insurance or condemnation proceeds; (v) the construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the Project; (vi) the special assessment of any expenses; (vii) the acquisition of any unit in the Project; (viii) any amendment to the Declaration or these By-Laws; (ix) any removal of the Project from the condominium property regime; and (x) any other matter that would substantially affect the security interest of the seller.

(o) "Project" means and includes the Land, the buildings and all other improvements thereon (including the units 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 in the vicinity of 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.

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

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

(r) "Unit" as used herein means a unit in the Project, within the meaning of that term as used in the Condominium Property Act, as designated and described in the Declaration.

(s) "Unit conveyance" means a condominium unit deed conveying a unit in the Project, together with the common interest appurtenant thereto, to a unit owner.

(t) "Waikoloa Village Association" means the Waikoloa Village Association, a Hawaii nonprofit corporation.

(u) "Waikoloa Village Covenants" means that certain Declaration of Protective Covenants dated May 27, 1971, recorded in said Bureau in Liber 7577 at Page 66, as supplemented and amended from time to time.

(v) "Yard Area" means each of the limited common element yard areas within the Project.

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 units 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, the Waikoloa Village Covenants, and the Declaration of Merger, as each may be amended from time to time. The acceptance of a unit conveyance, mortgage, agreement of sale, or rental agreement of a unit, or the act of occupying a unit, shall constitute an agreement that these By-Laws, the Declaration, the Rules and Regulations, the Waikoloa Village Covenants, 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 UNIT OWNERS

Section 1. Membership. All owners of units in the Project shall constitute the Association. The owner of any unit 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 unit 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 unit 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 units and the use of the common elements.

(f) The amendment of these By-Laws in accordance with the Declaration, Article IX, Section 9 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 Units, shall be entitled to vote the interest of each such Unit.

Section 3. Meetings. The first meeting of the Association shall be held upon the call of the Developer not later than one hundred eighty (180) days after recordation of the first unit conveyance, provided that forty percent (40%) or more of the units in the Project have been sold and recorded. If forty percent (40%) or more of the units 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 units in the Project, and the filing of unit conveyances transferring interests in the units 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 by the President, a majority of the Board, or by a petition to the Secretary or the Managing Agent signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent fails to send out the notices for the special meeting within fourteen (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 and proxies for the special meeting in accordance with these By-Laws and the Condominium Property Act. 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 determined by the Board of Directors; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.

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: (a) hand-delivered; (b) sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or (c) at the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner. The notice of any meeting of the Association must state the date, time, and place of the meeting, and the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these By-Laws, and any proposal to remove a member of the Board; provided that this section shall not preclude any unit owner from proposing an amendment to the Declaration or these By-Laws or to remove a member of the Board at any annual Association meeting. 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 unit 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 unit shall promptly be furnished a copy of any and all notices permitted or required herein to be made to the owner or owners whose unit 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 unit 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 unit 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 units 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 units to which are appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to units owned by those present at the meeting. Any other specified percentage of the owners means the owners of units 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 unit is entitled being the same as the percentage of the common interests assigned to such unit 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. The vote for any unit 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 unit be fractionalized. Votes may be cast in person or pursuant to a proxy duly executed by a unit owner. If the unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the Secretary or the Managing Agent. A proxy is void if it purports to be revocable without notice. 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 unit 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 unit in such capacity. The purchaser of a unit 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 the Condominium Property Act. No votes allocated to a unit owned by the Association may be cast for the election or re-election of directors.

Section 8. Proxies and Pledges. The authority given by any unit owner to another person to represent him at meetings of the Association shall be in writing.

(a) A proxy, to be valid, must: (i) 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; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of the persons to whom the proxy is given, and the date that the proxy is given; (iii) if it is a standard proxy form authorized by the Association, contain boxes wherein the owner has indicated that the proxy is given: (a) for quorum purposes only; (b) to the individual whose name is printed on a line next to this box; (c) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the directors present at the meeting; or (d) to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage. The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report.

(b) 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 unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(c) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(d) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

(e) With respect to the use of Association funds to distribute proxies: (i) if the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in this Section 8, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days before its distribution of proxies. If the Board receives within seven (7) days of the

posted notice a request by any unit owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all unit owners either: (a) a proxy form containing the names of all unit 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 owners who have requested the use of Association funds for soliciting proxies and their statements. The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the Board or reasons for wanting to receive proxies; and (ii) the Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as a unit owner under subpart (i) of this subsection.

(f) No Managing Agent or resident manager, if any, or their employees, shall solicit, for use by the Managing Agent or the resident manager, if any, any proxies from any unit 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.

(g) The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by unit owners; provided that the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations.

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.
- (i) Unfinished business.
- (j) New business.

