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733 Bishop Street, Suite 1400
Honolulu, Hawaii 96813

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Document Title: BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS
OF KEALI'I BY GENTRY II

Developer: GENTRY KGC, LLC, a Hawaii limited liability company

Property Description: Lots 6 to 8, inclusive, as shown on DPP File No. 2017/SUB-168, and
further described in Surveyor's Affidavit recorded in the Bureau of
Conveyances of the State of Hawaii as Document No. A-72140978

This property was previously a portion of Lot 6770, as shown on Map 571 of Land Court
Application 1069, now deregistered from the Land Court System by Document No. A-71711038,
recorded in the Bureau of Conveyances of the State of Hawaii on August 20, 2019.

TMK No.: (1) 9-1-16:228 (portion)

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OF KEALI'I BY GENTRY II
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**BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF
KEALI'I BY GENTRY II**

1. GENTRY KGC, LLC, a Hawaii limited liability company (the "**Developer**"), owns, in fee simple, the real property described in Exhibit "A" attached to and, by this reference, made a part of these Bylaws, and any appurtenances to such real property (collectively, the "**Land**").

2. The Developer has undertaken to improve the Land by constructing residential buildings and other improvements upon the Land, as described in that certain Declaration of Condominium Property Regime of Keali'i by Gentry II, dated July 15, 2020, and recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Document No.

A-75080758, as it may be amended from time to time (the "**Declaration**"), and in accordance with the plans therefor recorded as Condominium Map No. 6115, as it may be amended from time to time (the "**Condominium Map**").

3. The Developer has established that certain condominium project as a non-gated community known as Keali'i by Gentry II by Recording the Declaration and the Condominium Map.

NOW, THEREFORE, the Developer does hereby declare that the Land is held and shall be held, owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in these Bylaws (as may be amended from time to time), all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and preserving the value, desirability and attractiveness of the Land and the Project. These Bylaws shall constitute equitable servitudes, liens, and covenants running with the Land, the Project and all Apartments, and shall be binding on and shall inure to the benefit of all Persons having or acquiring any right, title, or interest in any portion of the Land, the Project or any of the Apartments.

**ARTICLE I
INTRODUCTORY PROVISIONS**

SECTION 1. Definitions. The terms used in these Bylaws shall have the same meaning as given them in the Declaration, unless the context clearly indicates otherwise.

SECTION 2. Conflicts. These Bylaws are set forth to comply with the requirements of the Act. In case any of these Bylaws conflict with the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

SECTION 3. Application. All present and future Owners, lessees, Mortgagees, purchasers under agreements of sale, tenants and occupants of Apartments and their guests, patrons, customers and employees and other business invitees, and any other Persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration and the House Rules. The acceptance of an Apartment deed or other conveyance, the rental of any of the Apartments, or the mere act of occupying an Apartment shall constitute an agreement that these

Bylaws, the House Rules, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

ARTICLE II ASSOCIATION OF OWNERS

SECTION 1. Membership. All Apartment Owners of the Project shall constitute the Association of Apartment Owners. Each Owner, upon acquiring title to any Apartment, shall automatically become a member of the Association and shall remain a member until that Person's ownership of such Apartment ceases. Notwithstanding any other provision in these Bylaws to the contrary, pursuant to the Declaration and Section 514B-106(d) of the Act, the Developer shall be entitled to control the Association and appoint and remove the officers and members of the Board of Directors until the expiration of the Developer's Association Control Period, as defined in Section 17E of the Declaration. Thereafter, the Developer, as the owner of any unsold Apartments, shall be entitled to vote the interest of each such Apartment.

SECTION 2. Meetings of the Association.

(a) **First Meeting.** The Developer shall call, or instruct and authorize the Managing Agent to call, the first annual meeting of the Association. The first annual meeting shall be held not later than one hundred eighty (180) days after Recording of the first Apartment conveyance, if, at that time, forty percent (40%) or more of the Apartments in the Project have been sold and Recorded. (The term "sold and Recorded" means the sale of an Apartment and the Recording of the Apartment deed.) If forty percent (40%) or more of the Apartments in the Project are not sold and Recorded at the end of one (1) year after Recordation of the first Apartment conveyance, then the first annual meeting shall be called and held as soon as practicable upon the written request of ten percent (10%) or more of the Apartment Owners. At such meeting, the Board will be elected or appointed to serve until the next annual meeting.

(b) **Annual Meetings.** The annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association or at such other time as the Board shall from time to time determine. At such meetings, the Board shall be elected by ballot of the Apartment Owners according to the requirements of Article III, Section 1 [Number and Qualification] of these Bylaws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

(c) **Place of Meetings.** All meetings of the Association shall be held at the address of the Project or elsewhere within the State of Hawaii as determined by the Board.

(d) **Special Meetings.** Special meetings of the Association may be held at any time upon the call of the President, the Developer during the Development Period, or any two (2) Directors, or upon the written request of not less than twenty-five percent (25%) of the Owners, and the business considered shall be limited to that stated in the notice of the special meeting, unless at least eighty percent (80%) of the Owners present, in person or by proxy, decide otherwise. Upon receipt of such call or petition, the Secretary shall send written notice of the meeting to all Apartment Owners and the meeting shall be held at the time specified in such call or petition or, if the time is unspecified, then within thirty (30) days after receipt of the call

or petition at any reasonable time. The meeting shall be held at the Project, unless some other suitable place within the State of Hawaii is designated by the Board.

(e) **Special Meeting Upon Merger.** Any other provision in these Bylaws to the contrary notwithstanding, if the Project is merged with another increment or increments in accordance with the Declaration of Intent to Develop and Merge, then a special meeting of the Association shall be called and held within one hundred twenty (120) 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.

(f) **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum has not attended in person or by proxy, then a majority of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was being held. Further, any meeting of the Association may be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was being held, as may be determined by majority vote of the Apartment Owners present, whether or not a quorum is still 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 that might have been transacted by a quorum at the meeting as originally called.

SECTION 3. Notice of Meetings and Other Notices. Written notice of all Association meetings, annual or special, shall be given by personally delivering or by mailing such notice, postage prepaid, at least fourteen (14) days but not more than thirty (30) days before the date assigned for the meeting, to the Owners of the Apartments at their addresses at the Project or at the addresses given to the Board for the purpose of service of such notices. All notices shall state the place, date and hour of the meeting; whether it is annual or special; the items on the agenda for such meeting and the business proposed to be transacted at the meeting and shall contain a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws. Upon written request for notices delivered to the Board, a Mortgagee may obtain a copy of any and all notices permitted or required to be given to the Owner whose interest is subject to the Mortgagee's Mortgage. Upon notice being given according to these provisions, the failure of any Owner or Mortgagee of an Apartment to receive actual notice of the meeting shall not in any way invalidate the meeting or proceedings at the meeting. The presence of any Apartment Owner or Mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless the Owner objects at the opening of the meeting to the holding of such meeting because of the failure to give notice in accordance with these provisions. Each Owner shall keep the Board and the Managing Agent informed of any changes in address.

SECTION 4. Powers and duties of the Association. The following powers and duties shall be vested in the Association, and shall be exercised according to the provisions of these Bylaws and the Act:

- (a) The election of a Board of Directors.
- (b) The administration and operation of the Project, payment of common expenses and determination and collection of common expenses.

- (c) The establishment and collection from the Apartment Owners of their shares of the common expenses.
- (d) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (e) The adoption of rules and regulations governing the details of operation and use of the common elements, subject to written approval by Developer during the Development Period, which approval shall not be unreasonably withheld or delayed.
- (f) The establishment of such restrictions and requirements consistent with the Declaration and the Act regarding the use and maintenance of the Apartments and the use of the common elements.
- (g) The amendment of these Bylaws according to the Declaration and subject to Section 514B-108 of the Act.
- (h) The creation and appointment of committees.
- (i) The acceptance and assumption of the Developer's remaining obligations under License No. 825, as described in the Declaration.
- (j) The making of arrangements for the management of the Project pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the Managing Agent, subject to written approval by Developer during the Development Period, which approval shall not be unreasonably withheld or delayed.

Nothing in this Section 4 shall prohibit the delegation by the Association of any of its powers according to these Bylaws.

SECTION 5. Other Powers. In addition to the powers enumerated in Article II, Section 4 [Powers of the Association] of these Bylaws and in addition to the powers granted by any other provision in these Bylaws, the Association may exercise any and all powers consistent with any law or the Declaration that are reasonably incident to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration, or are reasonably incident to the exercise of its powers as set forth in the Declaration or these Bylaws.

SECTION 6. Voting. Voting shall be on a percent basis and the percent of the vote to which each Owner is entitled is as set forth in the Declaration. Votes allocated to any area which constitutes a common element under Section 514B-3 of the Act shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Votes may be cast by the respective Apartment Owners in person or by proxy or by mail or electronic transmission through a duly executed proxy. An administrator, personal representative, guardian or trustee may vote in person or by proxy, at any meeting of the Association, the vote for any Apartment owned or controlled by such person in such capacity, provided that such person shall first present evidence satisfactory to the Secretary that such person owns or controls such Apartment in such capacity. The vote for any Apartment owned by two or more Persons may be exercised by any one of them present, in person or by proxy, at any meeting in the absence of

protest by the other or others, and, in case of protest, each co-Owner shall be entitled to only a share of such vote in proportion to his or her share of ownership in such Apartment. If an Apartment is owned by more than one Person, then each Owner of the Apartment may vote or register protest to the casting of votes by the other Owners of the Apartment through a duly executed proxy.

SECTION 7. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Apartment Owners having at least twenty-five percent (25%) of the total authorized votes of all Apartments shall constitute a quorum at all meetings of the Association.

SECTION 8. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum is present shall be binding upon all Apartment Owners for all purposes, unless the Declaration, these Bylaws or the Act requires a higher percent.

SECTION 9. Proxies and Pledges.

(a) The authority given by any Apartment Owner to another Person to represent the Owner at meetings of the Association shall be in writing and shall contain at least the name of the Association, the date of the meeting, the printed names and the signatures of the Person(s) giving the proxy, the Apartment number for which the proxy is given, the name of the Person to whom the proxy is given, and the date the proxy is given. If a proxy is a standard proxy form authorized by the Association, then the proxy shall also contain boxes wherein the Apartment Owner may indicate that the proxy is given:

- (i) for quorum purposes only;
- (ii) to the individual whose name is printed on a line next to this box;
- (iii) to the Board of Directors as a whole and that the vote is to be made on the basis of the preference of the majority of the Directors present at the meeting; or
- (iv) to the members of the Board of Directors present at the meeting with the vote to be shared with each Director receiving an equal percentage.

A proxy form that does not have a box marked or has more than one of the boxes in subparagraphs (i) through (iv) checked shall be counted for quorum purposes only. The proxy form shall also contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act. Proxies may also be limited as the Apartment Owner desires and indicates. The proxy shall be signed by such Owner and recorded with the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains and shall be valid unless revoked by actual written notice of revocation given to the Secretary or the Managing Agent. Any proxy given on a proxy form that accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only. No proxy shall be irrevocable unless coupled with a financial interest in the Apartment. A proxy is void if it purports to be revocable without notice.

(b) Any Apartment Owner shall be permitted to examine proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election; provided that:

- (i) the Owner makes a request to examine the documents within thirty (30) days after the Association meeting;
- (ii) the Board may require the Apartment Owner 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
- (ii) the Apartment Owner pay for administrative costs attributable to the Apartment Owner's request if such request requires in excess of eight (8) hours of the Association's or Managing Agent's time to fulfill the request.

The documents may be destroyed ninety (90) days after the Association meeting; provided that in the event of a contested election, the documents shall be retained until the contested election is resolved. Copies of tally sheets, Owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Apartment Owner upon request by the Apartment Owner; provided that the Owner pays a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request.

(c) Voting rights transferred or pledged by Mortgage, deed of trust, or agreement of sale of any interest in an Apartment, a true copy of which is recorded with the Board through the Secretary or Managing Agent, shall be exercised only by the Person designated in such instrument until the written release or other termination thereof is recorded with the Board. Any one of two or more Persons owning any Apartment may give or revoke a proxy for the entire vote of such Apartment or, if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving such proxy. Any proxy given by a co-Owner or co-Owners for only a share of an Apartment's vote in proportion to the share of ownership of such co-Owner or co-Owners shall be revocable only by such co-Owner or co-Owners. Any proxy given by a co-Owner or co-Owners for only a share of an Apartment's vote may be exercised to cast the entire vote for such Apartment in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner. In case of such protest, each co-Owner or holder of a proxy from a co-Owner, as the case may be, shall be entitled to only a share of such Apartment's vote in proportion to the respective shares of ownership in such Apartment.

(d) No Managing Agent or its employees solicit shall solicit, for use by such Managing Agent, any proxies from any Apartment Owner, nor shall the Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(e) The Board or a Member of the Board may use Association funds to solicit proxies as part of the distribution of proxies, but no member of a Board of Directors who uses Association funds to solicit proxies shall cast any proxy votes for the election or reelection of Board members at any Association meeting, unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Directors and the Board shall have first

posted notice of its intent to solicit such proxies in prominent locations within the Project at least twenty-one (21) days prior to its solicitation. If, within seven (7) days after posting such notice, the Board receives a request from any Apartment Owner to use Association funds to solicit proxies, accompanied by a statement, the Board shall mail to all Apartment Owners a proxy form that either: (i) contains the names of all Apartment Owners who have requested the use of Association funds for soliciting proxies, accompanied by their statements; or (ii) contains no names, but is accompanied by a list of names of all Apartment Owners who have requested the use of Association funds for soliciting proxies, accompanied by 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. If the Board fails to mail a proper proxy form to all Apartment Owners after having received a timely request to use Association funds to solicit proxies, then no proxy received by a Board member shall be valid to authorize such Board member to vote for the election or reelection of Directors, notwithstanding the fact that the proxy contains specific authorization to do so.

SECTION 10. Conduct of Meetings and Order of Business. All meetings of the Association shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. 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) reports of officers;
- (e) report of Board;
- (f) reports of committees;
- (g) election of inspectors of election (when required);
- (h) election of members of the Board (when required);
- (i) unfinished business; and
- (j) new business.

SECTION 11. List of Members. The Managing Agent or the Board shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements of sale, if any, covering any Apartment, and lessees, if any, under a lease providing that the lessee shall be deemed to be the Owner of the Apartment. The list shall be maintained at a place designated by the Board and a copy shall be made available, at cost, to any Owner who furnishes to the Managing Agent or the Board a duly executed and acknowledged affidavit stating that the list (a) will be used by such Owner personally and only for the purpose of soliciting proxies or providing information to other Owners with respect to Association matters, and (b) will not be used by such Owner or furnished to anyone else for any other purpose. Every Apartment Owner shall pay to the Association or the Managing Agent on demand a service charge, in a reasonable amount fixed from time to time

by the Board of Directors, for the registration on the records of the Association of any change of ownership of an Apartment. Initially, the service charge shall be \$15.00.

SECTION 12. Minutes of Meetings. Minutes of Association meetings shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) days after the meeting, if authorized by the Owners at an annual meeting. If approved by the Board, Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) days after approval. Minutes of all Association meetings shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of an Association 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 may define the authority and duties of such committees.

SECTION 14. Control of Association. Separate and apart from Developer's Reserved Rights, the Developer shall control the Association and appoint and remove the officers and members of the Board until expiration of the "Developer's Association Control Period", which shall be the earlier of:

- (a) sixty (60) days after conveyance of seventy-five percent (75%) of the common interest appurtenant to Apartments to Apartment Owners other than the Developer or an affiliate of the Developer;
- (b) two (2) years after the Developer has ceased to offer Apartments for sale in the ordinary course of its business;
- (c) two (2) years after any right to add new Apartments was last exercised by the Developer; or
- (d) The day the Developer, after giving written notice to the Apartment Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association.

If the Developer voluntarily surrenders its right to appoint and remove the officers and members of the Board before termination of the Developer's Association Control Period, then the Developer may require, for the balance of the Developer's Association Control Period, that specified actions of the Association or the Board, as described in a Recorded instrument executed by the Developer, be approved by the Developer before they become effective. Thereafter, the Developer, as the Owner of any unsold Apartments, shall be entitled to vote the interest of each such Apartment. As part of the exercise of the Developer's control of the Association, the Developer shall be entitled to appoint the initial Managing Agent on behalf of the Association.

Upon expiration of the Developer's Association Control Period, the Developer shall relinquish all special rights, expressed or implied, through which the Developer may directly or indirectly control, direct, modify or veto any action of the Association, the Board or a

Majority of Apartment Owners; provided, however, that, notwithstanding the foregoing, the expiration of the Developer's Association Control Period shall have no effect on the right and ability of the Developer to exercise Developer's Reserved Rights.

SECTION 15. Selling or Renting Apartments. Association employees shall not be in the business of selling or renting Apartments in the Project, except Association-owned Apartments or personally owned Apartments, if any, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the Apartment Owners.

SECTION 16. Registration with Real Estate Commission. The Association shall be registered annually with the Real Estate Commission. Registration shall include proof of fidelity bond coverage for all persons handling Association funds, names and titles of persons handling such funds, the name of the Managing Agent, the post office address of the Project, and the name, address and phone number of the designated contact person for the Association.

ARTICLE III BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. As set forth in Article II, Section 14 above, the Developer shall appoint and remove the officers and members of the Board until expiration of the Developer's Association Control Period; provided that, in contemplation of the expiration of the Developer's Association Control Period, an annual or special meeting of the Association shall be called and held at which the Apartment Owners shall elect the Board. The Board shall be composed of at least three (3) persons, provided that, after a merger pursuant to the Declaration, the Board may vote to increase the size of the Board to five (5) persons or seven (7) persons. Once increased, the size of the Board can only be reduced (either to three (3) or to five (5) members) if at least sixty-seven percent (67%) of the Apartment Owners vote by mail or at a special or annual meeting to amend these Bylaws to so reduce the number of Directors. All Directors shall be Owners, co-Owners, vendees under an agreement of sale, a trustee of a trust that owns an Apartment, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns an Apartment. No Managing Agent or site manager of the Project shall serve on the Board, and there shall not be more than one representative on the Board from any one Apartment. Any Owner who is delinquent by more than ninety (90) days in the payment of any maintenance fee or assessment or other amount due to the Association shall not be eligible to serve on the Board or to be an officer of the Association. Further, if the Board has made a final determination that an Owner has violated the Declaration, these Bylaws, the House Rules or the Act, then such Owner shall not be eligible to be a Director or officer unless and until the violation has been cured to the satisfaction of the Board.

SECTION 2. Election and Term of Office. At the first annual or special meeting of the Association after expiration of the Developer's Association Control Period when the Apartment Owners are to elect the Board, the candidate who receives the largest number of votes shall be elected for terms of three (3) years, the candidate who receives the next largest number of votes shall be elected for a term of two (2) years, and the candidate who receives the next largest number of votes shall be elected for a term of one (1) year. At the expiration of the term of office of each Director, his or her successor shall be elected to serve a term of three (3)

years and each Director must be a member in good standing of the Association, subject to removal as provided below. In case of delay in the election of a successor, each member of the Board shall continue to exercise the powers and duties of the office until his or her successor is elected by the Apartment Owners, provided such member continues to qualify to serve as a Director. In the event of a merger of this Project as provided in the Declaration, there shall be a special election of directors for the association for the project as then constituted upon such merger.

A Director or officer is in "good standing" when he or she is not delinquent by more than ninety (90) days in the payment of any maintenance fee or assessment or other amount due to the Association and is not in violation of the Declaration, these Bylaws, the House Rules or the Act. Any Director or officer not in good standing is subject to removal by the Board or by a vote of a majority of Apartment Owners present at any regular, annual or special meeting of the Association where there is a quorum.

SECTION 3. Election of Directors. Except with respect to the initial Board members appointed by the Developer, the election of Directors shall be by secret written ballot at each annual meeting and any special meeting called for that purpose, provided that if the number of candidates nominated is equal to or less than the number of vacancies to be filled, then the candidates shall be deemed to be elected. The election of Directors shall not be by cumulative voting, provided that at least sixty seven percent (67%) of the Apartment Owners can vote by mail or at a special or annual meeting to amend these Bylaws to have Directors elected by cumulative voting.

SECTION 4. Removal of Directors. Except during the Developer's Association Control Period, at any regular or special meeting of Apartment Owners, any one or more of the members of the Board may be removed with or without cause by a Majority of Apartment Owners and a successor shall then be elected for the remainder of the term to fill the vacancy. The call for a special meeting to remove a Director and elect a successor shall be by the President or by a petition to the Secretary or the Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners. If the Secretary or Managing Agent does not send out the notices for such special meeting within fourteen (14) days after the receipt of a petition, then the petitioners shall send out the notices for the special meeting. Any member of the Board whose removal is proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting. Further, if any Director or officer shall be more than ninety (90) days delinquent in the payment of any maintenance fee or assessment or other amount due to the Association, then such Director or officer shall be automatically removed from office, and shall not be eligible to be a Director or officer unless and until the delinquency is cured to the satisfaction of the Board. Also, if the Board has made a final determination that a Director or officer has violated the Declaration, these Bylaws, the House Rules or the Act, then such Director or officer shall be automatically removed from office, and shall not be eligible to be a Director or officer unless and until the violation has been cured to the satisfaction of the Board. In addition, if any Director fails to attend four (4) consecutive regular meetings of the Board for any reason, then the Board, by a vote of a majority of the other members, may remove him or her and select a replacement to serve the remainder of his or her term.

SECTION 5. Vacancies. Vacancies in the Board caused by any reason other than by the natural expiration of the term of any Director, or the removal of a Director by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining Board members at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a Board member until a successor is elected at the next annual or special meeting of the Apartment Owners. Any successor so elected shall be a member only for the unexpired remainder of the term of the member replaced. Death, incapacity, resignation or delinquency by more than ninety (90) days in the payment of any assessment of any Director, or his or her ceasing to be deemed an Owner of an Apartment, shall cause his or her office to become vacant.

SECTION 6. Meetings of the Board of Directors.

(a) Annual Meetings. The initial organizational meeting of the new Board following the annual meeting of the Association shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to the newly elected members of the Board in order to legally constitute such meeting, provided a majority of the whole Board shall be present at the meeting; provided, however, that the Directors appointed by the Developer may, in their sole discretion, hold meetings and take actions prior to the date of the first annual meeting of the Association and the Board's initial organizational meeting. At each meeting, the Board shall elect the officers of the Association for the ensuing year. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting and may be included with any notice of the annual meeting of the Association.

(b) Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, e-mail or facsimile at least three (3) business days prior to the day named for such meeting.

(c) Special Meetings. Special meetings of the Board may be called by the President on three (3) business days' notice to each member of the Board given personally or by mail, telephone, e-mail or facsimile, which shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or the Secretary in a like manner and on like notice by the written request of any member of the Board. Notwithstanding any other provision in these Bylaws to the contrary, the Developer, when acting as the Board as provided in Article II, Section 2 [Meetings of the Association] of these Bylaws, may act without a formal meeting and without call or notice.

(d) Meetings Generally. Notice of all Board meetings shall be posted by the Managing Agent, the site manager or a member of the Board in prominent locations within the Project at least seventy-two (72) hours prior to the meeting, or simultaneously with the notice sent to the Board. All meetings of the Board, other than executive sessions, shall be open to all Owners, and Owners who are not on the Board may participate in any deliberation or discussion,

other than executive sessions, unless a majority of a quorum of the Board votes otherwise. With the approval of a majority of a quorum of its members, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session. During the Developer's Association Control Period, the Board appointed by the Developer may act without a formal meeting, call or notice.