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

Section 12. Minutes of Meetings. The minutes of meetings of the Association shall be approved at the next succeeding annual meeting or by the Board, within sixty (60) days after the meeting, if authorized by the unit owners at an annual meeting. If approved by the Board, unit owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) days after approval. 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. An owner shall be allowed to offer corrections to the minutes at an Association meeting.

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 and the number of units in the merged phases exceeds one hundred (100), upon such merger, the Board of Directors shall consist of nine (9) directors unless not less than sixty-seven percent (67%) of all unit owners vote by mail ballot, or at a special or annual meeting, to reduce the number of directors. Each of the directors shall be the owner or co-owner of record of a unit, a vendee of a unit under an agreement of sale, a trustee or beneficiary of a trust whose trustee owns a unit, an officer of a corporate owner of a unit or a representative of any other legal entity which owns a unit. The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be the owners of a unit for the purpose of serving on the Board. There shall not be more than one representative on the Board of Directors from any one unit. No resident manager or employee of the Project shall serve on the Board of Directors. Except as specifically authorized by the Association at an annual or special

meeting, no director shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such director. An owner shall not act as director and an employee of the Managing Agent.

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 a unit or the purchaser of a unit under an agreement of sale or the officer of a corporate owner of a unit or a partner in a general partnership or a general partner in a limited partnership which owns a unit or has purchased a unit 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 member of the Board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in these By-Laws for the removal and replacement of directors, and, if removal and replacement is to occur at a special meeting, Article II, Section 3 of these By-Laws. Any director whose removal has been proposed by the unit 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 unit owners' right to remove directors as 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. 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 S 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, 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, 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 matters: (a) concerning personnel; (b) concerning litigation in which the Association is or may become involved; (c) necessary to protect

the attorney-client privilege of the Association; or (d) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The general nature of any business to be considered in executive session shall first be announced in open session. All meetings of the Board of Directors (whether organizational, regular or special) shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. A director shall not vote by proxy at Board meetings.

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. Notice of all Board meetings shall be posted by the Managing Agent, resident manager, if any, 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 Article II, Section 4 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 Article III, Section 2 hereof.

Section 13. Conflicts of Interest. A director shall not 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. "Conflict of interest", as used in this section, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the Association.

Section 14. Minutes of Meetings. The minutes of the meetings of the Board of Directors shall: (a) shall include the recorded vote of each Board member on all motions except motions voted on in executive session; (b) be approved no later than the second succeeding regular meeting; (c) 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.

Section 15. 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 16. 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 through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the Board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the unit owner pay for the costs associated with the participation.

Section 17. Duty of Directors. In the performance of their duties, each member of the Board of Directors shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of a director of a corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended.

Section 18. 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 19. Expenditure of Association Funds.

(a) 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; provided that, with the approval of the Board, directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the Board meetings shall reflect in detail the items and amounts of the reimbursements.

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

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. All officers shall 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. Duty of Officers. In the performance of their duties, each officer of the Association shall owe to the Association a fiduciary duty and exercise the

degree of care and loyalty required of an officer of a corporation organized under Chapter 414D of the Hawaii Revised Statutes.

Section 4. 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 5. 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 6. 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 7. 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 units, 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 8. 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 unit 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 unit 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 units, 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, the Waikoloa Village Covenants 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 units, the cost thereof shall be specially assessed to the owners of such units;

(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, including, without limitation, the use of balconies and lanais within 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 and, prior to the first meeting of the Association and the election of the initial Board of Directors, the Developer shall have the right, from time to time, to amend the Rules and Regulations;

(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 unit, 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 unit 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 unit owners;

(n) Purchase and maintain in effect of all policies of property 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) Notify all persons having any interest in any unit according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such unit;

(q) 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;

(r) 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;

(s) 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;

(t) Maintain and repair any unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements, the limited common elements or any other portion of the buildings and if the owner or owners of said unit 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 a unit have failed or refused to perform the same, the Board shall levy a special assessment against such unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(u) 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 unit owners;

(v) Provided it obtains the prior approval of owners having not less than sixty-seven percent (67%) of the common interests, purchase any unit 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 unit; provided, however, that the Association's employees shall not engage in selling or renting units in the Project except Association-owned units, unless such activity is approved by not less than sixty-seven percent (67%) of the common interests;

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

(x) Provided it obtains the prior approval of owners having not less than sixty-seven percent (67%) of the common interests, change the use of the common elements;

(y) On behalf of the Association, lease or otherwise use for the benefit of the Association those common elements that the Board determines are not actually used by any of the unit owners for a purpose permitted by the Declaration; provided that unless the lease is approved by the owners of at least sixty-seven percent (67%) of the common interests, the lease shall have a term of no more than five (5) years and may be terminated by the Board or the lessee on no more than sixty (60) days prior written notice;

(z) On behalf of the Association, lease or otherwise use for the benefit of the Association those common elements that the Board determines are actually used by one or more unit owners for a purpose permitted in this Declaration upon obtaining the approval of the owners of at least sixty-seven percent (67%) of the common interests, including all directly affected owners that the Board reasonably determines actually use the common elements, and the owners' mortgagees; and

(aa) 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: (i) The Board of Directors notifies the unit owner in writing of (a) the identity and location of the personalty, and (b) 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 unit owner's address as shown by the records of the Association or to an address designated by the unit owner for the purpose of notification or, if neither of these is available, to the unit owner's last known address, if any; or (ii) If the identity or address of the unit 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 unit owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association.

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

Section 2. Managing Agent.

(a) 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 or other limited liability company 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 (if required under 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.

(b) 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: (i) 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 (ii) such Managing Agent shall obtain and keep current a fidelity bond in an amount equal to \$500.00 multiplied by the aggregate number of units of the Association managed by the Managing Agent; provided that the minimum amount of bond shall not be less than \$20,000.00 nor greater than \$500,000.00. The Managing Agent shall permit only employees covered by the fidelity bond, and any principals of the Managing Agent who cannot be covered by the fidelity bond, to handle or have custody or control of any Association funds. The fidelity bond shall protect the Managing Agent against the loss of any of the Association's moneys, securities or other properties caused by the fraudulent or dishonest acts of employees of the Managing Agent.

(c) Every such property management contract between the Board on behalf of the Association and the Managing Agent (i) shall provide (a) that the Managing Agent shall not contract for any expenditure of any funds of the Association in excess of \$2,500.00 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 two (2) 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 these By-Laws, (b) that the Managing Agent shall *not commingle* any Association funds with its own funds, (c) 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 (d) that the contract may be terminated by the Board, at its option with or without cause on no more than ninety (90) 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 (ii) shall contain such other terms and conditions as the Board shall determine to be in the best interests of the Association.

(d) The Managing Agent shall keep and disburse funds collected on behalf of the Association in strict compliance with the property management contract, Chapter 467 of the Hawaii Revised Statutes, the rules of the Real Estate Commission, and all other applicable laws.

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 unit owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements, or more than one unit, 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 unit owners individually to appear, sue or be sued. Service of process on two (2) or more unit 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. Without limiting the generality of the foregoing, the preparation, execution, certification, and/or filing of amendments to the Declaration and/or these By-Laws on behalf of the Association may be undertaken 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 unit owner shall promptly cause to be duly recorded the unit conveyance, agreement of sale or other conveyance to him of such unit 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 unit 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 resident manager, if any, 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 a unit providing that the vendee thereunder shall be deemed to be the owner of the unit, and the names and addresses of all lessees or sublessees of units. 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 who furnishes to the Managing Agent or resident manager, if any, 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. 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 a unit.

Section 6. Association Records. The Association shall keep financial and other records sufficiently detailed to enable the Association to comply with requests for information and disclosures related to the resale of units. Except as otherwise provided by law, all financial and other records shall be made reasonably available for examination by any unit owner and the owner's authorized agents. Association records shall be stored on the island on which the Project is located; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island on which the Project is located.

Section 7. Association Records to be Maintained.

(a) An accurate copy of the Declaration, these By-Laws, the Rules and Regulations, a sample original unit conveyance, 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.

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

(c) Subject to Article V, Section 6 of these By-Laws, 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.

(d) The Board and Managing Agent shall ensure that there is a written contract for managing the operation of the Project, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract.

Section 8. Copies of Documents. Upon the request of any unit 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 9. Availability and Disposal of Association Records.

(a) The Association's most current financial statement shall be provided to any interested unit owner at no cost or on twenty-four hour loan, at a convenient location designated by the Board of Directors. The meeting minutes of the Board of Directors, once approved, for the current and prior year shall either:

(1) Be available for examination by unit owners at no cost or on twenty-four-hour loan at a convenient location at the Project, to be determined by the Board of Directors; or

(2) Be transmitted to any unit owner making a request for the minutes, by the Board of Directors, the Managing Agent, or the Association's representative, within fifteen (15) days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by unit owners pursuant to this subsection shall be subject to Article V, Section 10 of these By-Laws.

(b) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the duration those records are kept by the Association and delinquencies of ninety (90) days or more shall be available for examination by unit owners at convenient hours at a place designated by the Board of Directors, provided that (i) 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 (ii) 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 pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) After any Association meeting, and not earlier, owners shall also be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that: (i) owners shall make a request to examine the documents within thirty (30) days after the Association meeting; (ii) the Board may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both, and (iii) owners shall pay for administrative costs in excess of eight (8) hours per year. If there are no requests to examine proxies and ballots, the documents may be destroyed thirty (30) days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty (60) days, after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) The Managing Agent shall provide copies of Association records maintained pursuant to these By-Laws to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

(e) Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

(f) An Association may comply with this section by making information available to unit owners, at the option of each unit owner, and at no cost, for downloading the information from an Internet site.