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

SECTION 7. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except such acts and things as by law, the Declaration or these Bylaws may not be delegated to the Board by the Apartment Owners. Each Director shall owe the Association a fiduciary duty in the performance of his or her responsibilities. Each Board member shall familiarize himself with the condominium documentation for the Project. The powers and duties of the Board shall include, but are not necessarily limited to, the following:

(a) Enforcement of the provisions of the Declaration, these Bylaws, the House Rules, the Act and regulations promulgated by the Real Estate Commission, including establishing rules, penalties and fines to be used in enforcement of the Declaration, Bylaws and the House Rules;

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

(c) Preparation of an annual budget of the common expenses required for the affairs of the Association (including, without limitation, the operation and maintenance of the Project) and determination of the amounts of monthly and special assessments;

(d) Maintenance of 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;

(e) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Apartment Owners;

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

(g) Conducting (or directing another responsible party to conduct) background checks on applicants applying for employment as security guards or managers or for a position which would allow such employees access to the keys of or entry into the Apartments or access

to Association funds, provided that applicants sign an authorization to conduct such background checks;

(h) Adoption and amendment of the House Rules covering the details of the operation and use of the Project, as well as other matters deemed appropriate by the Board that are not in conflict with the Act, the Declaration or these Bylaws;

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

(j) Subject to any approval requirements and spending limits contained in these Bylaws or in the Declaration, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project. A Majority of Apartment Owners must give written consent to such borrowing, having been first notified of the purpose and use of the funds;

(k) Obtaining insurance for the Project, including the Apartments;

(l) Making additions and improvements to or alterations of the Project and repairs to and restoration of the Project according to the other provisions of these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(m) Procuring legal and accounting services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws, the Act and any other documents affecting the Project;

(n) Purchasing any other materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other common expenses that the Board is required to secure, make or pay pursuant to the Declaration, these Bylaws or the Act or which, in the Board's opinion shall be necessary or proper for the operation of the buildings as apartment buildings or the enforcement of the Declaration or these Bylaws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the particular actions or negligence of the Owners of particular Apartments, then the cost thereof shall be specially assessed to the Owners of such Apartments;

(o) Reviewing proper requests made by Owners for alterations or additions to Apartments, for aesthetic, structural impact and other reasons, and approving or disapproving such requests;

(p) Enter into contracts for goods or services, provided that any contract having a term of more than one (1) year shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than sixty (60) days written notice without cause or payment of a termination fee, except that the contract providing

for management services, should such contract be for a period in excess of one (1) year, shall provide that either party thereto may terminate the contract at any time without cause or payment of a termination fee by giving the other party at least thirty (30) days prior written notice of its intention to so terminate the contract;

(q) Purchase, maintain and replace any equipment and provision of all water and utility services required for the common elements;

(r) Conduct regular, periodic inspections of all common elements and limited common elements to determine if any Owner is affecting the structural (as determined by an independent consultant retained by the Board) or aesthetic integrity of the Project or is otherwise in violation of the Act, the Declaration, these Bylaws or the House Rules. The Board has the authority to require Owners who are affecting the Project in such a manner or are in such violation to cease such action or to take any remedial action or enforcement measures as authorized by these Bylaws;

(s) Payment of any amount necessary to discharge any lien or encumbrance levied against all or a part of the entire Project 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 of particular Owners or Apartments. If one or more Owners are responsible for the existence of any such lien, then they shall be jointly and severally liable for the cost of discharging it, including the costs incurred by the Association as a result of such lien;

(t) Enter into any Apartment and any limited common element from time to time during reasonable hours as may be necessary for making emergency repairs to prevent damage to the common elements or to another Apartment or Apartments. Access to each Apartment for normal maintenance must be at reasonable times and upon prior consent of the Apartment Owner;

(u) Maintenance and repair of any Apartment and/or its appurtenant limited common elements 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 Project, and if the Owner or Owners of said Apartment fail or refuse to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said Owner or Owners. The Board shall levy a special assessment against such Apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(v) Purchasing, leasing or otherwise acquiring any Apartment in the name of the Board of Directors or its nominee, corporate or otherwise, on behalf of all Apartment Owners. The Board may not purchase an Apartment and hold the same, or lease an Apartment for a period in excess of one (1) year, without obtaining the approval of at least a Majority of Apartment Owners;

(w) Purchasing Apartments at foreclosure or other judicial sales in the name of the Board or its nominee, corporate or otherwise, on behalf of all Apartment Owners;

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

(y) Giving to all Persons having any interest in any Apartment, according to the Association's record of ownership or book of Mortgages on Apartments, notice of delinquency exceeding thirty (30) days in the payment of any assessment against such Apartment;

(z) Giving to all institutional holders of first Mortgages on Apartments, as identified in the Association's record of ownership or book of Mortgages on Apartments, written notice of any loss to or taking of the common elements of the Project, if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00) in value. In the event of a merger pursuant to the Declaration, the TEN THOUSAND DOLLARS (\$10,000.00) amount shall be for each merged condominium community;

(aa) Giving to the institutional holder of any first Mortgage on any Apartment, as identified in the Association's record of ownership or book of Mortgages on Apartments, written notice of the failure of the Apartment Owner and/or lessee of the Apartment to comply fully (within thirty (30) days after written demand by the Association) with any provision of the Act, the Declaration, these Bylaws, the House Rules or any other agreements, decisions and determinations of the Association lawfully made from time to time, and giving to such Mortgagee written notice of any casualty loss to such Apartment that exceeds ONE THOUSAND DOLLARS (\$1,000.00);

(bb) Appointing a Managing Agent and delegating to the Managing Agent such of the Board's powers as the Board deems necessary or appropriate pursuant to the Declaration or these Bylaws; provided, however, that the Board must first obtain the approval of at least twenty-five percent (25%) of the Apartment Owners before it can make a decision not to renew the contract of the Managing Agent;

(cc) Entering into a contract with a qualified, responsible site manager and (i) giving the site manager such powers and duties as the Board deems necessary or appropriate and/or (ii) delegating to the site manager such of the Board's and/or the Managing Agent's powers as the Board deems necessary or appropriate pursuant to the Declaration or these Bylaws;

(dd) Appointing committees consisting of members, Directors and, in the case of a design review committee, non-member design professionals who may be compensated in a manner determined by the Board, and delegating to such committees such of the Board's powers as is necessary and appropriate to effectively manage the Association, subject, however, to oversight by the Board;

(ee) Enforcement of such penalties and fines as established hereunder for violations of the provisions of the Declaration, these Bylaws, the House Rules, the Act or the rules of the Real Estate Commission, including penalties and fines for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder or under the Declaration, provided such penalties and fines are not inconsistent with the law or these Bylaws. The unpaid amount of such penalties and fines against any Apartment Owner shall constitute a lien against his or her interest in his or her Apartment, which may be foreclosed upon by the

Board of Directors or Managing Agent according to the Declaration, these Bylaws and the Act. The lien for such penalties and fines shall be subordinate to liens for real property taxes and assessments lawfully imposed by governmental authorities against the Apartment and, except as provided in the Act, to all sums unpaid on Mortgages of Record;

(ff) Upon the request of any Apartment Owner, institutional lender or holder or insurer of a first Mortgage on an Apartment or any prospective purchaser of an Apartment, making available for inspection during normal business hours or other reasonable circumstances current copies of the Declaration, these Bylaws, the House Rules and other rules governing the Project and the books, records and financial statements of the Association, including the most recent annual audited financial statement;

(gg) Leasing out any Apartments acquired by the Association (as provided in subsection (v) above), provided the prior approval of a Majority of Apartment Owners is obtained;

(hh) Granting an easement across the common elements for any "reasonable purpose", as the term is used herein, which term shall include, but shall not be limited to, those purposes that are necessary to the operation, care, upkeep, maintenance and repair of any Apartment, the common elements or any limited common elements. The grant of the easement by the Board shall not be withheld unreasonably;

(ii) Being the beneficiary of a grant of easement and holding said easement for purposes necessary or convenient for the operation care, upkeep, maintenance and repair of the Project;

(jj) Expending Association funds for necessary travel, directors' fees and per diem on behalf of the Board members, if the Apartment Owners are informed in advance and the expenses are approved by a Majority of Apartment Owners; provided, however, that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association, and the Board's meeting minutes shall reflect in detail the items and amounts of the reimbursements;

(kk) To cause the Association to accept and assume the Developer's remaining obligations under, and to accept a delegation or assignment of the Developer's remaining obligations under, License No. 825;

(ll) To suspend the voting rights and participation rights of any Director or officer that is cited by the Board for a violation of the Declaration, these Bylaws, the House Rules or the Act, which suspension shall last until a final determination is made by the Board with respect to the violation; and

(mm) Disposing of personal property abandoned on the common elements of the Project in any one of the following ways:

- (i)** By selling the personal property in a commercially reasonable manner;
- (ii)** Storing such personal property at the expense of its owner;
- (iii)** Donating such personal property to a charitable organization; or

- (iv) Otherwise disposing of such personal property; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

- (a) The Board notifies, in writing, the Owner of the Apartment in which such personal property is believed to have been located:

- (1) The identity and location of the personal property; and
 - (2) The Board's intent to sell, store, donate, or dispose of it. Notification shall be by certified mail, return receipt requested, to such Owner's address as shown by the records of the Association, or to an address designated by the Owner for the purpose of notification; or, if neither of these is available, to the Owner's last known address, if any; or

- (b) If the identity or address of the owner of the personal property is unknown, then the Board shall first advertise the sale, donation, or disposition at least once in a daily newspaper of general circulation within the City and County of Honolulu.

The proceeds of any sale or disposition of personal property as set forth above shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the Owner for thirty (30) days, after which any proceeds not claimed shall become the property of the Association.

Notwithstanding anything to the contrary contained in these Bylaws, the Board shall have no power to impair the use and enjoyment of an Apartment or the limited common elements appurtenant thereto in a manner inconsistent with the Declaration or these Bylaws.

SECTION 8. Budgets and Reserves.

- (a) The Board shall prepare and adopt an annual operating budget and distribute it, or make it available, to the Apartment Owners. At a minimum, the budget shall include 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 per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subparagraph (iv).

(b) Effective as of the fiscal year which begins after the Association's first annual meeting, the Association shall, via assessments from Apartment Owners, collect a minimum of fifty percent (50%) of the full amount required to fund the estimated replacement reserves for that fiscal year. However, the Association may fund, in phases, over three years, estimated replacement reserves that have been substantially depleted by an emergency.

(c) The Association shall compute the estimated replacement reserves by a formula that 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.

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

(e) The Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations or with the approval of a Majority of Apartment Owners. Prior to the imposition or collection of an assessment under this Section that has not been approved by a Majority of Apartment 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 members with the notice of assessment.

(f) The requirements of this Section shall override any other requirements contained in these Bylaws, the Declaration and any other Association documents relating to preparation of budgets, calculation of reserve requirements, assessments and funding of reserves, and expenditures from reserves, with the exception of:

- (i) any requirements in the Declaration, these Bylaws 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.

(g) Subject to the procedures of Section 514B-157 of the Act and any regulations adopted by the Real Estate Commission, any Owner may enforce compliance with this Section by the Board if the Board fails to comply with the above.

(h) As used in this Section 8:

- (i) "Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.
- (ii) "Cash flow plan" means a minimum twenty (20)-year projection of the Association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty (20)-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty (20)-year period, except in an emergency.
- (iii) "Emergency situation" means any extraordinary expense:
 - (a) Required by an order of a court;
 - (b) Necessary to repair or maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered;
 - (c) Necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;

- (d) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or
- (e) Necessary for the Association to obtain adequate insurance for property that the Association must insure.
- (iv) "Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.
- (v) "Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the Project, including, but not limited to, roofs, walls, decks, paving, and equipment, that the Association is obligated to maintain.

SECTION 9. Employment of Managing Agent. Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible Hawaii corporate entity as Managing Agent to manage and control the Project, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated by the Board. The Managing Agent shall be duly registered with the Real Estate Commission of the State of Hawaii and shall comply with all other requirements of Section 514B-132 of the Act.

(a) **Contract to Employ Managing Agent; Termination.** The compensation of the Managing Agent shall be specified by the Board. Notwithstanding any other provision of these Bylaws to the contrary, any contract to employ the Managing Agent shall provide that it may be terminated by either party thereto with or without cause or payment of a termination fee on thirty (30) days' written notice, and in no event may such employment contract be for a term exceeding one (1) year. In addition to complying with the termination provisions in the agreement with the Managing Agent, before the Association or the Board can decide to terminate professional management of the Project, the Board must receive the prior written consent of at least eighty percent (80%) of the Owners.

(b) **Board's Delegation of Duties to Managing Agent.** The Board shall have the right to delegate to the Managing Agent such powers and duties as the Board deems appropriate. In addition, the Managing Agent shall have such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Project, (ii) maintenance, repair, replacement and restoration of the common elements and any addition or alteration thereto, (iii) the purchase, maintenance and replacement of any equipment for the common elements, (iv) provision for service of all utilities to the buildings and the various Apartments, (v) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (vi) contracting with others for the furnishing of such services as it deems proper for the Project, (vii) preparation of a proposed budget and schedule of assessments, (viii) collection of all assessments and payment of all bills, (ix) purchase of such insurance as is required and/or contemplated by the

Act, the Declaration and these Bylaws, (x) collection, custody, control and disbursement of all funds of the Association, (xi) maintenance of books and records and (xii) preparation of financial reports.

The Board may, in its discretion, limit any of the powers granted to the Managing Agent in these Bylaws or may grant additional powers to the Managing Agent.

(c) **Fidelity Bond.** The Managing Agent shall obtain and keep current a fidelity bond that complies with Section 514B-132 of the Act. The fidelity bond shall: (i) name the Association as an obligee; (ii) contain a waiver by the issuer of all defenses based upon an exclusion from the definition of "employee" or similar term or expression of any person who serves without compensation; and (iii) provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association. The fidelity bond shall be maintainable at the Managing Agent's expense and shall be in addition to any fidelity bonds maintained by the Association for the same or similar purpose covering the directors, officers, trustees, employees and volunteers of the Association.