(g) The Managing Agent may dispose of records of the Association which are more than five (5) years old, except tax records, which shall be kept for seven (7) years, without liability if the Managing Agent first provides the Board 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 proposed to be disposed.

(h) 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.

Section 10. Notice of Cost of Providing Information. No unit owner who requests legal or other information from the Association, the Board, the Managing Agent or their employees or agents, shall be charged for the reasonable cost of providing the information unless the Association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The Association shall notify the unit owner in writing at least ten (10) days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law, the Declaration, these By-Laws or the Rules and Regulations. After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

Section 11. Registration, etc. The Association shall comply with the registration requirements as provided in the Condominium Property Act.

Section 12. 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, insurer or guarantor of a first mortgage on any unit or any interest therein may request and the Association shall provide said holder, insurer or guarantor 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 holder, insurer or guarantor 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 unit owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall not be required to submit a copy of the annual audit report to a unit owner if the proxy form issued to said unit owner is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the Board shall make available:

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

(ii) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six (6) months after the annual meeting.

(c) 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 Units. Every unit owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his unit, including without limitation all doors, sliding glass doors (if any), windows, and window fixtures, all internal installations within the unit such as water, electricity, gas (if any), telephone, sanitation, lights, and all other fixtures and accessories belonging to such unit, if any, and the interior decorated or finished surfaces of all walls, partitions, floors, ceilings and roofs of such unit, if any (but excluding the lanai, if any, and the balcony, 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 unit 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 unit, 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 unit owner as a special assessment constituting a lien against his interest in his unit 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 units, the

lanais and the balconies, 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 a unit owner or occupant or any person under either of them, shall be charged to such unit owner or the unit owner of the unit of such occupant, as a special assessment constituting a lien against his interest in his unit 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 unit 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 unit 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. Right of Access. Each unit owner shall afford to the Association and the other unit owners, and to their agents or employees, during reasonable hours, access through the owner's unit reasonably necessary for the Association's operation of the property or the other unit owners' maintenance, repair and replacement of said unit owner's unit. The Board may establish procedures to determine whether a unit owner's access into another unit is reasonably necessary and for entry by a unit owner into another unit for said maintenance, repair and/or replacement. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the Association, if it is responsible, shall be liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the costs of removing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements. The Association shall have the irrevocable right, to be exercised by the Board, to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another unit or units.

Section 4. High-Risk Components in Units

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

(b) With regard to items designated as high risk components, the Board may require any or all of the following: (i) inspection (a) at specified intervals, or (b) upon replacement or repair by the Association or by inspectors designated by the

Association; (ii) replacement or repair at specified intervals whether or not the component is deteriorated or defective; and (iii) replacement or repair (a) meeting particular standards or specifications established by the Board, (b) including additional components or installations specified by the Board, or (c) using contractors with specific licensing, training or certification approved by the Board.

(c) The imposition of requirements by the Board under subpart (b) shall not relieve unit owners of obligations to maintain, repair and replace high-risk components.

(d) If the unit owner fails to follow the requirements imposed by the Board pursuant to this section, the Association, after reasonable notice, shall enter the unit to perform the requirements with regard to such high-risk components and the cost and expense shall be assessed to the unit owner as a special assessment.

Section 5. Use of Project.

(a) All of the units 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 unit 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 unit owner and occupant shall at all times keep his unit 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 unit owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his unit or the limited common elements appurtenant thereto or of the Project.

(f) No unit 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 units, limited common elements or any common elements of the Project, except in accordance with (a) plans and specifications, including detailed plot plan,

prepared by a licensed architect if so required by the Board, and submitted to and approved by the Board, and (b) all provisions of the Declaration and unit conveyances.

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

(h) No unit 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) Pets.

(i) No livestock, poultry or other animals or pets whatsoever shall be allowed or kept in any unit or any other part of the Project, except that dogs, cats and other household pets (as determined by the Board) in reasonable number and size as determined by the Board (but not to exceed a total of two (2) such animals per unit) may be kept in the unit and/or the Yard Area, if any, appurtenant to such unit.

(ii) In no case shall any animal prohibited by any applicable law (including the Condominium Property Act) be allowed anywhere on the Project.

(iii) Except as otherwise provided herein, no pets shall be allowed on the common elements (other than the Yard Areas) except in transit and when carried or on a short leash. Pets on leashes and at all times under the complete control of a capable person may be exercised or walked on the common elements, but not in garden areas. No owner or occupant shall permit his pet(s) to produce or cause any waste or unsanitary material or condition anywhere on the common elements, and any such waste or unsanitary material or condition shall be immediately removed and disposed of or remedied by such owner or occupant.