Upon written request of any Apartment Owner or his or her Mortgagee, the Managing Agent shall deliver a written statement of the status of the account of such Apartment Owner.

(d) **Class Actions.** The President of the Association or the Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more Apartment Owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one Apartment, and, on its or their behalf, may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any Apartment Owner individually to appear, sue or be sued.

SECTION 10. Examination of Minutes. Minutes of meetings of the Board shall include the recorded vote of each member of the Board on all motions except motions voted on in executive session. Minutes of meetings of the Board shall be approved no later than the second succeeding regular meeting. Minutes of all meetings of the Board shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within thirty (30) 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 11. Waiver of Notice. Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him or her of the meeting's time and place. If all the members of the Board are present at any meeting of the Board, then no notice shall be required, and any business may be transacted at such meeting.

SECTION 12. Rules of Order. All meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

SECTION 13. Quorum of Board. At all meetings of the Board, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, then a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 14. Fidelity Bonds. The Board shall, on behalf of the Association, obtain and maintain a fidelity bond that meets the requirements of Section 514B-143 of the Act that are not inconsistent with the following requirements: The fidelity bond shall cover all Directors, officers, trustees, employees and volunteers responsible for handling funds belonging to or administered by the Association, naming the Association as the obligee and providing coverage in an amount not less than one-and-one-half (1.5) times the estimated annual operating expenses and reserves of the Association, or the minimum amount required under the Act, whichever is greater. The premiums on such bonds shall constitute a common expense and every such bond shall:

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

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

SECTION 15. Compensation. No member of the Board shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses reasonably incurred in the course of acting as a Director.

SECTION 16. No Proxy Vote. Directors shall not cast any proxy vote at any Board meeting.

SECTION 17. Liability and Indemnity of the Board of Directors. The members of the Board and officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise, except for their own gross negligence or willful misconduct. The Association shall indemnify each Director and officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for reasonable attorney's fees and other related expenses that may be incurred by or imposed on such Director or officer in connection with any claim, action, suit, proceeding, investigation or inquiry made, instituted or threatened, in which such Director or officer may be involved as a party or otherwise by reason of such Director or officer being or having been a Director or officer, or by reason of any past or future action taken, authorized or approved by such Director or officer or any omission to act as such Director or officer, whether or not such Director or officer continues to be such Director or officer at the time such costs, expenses or liabilities are incurred or imposed. This shall not include costs, expenses or liabilities related to

matters which such Director or officer is finally adjudged to be liable by reason of such Director's or officer's gross negligence or willful misconduct toward the Association in performing such person's duties as such Director or officer. In determining whether a Director or officer is liable by reason of gross negligence or willful misconduct toward the Association in performing such Director's or officer's duties in the absence of a final adjudication of the existence or nonexistence of such liability, the Board and each Director or officer may conclusively rely upon an opinion of legal counsel selected by the Board. The foregoing right of indemnification shall not be exclusive of other rights that any Director or officer may have and shall inure to the benefit of the heirs, personal representatives, successors, successors in trust and assigns of each Director or officer.

SECTION 18. Conflict of Interest. A member of the Board of Directors shall not vote at any meeting of the Board of Directors on any issue in which such member 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 18, means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. If there is any disagreement as to whether or not a conflict of interest exists as to a particular Director or Directors, the determination shall be made by a majority of the non-interested Directors, whose decision shall be conclusive and binding on all parties.

SECTION 19. Documents Provided to Board. The Association shall provide, at its expense, all Board members with a current copy of the Declaration, these Bylaws, the House Rules, the Declaration of Intent to Develop and Merge, the agreement with the Managing Agent and, annually, a copy of the Act with amendments.

ARTICLE IV OFFICERS

SECTION 1. Designation. The principal officers of the Association shall be the President, the Treasurer and the Secretary, all of whom shall be Owners, co-Owners, vendees under an agreement of sale, a trustee of a trust which owns an Apartment, or an officer, partner, member or other person authorized to act on behalf of any other legal entity that owns an Apartment. The Board may appoint such other officers as in its judgment may be necessary. The President and Treasurer shall be, but no other officers need be, members of the Board. No officer of the Association shall also be employed by the Managing Agent.

SECTION 2. Election of Officers. All of the officers of the Association shall be elected or appointed by the Board, annually, at the annual meeting of the Board and shall hold office at the pleasure of the Board. All officer must be in good standing, as defined in Article II, Section 2 of these Bylaws.

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

SECTION 4. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and the Board. The President shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as the President may, in his or her discretion, decide to be appropriate to assist in the conduct of the affairs of the Association; provided that members of a design review committee can include design professionals who are not Apartment Owners. The President shall also have such other powers and duties as may be provided by these Bylaws or assigned to him or her from time to time by the Board.

SECTION 5. Treasurer. The Treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for preparing all required financial data and reports. The Treasurer shall be responsible for depositing all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent; provided, however, that the responsibility for the performance of the duties delegated shall remain with the Treasurer. The Treasurer shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Treasurer is able to act, then the Board shall appoint some other member of the Board to act temporarily in the place of the President. The Treasurer shall also have such other powers and duties as shall be assigned to him or her from time to time by the Board or by the President.

SECTION 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices as provided by these Bylaws and the Act, maintain and keep a continuous and accurate record of ownership of all Apartments, have charge of such books, documents and records of the Association as the Board may direct, and keep the minute book where resolutions shall be recorded. The Secretary shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to the Managing Agent; provided, however, that the responsibility for the performance of the duties delegated shall remain with the Secretary.

SECTION 7. Agreements, Contracts, Deeds, Checks and Other Instruments. All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the Declaration, the Condominium Map, these Bylaws and/or the House Rules, shall be executed by any two of the President, Treasurer or Secretary, or by such other Person or Persons (including the Managing Agent) as may be designated by the Board.

SECTION 8. Compensation of Officers. Except as specifically authorized by the Association at a regular 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 an officer.

ARTICLE V
USE, MAINTENANCE AND ALTERATION OF PROJECT

SECTION 1. Maintenance and Repair of Apartments and Limited Common Elements. Except as otherwise provided by law or the Declaration, each Apartment Owner shall, at his or her own expense, keep his or her Apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his or her Apartment. Each Owner shall be responsible for the maintenance, repair and replacement of the Apartment, including, but not limited to, all doors, windows, window fixtures and all internal installations within the Apartment, such as water, electricity, gas (if any), telephone, sanitation, lights and all other fixtures and accessories belonging to such Apartment, if any, and all foundations, walls, floors, ceilings and roofs of such Apartment with all necessary reparations and amendments whatsoever in good order and condition. Except as otherwise provided by the Declaration, each Owner shall also be responsible for maintenance and repair of the parking areas, concrete driveways, Private Yard Area, Privacy Fence and other limited common elements appurtenant to his or her Apartment. Notwithstanding the foregoing, the Association shall be responsible for the repaving of any numbered parking stalls that are limited common elements of a particular Apartment. Each Apartment Owner shall perform promptly all repair and maintenance work to such Owner's Apartment and limited common elements, the omission of which would adversely affect any common element or any other Apartment, and shall be responsible for all loss and damage caused if the Owner fails to do so.

SECTION 2. Maintenance and Repair of Common Elements.

(a) Each Apartment Owner shall afford to the Association and to the Association's employees, independent contractors, or agents, during reasonable hours, access through the Apartment Owner's Apartment and/or its appurtenant limited common elements as may be reasonably necessary for the purpose of maintenance, repair and replacement of the common elements of the Project. Unless entry is made pursuant to subsection (b) below, if damage is inflicted on the common elements or on any Apartment and/or its appurtenant limited common elements through which access is taken, then the Association is liable for the prompt repair thereof; provided that the Association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

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

(c) All maintenance, repairs and replacements of the common elements (excluding limited common elements), whether located inside or outside of the Apartment, shall be made only by or at the direction of the Board and shall be charged to all the Owners as a common expense. The costs of maintenance, repairs and replacements caused by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment, which shall be a lien on such Owner's Apartment in accordance with Article

VI, Section 4 [Default in Payment of Assessments] of these Bylaws. Additionally, all costs of maintenance, repair, replacement, additions and improvements to any limited common element shall be charged to the Owners of the Apartments to which such limited common element is or are appurtenant as a special assessment, which shall be a lien on the Apartment or Apartments of such Owner or Owners in accordance with said Article VI, Section 4.

SECTION 3. Use of Project.

(a) The Apartments of the Project shall be used only for such purposes as set forth in the Declaration.

(b) All common elements of the Project shall be used in accordance with the purposes permitted under the Declaration, subject to:

- (i) The right of the Owners to amend the Declaration to change the permitted uses of the common elements; provided that, subject to Section 514B-140(c) of the Act:
 - (A) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the Declaration; and
 - (B) Minor additions to or alterations of the common elements for the benefit of individual Apartments are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other Owners in the common elements, as reasonably determined by the Board;
- (ii) Any rights reserved in the Declaration to amend the Declaration to change the permitted uses of the common elements;
- (iii) The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that are not actually used by any of the Owners for a purpose permitted in the Declaration, as determined by the Board; provided that, unless the approval of sixty-seven percent (67%) of the Owners is obtained, any such lease or agreement shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either the Board or the other party on not more than sixty (60) days' prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Act; and
- (iv) The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association

those common elements that the Board determines are actually used by one or more Apartment Owners for a purpose permitted in the Declaration. The lease or use shall be approved by at least sixty-seven percent (67%) of the Owners, including all directly affected Owners that the Board reasonably determines actually use the common elements, and the Owners' Mortgagees; of Record on Apartments with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such Mortgagees; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by Section 514B-140(d) of the Act.

(c) It is intended that the exterior of the buildings shall present a cohesive appearance. The Board may therefore require the painting, staining, refinishing or repair of outside doors, windows, trim, fences, railings and other exterior portions of the buildings and regulate the type and color of paint to be used. The Board is authorized to contract and pay for such painting, staining, refinishing and repair out of the capital improvements fund, subject to direct charges for negligence, misuse or neglect, as provided above. No awnings, shades, jalousies or other device shall be erected or placed on any portion of the Apartment so as to be visible from the exterior without prior written permission from the Board. No portion of the Project may be used for openly storing material. All signs visible from outside of an Apartment are subject to Board approval.

(d) No Apartment Owner or occupant, unless otherwise exempted by any government law, rule or regulation, shall, without the prior written approval of the Board of Directors, install any wiring for electrical or telephone installations, machines or air-conditioning units or other equipment fixtures, appliances or appurtenances whatsoever on the exterior of an Apartment or protruding through the exterior walls, windows or roof of an Apartment.

(e) Nothing shall be allowed, done or kept in any Apartment or common element of the Project that would overload or impair the floors, walls or roofs, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association, unless the Owner of said Apartment shall agree to pay any such increases or obtain substitute insurance.

SECTION 4. Alteration of Project.

(a) Additions, alterations, repairs or improvements to the common elements (excluding limited common elements) may be made only by or at the direction of the Board. Except as authorized under the Declaration, no Owner may make, except with the prior written permission of the Board, any alteration, addition, repair or improvement to his or her Apartment or its appurtenant limited common elements that may affect the common elements or substantially change the exterior appearance of any building or structure. This provision shall not, however, impair or otherwise affect the Developer's right to exercise any of the Developer's Reserved Rights, as set forth in the Declaration.

(b) Whenever, in the judgment of the Board, the common elements or the limited common elements shall require additions, alterations, repairs or improvements with a total cost of less than TEN THOUSAND DOLLARS (\$10,000.00), the Board may proceed with such additions, alterations, repairs or improvements and shall assess the cost thereof as a common expense, except that the cost of any such work performed on any limited common elements may be charged to the Owners of Apartments to which such limited common elements are appurtenant. Any additions, alterations, repairs or improvements costing in excess of TEN THOUSAND DOLLARS (\$10,000.00) may be made by the Board only after obtaining approval of a Majority of Apartment Owners. Such approval shall not be required for any additions, alterations, repairs or improvements required by law or in the event of an emergency threatening immediate and substantial damage to person or property. If such approval is obtained, then the cost shall constitute part of the common expense.

Upon merger of this Project, as provided for in the Declaration, the \$10,000.00 limit mentioned above shall be automatically increased to Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

SECTION 5. Certain Work Prohibited. Any other provision in these Bylaws to the contrary notwithstanding, no Apartment Owner shall do any work that may jeopardize the soundness or safety of the Project or any building in the Project, reduce the value thereof, or impair any easement, as reasonably determined by the Board. Subject to the provisions of the Declaration, no Apartment Owner may make or allow any material addition or alteration, or excavate any basement or cellar, without first obtaining the written consent of sixty-seven percent (67%) of the Apartment Owners, of one hundred percent (100%) of all Apartment Owners whose Apartments or appurtenant limited common elements are directly affected, and of the Board, which shall not unreasonably withhold such approval.

SECTION 6. State and Federal Fair Housing Act. None of the above provisions are intended to contravene the State or Federal Fair Housing Act. The Board will at all times comply with the provisions of the Fair Housing Act when acting upon requests by handicapped persons to make reasonable modifications to the common areas to allow full enjoyment of the Project. Costs of such alterations shall be borne by the requesting residents. The Board shall also comply with the Fair Housing Act when acting upon requests by handicapped persons for exemptions from any of the provisions of the Project's documents that may interfere with said handicapped persons' equal opportunity to use or enjoy their Apartments and the common elements of the Project.

SECTION 7. Insurance - Casualty and Liability.

(a) Pursuant to Section 514B-143(a)(1) of the Act, the Board, on behalf of and at the common expense of the Association, shall purchase and at all times maintain, as a common expense, property insurance covering all of the Project's common elements (exclusive of limited common elements). The property insurance maintained by the Association shall insure against damage, destruction or loss by fire and other perils covered by an ISO Commercial Property "Special" Causes of Loss Form or its equivalent with an Agreed Amount Endorsement written on a Replacement Cost basis and an Increased Cost of Construction endorsement. The property insurance maintained by the Association shall be in a total amount of not less than the full

insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. Except as provided in Section 14 of the Declaration [Damage and Destruction], in every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the applicable common elements in a good and substantial manner according to the Project's original plans or such modified plans conforming to laws and ordinances then in effect as shall be first approved as provided in the Declaration or these Bylaws. Any deficiency in insurance proceeds shall be handled as described in Section 14 of the Declaration. The policy shall be issued by a responsible insurance company authorized to do business in Hawaii. Every policy of insurance maintained by the Association shall (unless unobtainable at reasonable cost):

- (i) Provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim any right of, set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Apartment Owner;
- (ii) Contain no provision relieving the insurer from liability for loss occurring while the hazard to any insured common element is increased (whether or not within the knowledge or control of the Board) because of any breach of warranty or condition or any other act or neglect by the Board or any Apartment Owner or any other Persons under either of them (the Board will, however, give notice to the insurers of an increased hazard as soon as practical);
- (iii) Provide that the policy may not lapse, be canceled or reduced by amount or type of coverage (whether or not requested by the Board) except by the insurer giving at least sixty (60) days prior written notice to the Board and to any other Person in interest who shall have requested such notice from the insurer;
- (iv) Contain a waiver by the insurer of any right of subrogation against the Association and the Board;
- (v) Contain a waiver by the insurer of any right to deny liability because of vacancy of fewer than 85% of the Apartments; and
- (vi) Contain a provision requiring the insurer, at the commencement of the policy and on each anniversary date, to provide the Board with a written summary in layman's terms of the policy. The summary shall include the type of policy, a description of the coverage and limits, amount of annual premium, and renewal dates. The Board shall provide this information to each Apartment Owner.

(b) In accordance with Section 514B-143(c) of the Act and considering that the Project contains detached apartments, the Board, under the control of the Developer, has determined that it is in the best interest of the Association for each Apartment Owner to purchase and maintain, at its own expense, property insurance covering the entirety of the Apartment Owner's Apartment, the contents of the Apartment, the fixtures and appliances of the Apartment (including the wall coverings and floor coverings), as well as the limited common elements

(including the Private Yard Area and improvements thereon) appurtenant to the Apartment. The property insurance maintained by each Apartment Owner must insure against damage, destruction or loss by fire and other perils and provide coverage for special form causes of loss, in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date, and, if the location of the Apartment Owner's Apartment is located in an identified flood hazard area, as designated by the Federal Emergency Management Agency, then the Apartment Owner shall purchase flood insurance in an amount required by the Apartment Owner's Mortgage lender, if any. The Association shall be listed as the certificate holder on the required insurance policy and the Apartment Owner shall deliver evidence of the required insurance coverage to the Association (via the Managing Agent) annually. If an Apartment Owner fails to deliver such evidence, then, unless and until the Apartment Owner delivers evidence of the required insurance coverage to the Association, the Association shall have the right (but not the obligation) to purchase the required insurance on behalf of such Apartment Owner, and all of the costs incurred by the Association for doing so shall be charged to such Apartment Owner as a special assessment, which shall be a lien on such Owner's Apartment in accordance with Article VI, Section 4 [Default in Payment of Assessments] of these Bylaws. Upon the written request of the Board, copies of the required insurance policies procured by the Apartment Owners shall be made available for inspection by the Board. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Apartment Owner for rebuilding, repairing or otherwise reinstating the Apartment Owner's Apartment in a good and substantial manner according to the original plans and elevations for the Apartment or such modified plans conforming to laws and ordinances then in effect as shall be first approved as provided in the Declaration or these Bylaws. The Apartment Owner shall make up from the Apartment Owner's own funds any deficiency in any insurance proceeds required to repair and to reconstruct the damaged Apartment and improvements in the foregoing manner. Each Apartment Owner shall be fully and individually responsible for the payment of all premiums relating to the required insurance policy or policies. Each Apartment Owner agrees to indemnify and hold harmless all other Apartment Owners and the Association from and against any liability or damages relating to a failure by such Apartment Owner to satisfy the Owner's insurance obligations under these Bylaws and the Declaration. The policies shall be issued by a responsible insurance company authorized to do business in Hawaii. Every policy of insurance maintained by the Apartment Owners shall (unless unobtainable at reasonable cost):

- (i) Provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim any right of, set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for the Association;
- (ii) Contain no provision relieving the insurer from liability for loss occurring while the hazard to the insured Apartment is increased (whether or not within the knowledge or control of the Apartment Owner) because of any breach of warranty or condition or any other act or neglect by the Apartment Owner or any other Persons under the Apartment Owner;

- (iii) Provide that the policy may not lapse, be canceled or reduced by amount or type of coverage (whether or not requested by the Apartment Owner) except by the insurer giving at least sixty (60) days prior written notice to the Apartment Owner and to any other Person in interest who shall have requested such notice from the insurer;
- (iv) Contain a waiver by the insurer of any right of subrogation against the Apartment Owner;
- (v) Contain a provision requiring the insurer, at the commencement of the policy and on each anniversary date, to provide the Apartment Owner with a written summary in layman's terms of the policy. The summary shall include the type of policy, a description of the coverage and limits, amount of annual premium, and renewal dates; and
- (vi) Contain a standard Mortgagee clause with special condominium endorsement, which shall:
 - (a) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or the Apartment Owner or any Persons under any of them; and
 - (b) waive any provision invalidating such Mortgagee clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

(c) The Board, on behalf of and at the common expense of the Association, shall purchase and maintain commercial general liability insurance written on an occurrence form, including coverage for premises and operation, independent contractors, products and completed operations, and personal and advertising injury. The policy shall cover all Apartment Owners with respect to the Project and the Association, the Developer (during the Development Period), and the Managing Agent. The policy shall be with a responsible insurance company authorized to do business in Hawaii. The policy shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury and property damage, and \$2,000,000 products and completed operations aggregate, or other higher limits as the Board may from time to time establish with due regard to then prevailing prudent business practice in the State of Hawaii, as reasonably adequate for the protection of the Association, the Board and each Apartment Owner. The scope of coverage shall include all other coverages in the kinds and amounts required by private institutional lenders for projects similar in construction, location and use. Every such policy of insurance shall (if obtainable at reasonable cost):

- (i) Contain an endorsement precluding the insurer from denying the claim of an Apartment Owner because of the negligent acts of the Association or other Apartment Owners;

(ii) Provide for or contain identical terms required in subsection (a) hereof.

(d) The Board, on behalf of and at the common expense of the Association, may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the Board.

(e) The Board shall review not less frequently than annually the adequacy of its insurance program and shall report in writing the Board's conclusions and any action taken on such review to each Apartment Owner and to the holder of any Mortgage on any Apartment who shall have requested a copy of such report. In addition, the Board shall give timely written notice to each Apartment Owner and to any Mortgagee of an Apartment of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

(f) Copies of every policy of insurance procured by the Board shall be available for inspection by an Owner (or his or her Mortgagee or purchaser holding a contract to purchase an interest in an Apartment) at a place designated by the Board.

(g) Any coverage procured by the Board shall be without prejudice to the right of any Owner to insure his or her Apartment and the contents thereof for his or her own benefit at his or her own expense.

(h) Any insurance coverage specified in this Section shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for projects similar in construction, location and use.

(i) The Board has the right and power to increase coverage or to obtain better terms than those stated in this Section if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Section.

(j) The Board may accept any deductibles, uninsured retentions, and co-insurances as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a common expense; provided that if a loss results from the negligence or willful misconduct of an Owner, then the Association may charge the amount to the Owner as provided in these Bylaws.

(k) The Board may designate and appoint a qualified bank or trust company authorized to do business in the State of Hawaii to act as trustee on behalf of the Association (the "Insurance Trustee") in negotiating losses under any insurance policy carried by the Association and in performing such other functions as are necessary to recover and apply the insurance proceeds in accordance with the terms of the Declaration and these Bylaws.

ARTICLE VI
COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING

SECTION 1. Common Expenses.

(a) **Definition of Common Expenses.** Each Apartment Owner shall be liable for and pay a share of the common expenses in proportion to the common interest appurtenant to his or her Apartment. Notwithstanding the foregoing, pursuant to Section 8 of the Declaration, in the event it is necessary to allocate varying common interests to the Apartments so that the total common interest equals exactly one hundred percent (100%), the common expenses shall be shared equally among the Apartments, on a pro rata basis. In addition to the items otherwise designated in the Declaration or these Bylaws as common expenses, the following sums are hereby designated as common expenses: all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including, without limitation, all charges for taxes (except real property taxes and other such taxes that are or may be assessed separately on each Apartment and its appurtenant common interest or the personal property or any other interest of the Apartment Owner) and governmental assessments that are not assessed or allocated separately against each Apartment; premiums for insurance, including fire and other casualty and liability insurance, required or permitted to be maintained by the Association pursuant to the Declaration or these Bylaws; any liability whatsoever of the Association for loss or damage arising out of or in connection with the common elements or any fire, accident or nuisance thereon; costs of maintenance, repair, reinstatement, rebuilding and replacement of the Project; costs of yard, landscaping, janitorial, security and other similar services for all of the Apartments; wages; accounting and legal fees; management fees; start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements; and the cost of all common area utility services (including water, electricity, gas, garbage disposal, telephone, sewer and similar services), unless such charges, costs and other expenses are separately metered, sub-metered or allocated. The Board shall also have the right, as a common expense, to install additional or separate meters or sub-meters to gauge utility use. Common expenses, however, shall not include any additions, alterations or any other expense made by the Developer in the exercise of the Developer's Reserved Rights.

(b) **Metered Utilities.** All separately metered or sub-metered utilities, all costs associated with such separate metering and sub-metering (including costs for an outside vendor to read the meters and invoice Owners for metered charges), and all other charges separately attributable to an Apartment or group of Apartments shall be payable by the Owner(s) of such Apartment(s). Such amounts shall not be common expenses of the Project.

(c) **Maintenance Reserve Fund or Funds.** The Board shall establish a working capital fund for the initial months of the Project operations equal to at least two months' estimated common expenses for each Apartment. The Board shall also establish and maintain a maintenance reserve fund or funds, by the monthly assessment against and payment by all the Apartment Owners in proportion to their respective common interests, of such annual amount as the Board determines to be adequate to provide for the common utilities, insurance, maintenance, repair, restoration, and replacement of the common elements and other expenses of administration of the Project, and the furniture, fixtures, and mechanical equipment thereof, and

for such other purposes as the Board deems necessary, all of which shall be deemed conclusively to be a common expense of the Project. Such fund or funds shall meet any requirements mandated by the Act, the Veteran's Administration or the Department of Housing and Urban Development and further outlined in these Bylaws. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or decreased at the discretion of the Board. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed income to the Association, but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the Apartment Owner. The proportionate interest of each Apartment Owner in said fund or funds shall not be withdrawn or assigned separately, but shall be deemed to be transferred with such Apartment even though not mentioned or described expressly in the instrument of transfer. If the condominium property regime established by the Declaration is terminated or waived, then said fund or funds remaining after full payment of all common expenses of the Association shall be distributed to all Apartment Owners, except for the owners of apartments reconstituted as a new condominium property regime, in proportion to their respective common interest.