(iv) Any pet which, in the sole judgment of the Board, causes a nuisance, unreasonable disturbance or threat to the health or safety of any owner, occupant or guest may be ejected from the Project on the demand of the Managing Agent or resident manager; provided, however, that upon assessment of the severity of the nuisance, disturbance or threat caused by such pet, the Board, in its sole discretion, may give the pet's owner an opportunity to remedy the situation short of ejection.

(v) Notwithstanding the foregoing restrictions on pets or anything contained herein to the contrary, guide dogs, signal dogs, or other animals upon which disabled owners, occupants or guests depend for assistance shall be permitted to be kept by such owners, occupants and guests in their units and/or the Yard Areas

appurtenant to such units and shall be allowed to walk throughout the common elements while on a leash, provided that such animals shall at all times be accompanied by their owners while present upon the common elements (other than the Yard Areas). If such a guide dog, signal dog or other animal causes a nuisance or unreasonable disturbance or poses a threat to the health or safety of any owner, occupant or guest, the owner thereof will be given an opportunity to rectify the problem by measures which fall short of ejection of the animal from the Project. Ejection will be required only if the Board reasonably determines that less drastic alternatives have been unsuccessful. If such an animal is ejected, it will nonetheless be allowed to remain at the Project for a reasonable period of time while the owner thereof attempts to find a suitable replacement animal, provided that the problem is controlled to a sufficient degree that the continued presence of the animal during that time does not constitute an unreasonable imposition upon, or threat to the safety or health of, other owners, occupants or guests.

(vi) In no event shall the Board, the Association, the Managing Agent or resident manager be or be deemed to be liable for any loss, damage or injury to persons or property caused by or arising in connection with any owner's, occupant's or guest's pet, guide dog, signal dog or other animal. By acquiring an interest in a unit in the Project, each owner agrees to indemnify, defend and hold harmless the Board, the Association, the Managing Agent and the resident manager against any claim or action at law or in equity arising out of or in any way relating to such owner's or occupant's or guest's pet, guide dog, signal dog or other animal.

(vii) All pets and other animals kept anywhere on the Project must be registered immediately with the Managing Agent.

(j) No unit 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, as follows:

(i) A unit owner or occupant may install air-conditioning units in accordance with a written request and 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. The flow of condensate from an air-conditioning unit should be directed away from the limited common elements, including without limitation, the Yard Areas, if any, appurtenant to the ground floor units of the building in which the air conditioning unit is located. Should it become necessary and upon the request of a second floor unit owner, the owner of a ground floor unit with an appurtenant Yard Area shall provide access over and upon said Yard Area for the initial installation and any required general maintenance of one or more air

conditioning units located on the second floor of the building. The owner of the second floor unit shall be responsible for any and all damage to the Yard Area caused by the installation or operation of such owner's air conditioning unit(s).

(ii) A unit owner or occupant may install upon the Yard Area, if any, appurtenant to such owner's or occupant's unit, in a location designated by the Board of Directors (to the extent it is feasible to do so without impairing the reception of an acceptable quality signal or imposing unreasonable expense or delay in installation), (a) an antenna that is used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and is one meter or less in diameter, (b) an antenna that is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, that is one meter or less in diameter or diagonal measurement, (c) an antenna that is used to receive television broadcast signals, and (d) a mast supporting an antenna described in subparts (a), (b) or (c) of this subsection. For purposes of this subsection, "fixed wireless signals" shall have the meaning set forth in 47 C.F.R. Section 1.4000(a)(2), as amended from time to time, or its successor. Provided that it will not interfere with reception or impose unreasonable costs, the antenna shall be painted with such color or colors as determined by the Board of Directors. The Board of Directors may adopt guidelines relating to the installation, maintenance and use of antennas within the Project as may be reasonably necessary to protect public safety.

(iii) The owners of two-story units may install a solar energy device within the Project for the use of said owner's unit, provided that: (a) the unit owner shall obtain the prior written consent of the Board of Directors; (b) the solar energy device shall be installed in a location designated by the Board of Directors, in accordance with applicable law; and (c) the solar energy device shall be in compliance with any rules and specifications adopted by the Board. For purposes of this subsection, "solar energy device" shall have the meaning set forth in the Condominium Property Act.

(k) Nothing shall be allowed, done or kept in any unit or common element (including the 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) and with an approved reflective value (as determined by the Board) may be installed by a unit owner on the glass located along the perimeter of his unit. If any bubbling or cracking shall occur, the unit owner shall immediately remove the tint and may replace it in accordance with the foregoing provisions.

(n) No unit owner may lease or rent his unit for a period of less than thirty (30) days. Any lease or rental agreement must be in writing and must be subject to the requirements of the Declaration, these By-Laws and the Association.

(o) Except as otherwise permitted by the Declaration or these By-Laws, no alteration or addition to a unit nor any alteration or addition to the common elements may be made without the prior written approval of the Board; provided, however, that a unit owner or occupant may install a front screen door in accordance with a written request and 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.