(d) Special Assessments for Purchasing or Leasing Apartments. The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Apartment by the Board or its designee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law, the Declaration or these Bylaws; provided, however, that the Board may not purchase an Apartment and hold the same, or lease an Apartment for a period in excess of one (1) year, without obtaining approval of fifty percent (50%) of the Owners.

(e) Payment of Assessments. Assessments of common expenses shall be payable in monthly installments on the first day of each month, and shall commence as specified in Section 13.3 of the Declaration. 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 sends to all Apartment Owners affected written notice of any such increase or special assessment not less than 30 days before the effective date of such increase or assessment. Any portion of an Owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid-in surplus.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the appropriate Owners, all common expenses. Each Owner, as principal, shall be liable for and pay his or her share, determined as provided in the Declaration and these Bylaws, of all such expenses, and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payment must be made by the Owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as principal, but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owners.

SECTION 3. Taxes and Assessments. Each Owner of an Apartment shall be obligated to have the real property taxes for such Apartment and its appurtenant common interest assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing shall apply to all types of taxes that are assessed separately by law on each Apartment and its appurtenant common interest 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 or her proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately. Such payment shall be made as directed by the Board. The assessments shall be levied by mailing to each Owner, at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the individual Apartment. If, in the opinion of the Board, any taxes or assessments may be a lien on the Land, on the entire Project or on any part of the common elements, then 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 VI, Section 4 [Default in Payment of Assessments] of these Bylaws.

SECTION 4. Default in Payment of Assessments. Each regular 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 or against whose Apartment the same are assessed, and, in the case of an Apartment owned by more than one Person, shall be the joint and several obligation of such co-Owners. Any assessment not paid within ten (10) days after its due date shall accrue interest at the rate of one percent (1%) per month from such due date until paid and the Apartment Owner shall also be charged a late fee of \$50 for each month that the delinquency exists. The Board shall have the right to increase the late fee, from time to time, in accordance with increases in the Honolulu Consumer Price Index.

In the event of a default or defaults in the 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) The Board may institute legal action to enforce such assessment obligations. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or by the 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 of its members, acting in the name of the Board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction document.

(b) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority of the Board at any regular or special meeting) may give a

notice to the defaulting Owner (with a copy to the Mortgagee of such Owner if the Owner's payment delinquency has reached sixty (60) days and 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 its payment. If such delinquency is not paid within ten (10) days after delivery of such notice, then the Board may Record a lien against the Apartment of such delinquent Owner, which lien shall be prior to all liens except government imposed lien for real property taxes and assessments against the Apartment and, except as provided in the Act, all sums unpaid on any Mortgage Recorded prior to the Recording of a notice of lien by the Association and any costs and expenses, including attorneys' fees provided in such Mortgage. Such lien shall state (i) the name of the delinquent Owner, (ii) a designation of the Apartment against which the lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper off-set), (iv) that the lien is made by the Board pursuant to the terms of these Bylaws, the Declaration and/or the Act, and (v) that a lien is claimed against such Apartment in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of enforcement, including attorneys' fees, if any. Such liens shall be signed and acknowledged by any two or more members of the Board, by the attorney for the Board 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 lien. Upon Recordation of a duly executed original or copy of such lien, the Board shall have all remedies provided in the Act. Each default shall constitute a separate basis for a lien, but a separate lien may be Recorded with respect to more than one default. Action to recover a monetary judgment may be maintained without foreclosure or waiver of the lien.

(c) If the Owner of an Apartment rents or leases the Apartment and is in default for thirty (30) days or more in the payment of the Apartment's share of the common expenses or the limited common expenses, then the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the Apartment or from the rental agent renting the Apartment, an amount sufficient to pay all sums due from the Apartment 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.

Prior to taking any action under this section, the Board of Directors shall give to the delinquent Apartment Owner written notice of its intent to collect the rent owed. The notice shall:

- (1) Be sent both by first-class and certified mail;
- (2) Set forth the exact amount the Association claims is due and owing by the Apartment Owner; and
- (3) Indicate the intent of the Board of Directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

The Apartment Owner shall not take any retaliatory action against the tenant for payments under this section.

The payment of any portion of the Apartment'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 Apartment Owner against the tenant.

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

- (1) A commissioner or receiver has been appointed to take charge of the premises pending a Mortgage foreclosure;
- (2) A Mortgagee is in possession pending a Mortgage foreclosure; or
- (3) The tenant is served with a court order directing payment to a third party.

(d) In a voluntary conveyance of an Apartment, the grantee of the Apartment shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his or her share of the common expenses up to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee prior to conveyance. Any such grantee shall be entitled to a statement from the Managing Agent or the Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Apartment conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth.

No Apartment Owner may exempt himself from liability for his or her contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his or her Apartment, nor shall an Apartment Owner withhold any assessment claimed by the Association. An Apartment Owner who receives a demand for payment from the Association and disputes the amount of an assessment may request a written statement (the "**Initial Written Statement**") clearly indicating:

- (a) The amount of common expenses included in the assessments, including the due date of each amount claimed;
- (b) The amount of any penalty or fine, late fee, lien filing fee, and any other charge included in the assessment that is not imposed on all Apartment Owners as a common expense; and
- (c) The amount of attorneys' fees and costs, if any, included in the assessment.

An Apartment Owner who disputes the information in the Initial Written Statement received from the Association may request a subsequent written statement that additionally informs the Apartment Owner that:

- (a) Under Hawaii law, an Apartment Owner has no right to withhold common expense assessments for any reason;
- (b) An Apartment Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's common

expense assessment, provided the Apartment Owner immediately pays common expense the assessment in full and keeps common expense assessments current;

(c) Payment in full of the common expense assessment does not prevent the Owner from contesting the common expense assessment or receiving a refund of amounts not owed; and

(d) If the Apartment Owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the Apartment Owner may demand mediation as provided in the Act prior to paying those charges.

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

An Apartment Owner who pays the Association the full amount of the common expenses claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's common expense claim. If the Apartment Owner and the Association are unable to resolve the dispute through mediation, then either party may file for arbitration under subpart D of part VI of the Act. An Apartment Owner may only file for arbitration if all amounts claimed by the Association as common expenses are paid in full on or before the date of filing. If the Apartment Owner fails to keep all Association common expense assessments current during the arbitration, then the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Apartment Owner pays all Association common expense assessments within thirty (30) days after the date of suspension, then the Apartment Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association common expense assessments by the end of the thirty (30)-day period, then the Association may ask the arbitrator to dismiss the arbitration proceedings. The Apartment Owner shall be entitled to a refund of any amounts paid as common expenses to the Association that are not owed.

For the purposes of this Section 4, a certificate executed and acknowledged or made by any two members of the Board or by the Managing Agent shall be conclusive upon the Board, the Owners and all Persons who rely upon it in good faith, except as to the amount of any check received within the 30-day period immediately preceding the date of such statement which is subsequently dishonored. Any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his or her Apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand thereof and upon payment of a reasonable fee not to exceed TEN DOLLARS (\$10.00). If any claim of lien is Recorded 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, not to exceed TWENTY-FIVE DOLLARS (\$25.00), the Board, acting by any two 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 Recorded document number of the claim of lien and that the lien is fully satisfied, released and discharged.

Notwithstanding any other provision in these Bylaws to the contrary, if any damage or destruction to a common element is caused solely by the act or conduct of one

Apartment Owner, his or her tenants, guests, visitors or co-occupants, then only such Apartment Owner shall be responsible and be liable to pay for the repair to any such damaged common element. Said Apartment Owner shall promptly reimburse the Association for any and all costs and expenses incurred in restoring or repairing any such damaged or destroyed common element. All sums assessed by the Association but remaining unpaid in connection with the restoration or repair of any such damaged or destroyed common element shall be subject to the same provisions governing unpaid common expenses, and the Association shall have all of the rights and remedies afforded the Association with respect to unpaid common expenses as provided in these Bylaws.

SECTION 5. Foreclosure. Any lien created pursuant to the Act, the Declaration or these Bylaws may be foreclosed upon by action of the Managing Agent or the Board of Directors, acting on behalf of the Association. In any such foreclosure, the Apartment Owner shall be required to pay a reasonable rental for the Apartment and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rent. The Managing Agent or the Board of Directors, acting on behalf of the Association, may bid on the Apartment at the foreclosure sale, and may acquire and hold, lease, Mortgage and convey it pursuant to the Declaration and these Bylaws. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the judgment.

Prior to foreclosing upon such lien, the Board of Directors or Managing Agent shall provide thirty (30) days prior written notice of intention to foreclose by mailing written notice, postage prepaid, to all Persons having any interest in such Apartment as shown in the Association's record of ownership, including, but not limited to, any holder or insurer of a Mortgage of any interest in such Apartment.

Except as provided in the Act, when the Mortgagee of a Mortgage of Record or other purchaser of any Apartment obtains title to the Apartment pursuant to the Mortgage, or as a result of foreclosure of the Mortgage, a conveyance in lieu of foreclosure, or exercise of the remedies provided in the Mortgage, the acquirer of title, his or her successors and assigns, shall not be solely liable for the share of the common expenses or assessments by the Association chargeable to the Apartment that become due prior to the acquisition of title to the Apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the Apartment Owners, including the acquirer, his or her successors or assigns.

In conjunction with or as an alternative to foreclosure proceedings, where an Apartment is owner-occupied, the Association of Apartment Owners may authorize the Managing Agent or the Board of Directors to, after sixty (60) days' written notice to the Apartment Owner and to the Apartment's first Mortgagee of the nonpayment of the Apartment's share of common expenses, terminate the delinquent Apartment's access to the common elements and cease supplying the delinquent Apartment 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. Before the Board of Directors may take the actions permitted under this paragraph, the Board must adopt a written policy providing for such actions and have the policy approved by a

Majority of Apartment Owners at an annual or special meeting of the Association or by the written consent of a Majority of Apartment Owners.

SECTION 6. Waiver. The failure of the Board to insist in any one or more instances upon strict performance of or compliance with any of the covenants of the Owner contained in these Bylaws 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, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach. No waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 7. Books of Account; Audit. The Board, on behalf of all Owners, will maintain or cause to be maintained books of account of the common expenses in accordance with recognized accounting practices and 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 Board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

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. If the Association is comprised of less than twenty (20) Apartments, then the annual audit and the annual unannounced cash balance verification may be waived at an Association meeting by a vote of a Majority of Apartment Owners. The Board shall make available a copy of the annual audit to each Apartment Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. All proxy forms shall provide a box where the Owner may indicate that the Owner wishes to obtain either a summary or an unabridged copy of the annual audit report. The Board shall not be required to provide the report or a summary if the proxy form 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, then the Board shall make available:

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

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

If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, then 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. Any Owner may, at his or her expense, cause an annual inspection to be made of the books and records of the Association.

SECTION 8. Association of Apartment Owners Funds; Handling and Disbursement.

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities, such as lease rent collections and rental operations, nor shall the Managing Agent commingle any Association funds with the Managing Agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association; provided that:

- (i) the collection is allowed by the provisions of the Declaration and these Bylaws; and
- (ii) the system of lease rent collection is approved at a meeting of the Association by a vote of a Majority of Apartment Owners.

(c) All funds collected by the Association, or by the Managing Agent for the Association, shall be:

- (i) deposited in a financial institution, including but not limited to a federal or community credit union, located in the State of Hawaii, pursuant to a resolution adopted by the Board, and whose deposits are insured by an agency of the United States government;
- (ii) held by a corporation authorized to do business under Article 8 of Chapter 412, Hawaii Revised Statutes;
- (iii) held by the United States Treasury;
- (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 National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; or
- (v) placed through a federally insured financial institution located in the State of Hawaii for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States; and
- (vi) invested only as permitted in Section 514B-149(c)(2) of the Act.

Records of the deposits and disbursements shall be disclosed to the Real Estate Commission upon request. 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 account and shall be disbursed only by the Managing Agent or the Managing Agent's employees under the supervision of the Board.

(d) Neither the Managing Agent nor the Board shall, by oral instructions over the telephone, transfer Association funds between accounts, including, but not limited to, the general operating account and reserve fund account.

(e) The Managing Agent shall keep and disburse funds collected on behalf of the Apartment Owners in strict compliance with any agreement made with the Apartment Owners, Chapter 467 of the Hawaii Revised Statutes, the rules of the Real Estate Commission, and all other applicable laws.