(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 units 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 units 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 subpart.

(q) Yard Areas.

(i) No swimming pools, spas, water features, gazebos or trellises may be installed or maintained within the Yard Areas.

(ii) Lanais, patios, paved surfaces and/or wood decks may be installed within the Yard Areas in accordance with a written request and plans and specifications prepared by a licensed architect (if so required by the Board) that are submitted to and approved by the Board, which approval shall not be unreasonably withheld or delayed. Prior to the installation of any lanai, patio, paved surface and/or wood deck within a Yard Area, an owner shall arrange for termite treatment of the area under such lanai, patio, paved surface and/or wood deck.

(iii) A storage shed, for the purpose of storing lawn equipment, may be installed within the Yard Areas in accordance with a written request submitted to and approved by the Board. The Board shall have the right to limit the number, size, height and types of storage sheds that may be installed within the Yard Areas.

(iv) The installation of improvements permitted under this section shall not require an amendment to the Declaration or the filing of a complete set of floor plans of the Project as so altered.

(v) All improvements and landscaping within the Yard Areas shall comply the requirements of utility companies providing utilities for the Project. These requirements may include, without limitation, minimum setback requirements from utility easement areas and utility facilities.

(vi) Each owner shall commence landscaping of the Yard Area assigned to his unit, if any, within ninety (90) days after the closing of the purchase of the unit and shall complete such landscaping within 180 days after the closing of the purchase of the unit (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, a proposed plant list) for the Board's review and written approval, which approval shall not be unreasonably withheld or delayed.

(vii) All landscaping within the Yard Areas shall be kept in neat and orderly condition. All landscaping, including the root systems thereof, shall remain within the Yard Area, shall not be attached to the fence, if any, surrounding the Yard Area, and shall not encroach upon the other common elements or limited common elements of the Project, including, without limitation, other Yard Areas. Large trees shall not be placed or permitted within the Yard Areas. Hedges shall not exceed six (6) feet in height.

(r) Project Landscaping, including Yard Areas.

(i) All landscaping within the Project shall comply the requirements of utility companies providing utilities for the Project. These requirements may include, without limitation, minimum setback requirements from utility easement areas and utility facilities.

(ii) 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.

(iii) 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. No trees shall be planted in any drainage easements.

(iv) 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.

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

ARTICLE VII

COMMON EXPENSES, UNIT EXPENSES, BUDGETS AND RESERVES, AND TAXES

Section 1. Common Expenses, Budgets and Reserves.

(a) The Association shall assess each unit owner for, and each unit owner shall be liable for and pay, a share of the common expenses in proportion to the common interest appurtenant to his unit. 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 unit 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 unit 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 unit (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 unit is complete enough to be occupied). Payments of assessments for common expenses shall be made to the Association (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, either directly or through the Managing Agent or resident manager, if any, shall send to all unit 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 unit 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 Developer's public report that the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time the Developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. 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 within thirty (30) days after the adoption of the budget, the Board shall make available a copy of the budget to all the unit owners. The budget shall include at least the following:

- (i) The estimated revenues and operating expenses of the Association;

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

(c) The Association shall assess the unit 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.

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

- (i) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (ii) Separate, designated reserves for each part of the Project for which capital expenditures or major

maintenance will exceed \$10,000. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(e) Neither the Association, nor the Developer, nor any unit 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.

(f) Except in emergency situations or with the approval of a majority of the unit owners, the Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subpart that has not been approved by a majority of the unit owners, the Board shall adopt 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 unit owners with the notice of assessment.

(g) The requirements of this section 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, and expenditures from reserves with the exception of:

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

(h) The terms "capital expenditure", "cash flow plan", "emergency situation", "major maintenance" and "replacement reserves" shall have the meanings given to them in the Condominium Property Act.

(i) The funds in the general operating account 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 the Managing Agent's own funds.

- Agent, shall be :
- (j) All funds collected by the Association, or by the Managing
 - (i) Deposited in a financial institution, including a federal or community credit union, pursuant to a resolution adopted by the Board, and whose deposits are insured by an agency of the United States government;
 - (ii) Held by a corporation authorized to do business under Article 8 of Chapter 412 of the Hawaii Revised Statutes;
 - (iii) Held by the United States Treasury; or
 - (iv) Purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State of Hawaii, and the accounts of which are held by member firms of the New York Stock Exchange or the National Association Securities Dealers and insured by the Securities Insurance Protection Corporation.

shall be invested only in:

(k) All funds collected by the Association or the Managing Agent

- (i) Deposits, investment certificates, savings accounts and certificates of deposit;
- (ii) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual meeting or special meeting of the Association or by written consent of a majority of the unit owners; or
- (iii) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless

approved otherwise by a majority vote of the unit owners at an annual meeting or special meeting of the Association or by written consent of a majority of the unit owners;

provided that before any investment longer than one (1) year is made by the Association, the Board must approve the action; and provided further that the Board must clearly disclose to owners all investments longer than one (1) year at each annual meeting.

(l) All funds collected by the Association shall only be disbursed by employees of the Association under the supervision of the Board. All funds collected by the Managing Agent from the Association shall be held in a client trust fund and shall be disbursed only by the Managing Agent or the Managing Agent's employees under the supervision of the Board.

(m) The Managing Agent or the Board shall not, by oral instructions over the telephone, transfer Association funds between accounts, including but not limited to the general operating account and the reserve fund account.

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 a unit shall be obligated to have the real property taxes for such unit 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 unit 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 Article VII, Section 4 hereof.

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 a unit 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 unit owners shall be applied toward the indebtedness of such unit 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 file a claim of lien against the unit of such delinquent owner. Such claim of lien shall state (i) the name of the delinquent owner, (ii) a designation of the unit against which the claim of lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper offset), (iv) that the claim of lien is made 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 unit 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 filing of a duly executed original or copy of such claim of lien in the Office of the Assistant Registrar of the Land Court 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 a unit against which such lien of the Association is foreclosed shall pay a reasonable rental for such unit and the plaintiff in such a foreclosure shall be entitled to a receiver to collect the rental owed.

(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 unit (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.

(d) In conjunction with or as an alternative to foreclosure proceedings, where a unit is owner-occupied, the Association may authorize its Managing Agent or Board of Directors to, after sixty (60) days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

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

Section 5. Collection from Tenant.

(a) If the owner of a unit rents or leases the unit and is in default for thirty (30) days or more in the payment of the unit's share of the common expenses or the limited common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit, an amount sufficient to pay all sums due from the unit owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the Board shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall: (i) be sent both by first-class and certified mail; (ii) set forth the exact amount the Association claims is due and owing by the unit owner; and (iii) indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

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

(d) The payment of any portion of the unit's share of common expenses and/or limited common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The Board may not demand payment from the tenant pursuant to this section if: (i) a commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure; (ii) a mortgagee is in possession pending a mortgage foreclosure; or (iii) the tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of Chapter 521 of the Hawaii Revised Statutes, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under Chapter 521 of the Hawaii Revised Statutes, the tenant may deduct the offset from the

amount due to the Association, up to the limits stated in Chapter 521 of the Hawaii Revised Statutes. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

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

Section 6. Late Fees, Legal Fees, Fines and Interest. The Association shall not deduct and apply portions of common expense payments and limited common expense payments received from a unit owner to unpaid late fees, legal fees, fines and interest (other than amounts remitted by a unit owner in payment of late fees, legal fees, fines and interest) unless the Board adopts and distributes to all owners a policy stating that: (a) failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines and interest from future common expense payments and limited common expense payments, so long as a delinquency continues to exist; and (b) late fees may be imposed against any future common expense payment or limited common expense payment that is less than the full amount owed due to deduction of unpaid late fees, legal fees, fines and interest from the payment.

ARTICLE VIII

MORTGAGES AND MORTGAGEES

Section 1. Notice to Board of Directors. Any unit owner who mortgages his interest in a unit 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 Units".

Section 2. Notice of Unpaid Common Expenses. The Association, whenever so requested in writing by an owner or holder, insurer or guarantor of a mortgage of a unit and upon payment of a reasonable fee or service charge by the unit 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 unit owner involved, and if no request is made then notice shall be given as provided in Article V, Section 1(p) hereof.

Section 3. Notice of Default. The Board, when giving notice to a unit 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 unit whose name and address has theretofore been furnished to the Association.

Section 4. Examination of Books. Each mortgagee and each insurer and guarantor of first mortgages that are secured by one or more units in the Project 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 unit on which it holds a mortgage, provided that entry into any such unit 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 unit 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 unit, if falling due after the date of the acquisition of title (as defined in Section K of the Declaration) or pursuant to the Condominium Property Act, 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 units and not to the condominium project as a whole.

(c) The Declaration and By-Laws shall not affect the rights of a unit owner with respect to the rights of first mortgagees of units pursuant to their mortgages in the case of a distribution made in accordance with the Declaration and By-Laws to unit owners of insurance proceeds or condemnation awards for losses to or a taking of units 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, insurer or guarantor of a mortgage of a unit 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 unit 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 unit covered by the mortgage held or insured by such person;

(vi) Upon request therefor and the payment by the unit 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 unit 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;

(ix) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.

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 a unit or the Project to a mortgagee of such unit 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 Unit 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 unit 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 unit 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; provided, however, that the Board shall institute appropriate legal proceedings before any items of construction can be altered or demolished; 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 unit owner.