(f) Any Person who embezzles or knowingly misapplies Association funds received by the Managing Agent or the Association shall be guilty of a class C felony.

SECTION 9. Examination of Records. Financial statements, general ledgers, the accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more, shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board, and shall be available for examination by any Owner at no cost, or on twenty-four (24) hour loan, at a convenient location designated by the Board; provided that:

(a) The Board may require the Apartment Owner 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, its members or both; and

(b) The Apartment Owner must pay for any administrative costs connected with furnishing such information in the event that providing such information exceeds eight hours of an Association employee's time (over the course of a year) to comply with the request.

Copies of these items shall be provided to any Apartment 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. 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 after receipt of the request.

SECTION 10. Disposal of Records. The Managing Agent may dispose of the records of the Association which are more than five years old (except for tax records, which shall be kept for seven 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 within sixty days. The notice shall include an itemized list of the records that the Managing Agent proposes to dispose.

SECTION 11. No Alteration of Documents. No Person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of either 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.

ARTICLE VII MORTGAGEES

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

SECTION 2. Notice of Default. When giving notice to an Apartment Owner of a default in paying common expenses that is at least sixty (60) days or of another default, the Board of Directors shall send a copy of such notice to each holder and insurer (or guarantor) of a Mortgage covering any interest in such Apartment whose name and address has previously been furnished to the Board.

SECTION 3. Additional Notices to Mortgagees. A holder and insurer (or guarantor) of a Mortgage on any Apartment in the Project shall be entitled to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the Project or the Apartment securing its Mortgage;
- (b) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Apartment on which it holds its Mortgage;
- (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (d) any proposed action that requires the consent of a specified percentage of Mortgagees.

SECTION 4. Mortgagee Approval.

(a) Except as provided in Section 514B-47 of the Act, any action to terminate the Project after substantial destruction or condemnation occurs or for other reasons may only occur upon approval of Mortgagees that represent at least fifty-one percent (51%) of the common interests appurtenant to the Apartments that are subject to Mortgages.

(b) No Apartment shall be partitioned or subdivided without the prior written consent of the Mortgagee(s) of such Apartments.

(c) Unless at least eighty percent (80%) of the first Mortgagees (based upon one vote for each first Mortgage held), and eighty percent (80%) of the Apartment Owners (other than the Developer) have given their prior written approval, the Association shall not be entitled to:

- (i) By act or omission, abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this clause);
- (ii) Use hazard insurance proceeds for losses to the Project or any part thereof (whether to Apartments or to common elements) for other than the repair, replacement or reconstruction of the same, except as otherwise provided by the Declaration, these Bylaws or the Act;
- (iii) Terminate professional management and assume self-management of the Project.

SECTION 5. Examination of Books. Each holder or insurer of a Mortgage of an Apartment shall be permitted to examine the books of account of the Association at reasonable times on business days, but not more often than once a month.

SECTION 6. Annual Reports and Other Financial Data. Each holder or insurer of a Mortgage of an Apartment may request, and shall receive upon request, such financial data and/or an annual audited financial statement of the financial status of the Association and of the Project within ninety (90) days following the end of any fiscal year of the Project. Unless otherwise determined by the Board, the fiscal year of the Project shall be the calendar year.

SECTION 7. Mortgagee Protection. Notwithstanding all other provisions hereof:

(a) The liens created by and under these Bylaws upon any Apartment shall be subject and subordinate to, and shall not affect, the rights of the holder of any indebtedness secured by any Mortgage of such interests made for value that was Recorded prior to the Recordation of a notice of a lien by the Association. After the foreclosure of any such Mortgage, there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure (i) all assessments, whether regular or special, assessed to such Apartment if falling due after the date of such foreclosure sale, and (ii) such purchaser's pro rata share of unpaid assessments falling due before the conveyance to the purchaser. The lien shall have the same effect and be enforced in the same manner as provided in Article VI, Section 4 [Default in Payment of Assessments] of these Bylaws.

(b) No amendment to this Section 7 shall affect the rights of the holder of any Mortgage that has been duly Recorded prior to the Recordation of such amendment, when such holder does not join in the execution of the amendment.

SECTION 8. Notice to Board of Directors. An Apartment Owner who Mortgages his or her interest in an Apartment shall notify the Board of the name and address of his or her Mortgagee, and within ten (10) days after the Recordation of the same, shall deliver a conformed copy of the Mortgage to the Board. The Board shall maintain such information in a book entitled "Mortgagees of Apartments".

ARTICLE VIII LAND TRUST

SECTION 1. Operation and Control. If title to any Apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Apartment remain vested in the trust beneficiary or beneficiaries, then the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all common expenses and all other charges, costs and expenses assessed against such Apartment or the Owner thereof pursuant to the Declaration, these Bylaws, the House Rules or the Act.

SECTION 2. Common Expenses. No claim for payment of common expenses or other charges, costs or expenses shall be made against any such trustee personally and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the Apartment as provided in the Declaration, these Bylaws and the Act, notwithstanding any transfer of beneficial interest under such trust.

ARTICLE IX LITIGATION

No judicial or administrative proceedings shall be commenced or prosecuted by the Board or the Association unless approved by a vote of seventy-five percent (75%) of the Apartment Owners. This Article shall not apply, however, to: (a) actions to enforce the provisions of the Declaration, these Bylaws, the House Rules or any other rules or regulations adopted by the Board or the Association relating to the use or occupancy of the Apartments or the common areas, or the conduct of Owners or occupants of the Apartments; (b) actions to enforce the rights of the Association under any contract for goods or services entered into by the Board pursuant to the powers given it under these Bylaws, the Declaration or by statute; (c) the imposition and collection of assessments as provided in the Declaration and in Article VI of these Bylaws (including, without limitation, the foreclosure of liens); or (d) counterclaims brought by the Association in proceedings instituted against it.

ARTICLE X GENERAL PROVISIONS

SECTION 1. House Rules. The Developer shall initially establish and the Board (upon giving notice to all Apartment Owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon) may thereafter establish and amend such House Rules as the Developer or the Board, as the case may be, may deem necessary for the operation and use of the Project. The Apartment Owner's rights under these Bylaws shall in all respects be subject to the House Rules, which shall be deemed to be a part of these Bylaws. Each Apartment Owner shall abide by all the House Rules, and shall be responsible for the conduct of the Apartment Owner's tenants, guests, invitees and employees. The House Rules shall uniformly apply to and be binding upon all occupants of the Apartments. The Board may establish reasonable fines and penalties to enforce the House Rules and provisions of the Project's documents upon giving notice to all Apartment Owners in the same

manner as herein prescribed for notice of meetings.

SECTION 2. Restrictions on Pets. Only a reasonable number of common household pets, including, but not limited to, dogs, cats, guinea pigs, rabbits, birds or fish, may be kept inside each Apartment and/or in the Apartment's limited common element Private Yard Area; provided such animals shall not be kept, bred or used for any commercial purposes. The foregoing notwithstanding, animals described as pests under Section 150A-2, Hawaii Revised Statutes, animals prohibited from importation under Sections 141-2, 150A-5 or 150A-6, Hawaii Revised Statutes and animals prohibited in residential areas by City and County of Honolulu ordinances, shall not be allowed in the Project. If a pet causes a nuisance or an unreasonable disturbance or presents a danger to any person within the Project, then the Owner of the Apartment where the pet is kept shall be given an opportunity by the Board of Directors to rectify the problem. If the pet continues to cause a nuisance or an unreasonable disturbance or present a danger to any person within the Project, then the Managing Agent, at the direction of the Board of Directors, shall require that the pet be promptly and permanently removed from the Project. All pets (except fish) must be registered with the Managing Agent or other Person specified by the Managing Agent.

Animals are not allowed on the common elements except when carried or on a leash or harness or otherwise within the immediate control of the animal's owner or handler. Owners must immediately clean up any droppings left by their pets on any common areas.

If a certified guide animal, certified signal animal or certified service animal causes a nuisance, then the resident-owner of that animal shall be responsible for abating the nuisance within a reasonable time. If the resident-owner of the animal is unable to abate the nuisance, then the animal must be removed from the Project. The resident-owner will be given a reasonable amount of time to replace the animal before the resident-owner is required to remove the animal causing the nuisance.

If an Owner has agreed in writing to allow his or her tenants to keep pets in the Apartment, then the tenants may keep only those types of pets which may be kept by the Owner, provided such pets are permitted under these Bylaws.

If there is an amendment to these Bylaws that prohibits pets within the Project, then any Owner who is keeping a pet pursuant to this Section 2 (before being amended) as of the effective date of the amendment to these Bylaws may, upon the death of the animal, replace the animal with another and continue to do so for as long as the Owner continues to reside in the Project.

The House Rules have additional provisions relating to pets.

SECTION 3. Abatement and Enjoinment of Violations by Apartment Owners. The violation of any of the House Rules, the breach of any of these Bylaws or the breach of any provision of the Declaration shall give the Board the following rights in addition to any other rights set forth in these Bylaws, the House Rules or the Declaration:

(a) To enter the Apartment in which, or as to which, such violation or breach exists and summarily abate and remove, at the expense of the defaulting Apartment Owner, any

structure, thing or condition that may exist therein in violation of the House Rules, these Bylaws or the Declaration. The Board shall not be guilty of any trespass, provided, however, that notwithstanding the foregoing, the Board shall have such right of entry only in the instance where such violation or breach threatens an immediate and substantial threat to the physical safety or property of any Apartment Owner, member of his or her family, tenant, guest or invitee.

(b) To enjoin, abate or remedy by appropriate legal proceedings the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be paid by the defaulting Apartment Owner on demand.

SECTION 4. Penalties for Violations. The Association, via the Board, shall have the right to charge or assess any penalties for violations against any Owner. The Board shall have the right to establish and implement (a) a schedule of reasonable fines and/or penalties for specific violations, (b) reasonable and specific methods and procedures for determining such violations and culpability therefor, and (c) the manner in which such penalties shall be enforced and in which such fines shall be collected. Unless prohibited under the Act, (i) fines and penalties accrued against an Apartment shall be treated as an assessment as described in Section 4 of Article VI of these Bylaws, and (ii) defaults in the payment of fines and penalties treated as assessments shall be treated pursuant to Sections 3 and 4 of Article X of these Bylaws.

SECTION 5. Arbitration of Grievances and Disputes. At the request of any party, any grievance or dispute concerning or involving one or more Apartment Owners and the Association, the Board, the Managing Agent or one or more other Apartment Owners relating to the interpretation, application or enforcement of the Act, the Declaration, these Bylaws or the House Rules shall be submitted to arbitration as provided in Section 514B-162 of the Act. Notwithstanding any provision in the Act to the contrary, the Declaration or these Bylaws, the award of any costs, expenses and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses and legal fees shall be binding upon all parties. Nothing in this Section shall be interpreted to require the arbitration of any grievance or dispute which is either exempt from arbitration or determined to be unsuitable for arbitration pursuant to Section 514B-162 of the Act.

SECTION 6. Expenses of Enforcement. Every Apartment Owner, occupant, tenant, employee of an Owner or any other Person who may in any manner use the Project shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such Apartment, foreclosing its lien therefor or enforcing against such Person or Persons any provisions of the Declaration, these Bylaws, the House Rules or the rules of the Real Estate Commission. However, if the claims upon which the Association takes any action are not substantiated, then all costs and expenses, including reasonable attorneys' fees, incurred by such Person or Persons as a result of the Association's action shall be promptly paid to such Person or Persons on demand. Unless prohibited under the Act, the unpaid amount of such costs and expenses incurred as a result of such substantiated claims against any Apartment Owner or the occupant, tenant or employee of any Apartment Owner shall constitute a lien against his or her interest in his or her Apartment, which may be foreclosed upon by the Board of Directors or Managing Agent according to the Declaration, these Bylaws and the Act in the same manner as provided in the Act for common expenses; provided, however, that the lien for such

costs and expenses shall be subordinate to liens for real property taxes and assessments lawfully imposed by governmental authorities against the Apartment and, except as provided in the Act, to all sums unpaid on Mortgages of Record.

If any claim by an Owner against the Association, any of its officers or Directors or the Board is substantiated in an action demanding enforcement of any provision of the Declaration, these Bylaws, the House Rules, the Act, or the rules of the Real Estate Commission, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner as a result of such action shall be awarded to such Owner. However, no such award shall be made in any derivative action unless: (a) the Owner shall have demanded and allowed a reasonable time for the Board to pursue such enforcement; or (b) the Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If any claim by an Owner is not substantiated in any court action against the Association, any of its officers or Directors, or the Board to enforce any provision of the Declaration, these Bylaws, the House Rules, the Act, or the rules of the Real Estate Commission, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless, before filing the action in court, the Owner has first submitted the claim to mediation, or to arbitration under subpart D of Part VI of the Act, and made a good faith effort to resolve the dispute under any of those procedures.