Section 2. Penalties for Violations. The violation by any unit 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 unit owner shall constitute a lien against his interest in his unit 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 unit 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 unit 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.

(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collecting any delinquent assessments against any owner's unit; (ii) foreclosing any lien thereon; or (iii) enforcing any provision of the Declaration, these By-Laws, the Rules and Regulations, the Condominium Property Act, or the rules of the Real Estate Commission of the State of Hawaii, against any owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Project, shall be promptly paid 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 promptly paid on demand to such person or persons by the Association. The unpaid amount of such costs and expenses payable by any unit owner shall constitute a lien against his interest in his unit 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.

(b) If any claim by a unit owner is substantiated in any action against the Association, any of its officers or directors, 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 unit owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless (i) the unit owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or (ii) the unit owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If any claim by a unit owner is not substantiated in any court action against the Association, any of its officers or directors, 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 the Association shall be awarded to the Association, unless before filing the action the unit owner has first submitted the claim to mediation, or to arbitration under the Condominium Property Act, and made a good faith effort to resolve the dispute under any of those procedures.

Section 4. 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 subsection (a) or (b) of this Section 4, 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 4 (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 subsection (a) or subsection (b) of this Section 4. Such determination shall be made (i) 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 (ii) 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 (iii) 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 4.

(f) Any indemnification pursuant to this Section 4 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 4. Premiums for such insurance shall be common expenses.

Section 5. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the unit 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 unit 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 6. 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 7. 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. Except as otherwise expressly provided in these By-Laws, 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 unit 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 units and insurers and guarantors of mortgages of units 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. Except as otherwise expressly provided in these By-Laws, 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 8. 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 9. 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 units to which are appurtenant sixty-seven percent (67%) 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 the approval of eligible holders of

first mortgages (as defined below) on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required for amendments of a material nature, which consist of a change to any of the provisions governing 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) rights to use of the common elements; (f) responsibility for the 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 in a manner other than that specified in Section S of the Declaration; (h) boundaries of any unit; (i) the interests in the common elements or the limited common elements; (j) convertibility of units into common elements or of common elements into units; (k) leasing of units; (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 unit; (m) establishment of self-management by the Association where professional management has been required previously by the Declaration or these By-Laws or by an eligible holder of first mortgage; (n) any provision that expressly benefits holders, insurers or guarantors of mortgages on units in the Project; (o) restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard in a manner other than that specified in the Declaration and in accordance with the plans and specifications therefor which will restore the same to the design immediately prior to condemnation or damage; (p) any election to terminate the legal status of the Project as a condominium property regime after substantial destruction or a substantial taking in condemnation of the Project; (q) reallocation of the interests in the common elements after a partial condemnation or a partial destruction of the Project in a manner other than that specified in the Declaration or by applicable law; provided further, however, that the approval of eligible holders of first mortgages on units to which at least sixty-seven percent (67%) of the votes of units subject to mortgages held by such eligible holders of first mortgages are allocated shall be required to terminate the legal status of the Project as a condominium property regime for reasons other than substantial destruction or a substantial taking in condemnation of the Project; and provided further that any proposed by-laws together with the detailed rationale for the proposal may be submitted by the Board or by a volunteer unit owners group. If submitted by such a group, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the unit 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 unit 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, to be valid, must be obtained within three hundred sixty-five (365) days after mailing for a proposed by-law submitted by either the Board or a volunteer unit owners group. If the by-law is adopted, the Board shall cause the by-law amendment to be recorded in said Bureau of Conveyances. The volunteer unit owners group shall be precluded from submitting a petition for a proposed by-law which is

substantially similar to that which has been previously mailed to the unit owners within three hundred sixty-five (365) days after the original petition was submitted to the Board. This section shall not preclude any unit owner or volunteer unit owners group from proposing any by-law amendment 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 10. Owners May Incorporate. All of the rights, powers, obligations and duties of the owners imposed hereunder may be exercised and enforced by a nonprofit 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-seven percent (67%) 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 11. 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 units 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 unit owners.


Section 12. 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 units of the Project hereby adopts the foregoing By-Laws of the Association of Unit Owners of Makana Kai at Wehilani - Phase I this 6th day of July, 2006.

CASTLE & COOKE WAIKOLOA, LLC
By Castle & Cooke Homes Hawaii, Inc.
Its Member

By 
Name: ALAN K. ARAKAWA
Title: EXECUTIVE VICE PRESIDENT

By 
Name: JON UCHIYAMA
Title: SR. VICE PRESIDENT & CONTROLLER
Developer

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

On this 6th day of July, 2006, before me

personally appeared ALAN K. ARAKAWA and JON UCHIYAMA, to me personally known, who being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

84

Deborah Y. Hamamura

Typed or Printed Name: Deborah Y. Hamamura
Notary Public, State of Hawaii

My Commission expires 10-16-07