SECTION 7. Right of Access. The Managing Agent and any other Person authorized by the Board or the Managing Agent shall have a right of access to any Owner's Apartment for the purpose of making inspections where there is reason to believe that there is a condition existing in an Apartment which threatens to damage another Apartment or the common elements, or for the purpose of correcting any condition existing in an Apartment and threatening another Apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in an Apartment or elsewhere in the buildings, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be granted immediately, whether the Owner is present at the time or not.

SECTION 8. 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 Developer or the Owners under the laws of the State of Hawaii for the purposes herein set forth. If not sooner formed by the Developer, such corporation shall be formed upon the written approval by the Owners of at least sixty-seven percent (67%) of the common interest. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles of such corporation shall be subordinated hereto and controlled hereby. These Bylaws shall be the bylaws of the corporation. 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.

If, as expected, the Association is incorporated as a nonprofit membership corporation, then, upon an administrative merger of the Association with another association (or

other associations) of apartment owners, the apartment owners in such other merged association(s) shall automatically become members of the Association.

If, as expected, the Association is incorporated as a nonprofit membership corporation, then, in the event that one or more association(s) of apartment owners that is/are to be merged with the Association shall be incorporated prior to an administrative merger with the Association, the Association and such other association(s) of apartment owners, acting through their respective board of directors, shall, upon such administrative merger, take the appropriate steps to (a) merge the associations into one nonprofit membership corporation or consolidate the associations into a new nonprofit membership corporation, and (b) have the apartment owners in the unincorporated association(s), if any, become members of the association of apartment owners of the entity that survives the merger or consolidation.

The Board shall have the power and obligation to amend the Association's articles of incorporation and any other appropriate articles of incorporation to reflect the name of the merged association as the "Association of Apartment Owners of Keali'i by Gentry", as specified in Section B.4(c) of the Declaration of Intent to Develop and Merge.

SECTION 9. Notices. All notices to the Association shall be mailed or delivered to the Board, in care of the Managing Agent, or, if there is no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate by notice in writing to all Owners and all Mortgagees of Apartments requesting such notice. Any notices to Mortgagees of Apartments shall be sent by mail to their respective addresses, as designated by them in writing given to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address, which shall be deemed to have been given when received. If any interest in an Apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the Apartment remain vested in the trust beneficiary or beneficiaries, notice shall be deemed given sufficiently for all purposes if it is in writing and is delivered personally or by registered or certified mail to the trustee of any such trust and to any beneficiary whose name and address has been furnished to the Board.

SECTION 10. Inspection of Condominium Property Regime Documents. During normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Owners, lenders (and the insurer of a first Mortgage on any Apartment) and prospective purchasers, current copies of the Declaration, these Bylaws, the House Rules and the most recent annual financial statement of the Association. Copies of these documents shall be provided to any Owner upon the Owner's request, provided that the Board first gives the Owner a ten (10) day written notice of the reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request, and the Owner, upon receiving this notice, either agrees to pay such fee or withdraws the request.

SECTION 11. Captions. The captions herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or prescribe the scope of these Bylaws or the intent of any provision hereof.

SECTION 12. Gender. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders.

SECTION 13. Waiver. No restriction, condition, obligation or provision in these Bylaws shall be deemed abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

SECTION 14. Interpretation/Construction.

(a) The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project under the provisions of applicable laws, including the Act. To the extent such provisions affect or pertain to the Declaration, these Bylaws and the Project, the provisions of the Act shall be liberally construed to effectuate the intent of the Declaration and these Bylaws.

(b) Nothing in these Bylaws shall be deemed or construed to authorize the Association or Board to conduct or engage in active business for profit on behalf of any or all of the Apartment Owners.

(c) The use of the singular shall be deemed to include the plural whenever the context shall so require. The use of the plural shall be deemed to include the singular whenever the context shall so require.

(d) The terms "herein," "hereof" or "hereunder" or similar terms used in these Bylaws refer to these entire Bylaws and not to the particular provision in which the terms are used.

(e) When the term "including" is used in these Bylaws, it shall not be interpreted as a term of limitation, but shall mean "including, but not limited to".

(f) When, in these Bylaws, a Person reserves or is given or granted a right to do something, the Person shall not be obligated to exercise that right, even if a term such as "but is not obligated" or "but not the obligation" does not accompany the reservation, giving or granting of the right.

(g) References to "days" in these Bylaws mean calendar days unless otherwise specified. References to "business days" means those non-weekend days that are not recognized as holiday days by the government of the State of Hawaii.

(h) When used in these Bylaws, the words "and/or" shall be deemed to mean one, some or all of the listed items.

SECTION 15. Compliance with Hawaii Law. The Declaration and these Bylaws are subject to the laws of the State of Hawaii, including but not limited to the Act and the Hawaii Administrative Rules, Title 16, Chapter 107.

SECTION 16. Amendment.

(a) Except as otherwise provided in these Bylaws, the Declaration or the Act, the provisions of these Bylaws may be amended in accordance with Section 514B-108 of the Act by the vote or written consent of at least sixty-seven percent (67%) of the Apartment Owners;

provided that proposed amendments to these Bylaws that are of a material adverse nature to Mortgagees must be agreed to by first Mortgagees that represent at least fifty-one percent (51%) of the common interest of Apartments that are subject to first Mortgages. Implied approval by a Mortgagee to a proposed amendment to these Bylaws shall be assumed when such Mortgagee fails to submit a response to a written proposal for such amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Each one of the particulars set forth in Section 514B-108 of the Act shall always be embodied in these Bylaws.

(b) Amendments to these Bylaws may be proposed by the Board or by a volunteer Apartment Owners' committee, and any such proposed amendment shall be accompanied by a written explanation of the rationale therefor. Any amendments proposed by a volunteer Apartment Owners' committee shall be accompanied by a petition in favor of the proposed amendments signed by not less than twenty-five percent (25%) of the Apartment Owners. However, a volunteer Apartment Owners' committee may not submit a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the Apartment Owners within one year after the original petition was submitted to the Board. Within thirty (30) days after the receipt of such petition to amend the Bylaws, the Board shall mail the proposed amendments, the rationale therefor and ballots for voting on the proposed amendments without change to all Apartment Owners at the expense of the Association. The vote or written consent required to adopt the proposed amendments must be obtained within three hundred sixty-five (365) days after mailing.

(c) Notwithstanding the foregoing and notwithstanding the sale or conveyance of any of the Apartments, the Developer may unilaterally amend these Bylaws without the approval, consent or joinder of Persons then owning the Apartments or any Mortgagee of an Apartment in order to (i) update or correct the legal description of the Land, including substituting a file plan description of the Land in place of a metes and bounds description of the Land, and (ii) comply with the law or with requirements imposed by the Real Estate Commission of the State of Hawaii or any other governmental agency, by any title insurance company issuing title insurance on the Project or any of the Apartments and/or by any institutional lender lending funds on the security of the Project or any of the Apartments.

(d) Any amendments to these Bylaws shall be evidenced by a written instrument in form suitable for Recordation that sets forth the amendment and the manner in which it was duly approved and which is signed and acknowledged by any two (2) officers of the Association; provided, however, that amendments to these Bylaws pursuant to a reservation in favor of the Developer need only be signed and acknowledged on behalf of the Developer. The amendment shall be effective only upon Recordation of the instrument, together with all required consents.

SECTION 17. Restatement of Declaration and Bylaws.

(a) Notwithstanding any other provision in these Bylaws or the Act to the contrary, the Association may, at any time, restate the Declaration or these Bylaws to set forth all amendments thereof by a resolution adopted by the Board.

(b) The Association may, at any time, restate the Declaration or these Bylaws to amend the Declaration or these Bylaws as may be required in order to conform with the provisions of the Act or of any other statute, ordinance, rule or regulation enacted by any governmental authority, by a resolution adopted by the Board, and the restated Declaration or Bylaws shall be as fully effective for all purposes as if adopted by the vote or written consent of the Apartment Owners. Any such restated document shall identify each portion so restated and shall contain a statement that those portions have been restated solely for purposes of information and convenience, identifying the statute, ordinance, rule or regulation implemented by the amendment, and that in the event of any conflict, the restated Declaration or Bylaws shall be subordinate to the cited statute, ordinance, rule or regulation.

(c) Upon the adoption of a resolution pursuant to subsections (a) or (b) above, the restated Declaration or Bylaws shall set forth all of the operative provisions of the Declaration or Bylaws, as amended, together with a statement that the restated Declaration or Bylaws correctly sets forth without change the corresponding provisions of the Declaration or Bylaws, as amended, and that the restated Declaration or Bylaws supersedes the original Declaration or Bylaws and all prior amendments.

(d) The restated Declaration or Bylaws shall be Recorded in the manner provided in Section 514B-109 of the Act, and, upon Recordation, shall supersede the original Declaration or Bylaws and all prior amendments. In the event of any conflict, the restated Declaration or Bylaws shall be subordinate to the original Declaration or Bylaws and all prior amendments.

SECTION 18. Severability. The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

SECTION 19. Department of Veterans Affairs Financing. To the extent that any provision in the Declaration, these Bylaws or any deed conveying an Apartment from the Developer to an Apartment Owner is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("**DVA Financing**"), such provision shall not apply to any Apartment that is: (a) encumbered by DVA Financing; or (b) owned by the Department of Veterans Affairs.

Remainder of page intentionally left blank.

The undersigned Developer, as the Developer, the Owner of all of the Apartments in the Project and on behalf of the Association, hereby adopts the foregoing as the Bylaws of the Association of Apartment Owners of Keali'i by Gentry II as of July 15, 2020.

GENTRY KGC, LLC,
a Hawaii limited liability company

By: Gentry Homes, Ltd., a Hawaii corporation
Its Member

By: Andrew Kamikawa

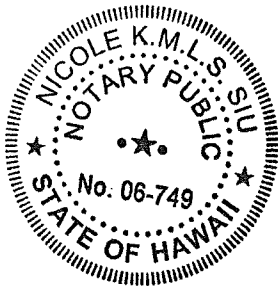
Name: Andrew Kamikawa

Title: Vice President

"Developer"

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

On this July 15, 2020, before me personally appeared ANDREW KAMIKAWA, to me personally known, who, being by me duly sworn and affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity, and acknowledged the instrument to be the free act and deed of the corporation.



[Handwritten Signature]

Name: Nicole K.M.L.S. Siu

Notary Public, State of Hawaii

My commission expires: December 3, 2020

(Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Bylaws of the Association of Apartment Owners of Keali'i by Gentry II

Document Date: July 15, 2020

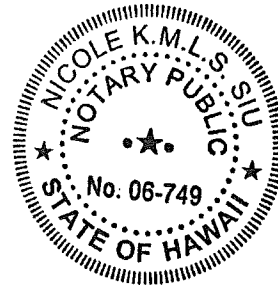
No. of Pages: 60

Jurisdiction (in which notarial act is performed): First Circuit

[Handwritten Signature]

Signature of Notary

July 15, 2020
Date of Notarization and
Certification Statement



(Stamp or Seal)

Nicole K.M.L.S. Siu
Printed Name of Notary

EXHIBIT "A"

Description of the Land

All of those certain parcels of land situate at Honouliuli, District of Ewa, Island of Oahu, City and County of Honolulu, State of Hawaii, described as follows:

Lot 6, 0.974 acre;

Lot 7, 0.974 acre; and

Lot 8, 0.974 acre, all as shown on DPP File No. 2017/SUB-168 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140978, which descriptions are incorporated into these Bylaws by reference.

TOGETHER WITH non-exclusive easements for access and utility purposes, over, through, under, and across the following lots:

Lot 11, 1.069 acres,

Lot 13, 1.963 acres,

Lot 14, 0.927 acre, all as shown on DPP File No. 2017/SUB-168 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140978, which descriptions are incorporated into these Bylaws by reference, and

Lot 12-A, 0.860 acre, as shown on DPP File No. 2019/SUB-44 and further described in Surveyor's Affidavit recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72140979, which description is incorporated into these Bylaws by reference, but subject to the provisions of these Bylaws and the Declaration.

All of the property described in this Exhibit "A" was previously a portion of Lot 6770, as shown on Map 571 of Land Court Application 1069, which was deregistered from the Land Court System by Document No. A-71711038, recorded in the Bureau of Conveyances of the State of Hawaii on August 20, 2019.

END OF EXHIBIT "A"