

BYLAWS OF ASSOCIATION OF APARTMENT OWNERS OF HONOLULU PARK PLACE

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BYLAWS OF ASSOCIATION
OF APARTMENT OWNERS OF
HONOLULU PARK PLACE

RECITALS:

HONOLULU PARK PLACE LIMITED PARTNERSHIP, a Hawaii Limited Partnership (the "Developer"), owner of the land described in Exhibit "A" of the foregoing Declaration of Condominium Property Regime of Honolulu Park Place, of even date herewith, hereby submits the Condominium Property Regime described in said Declaration to the following Bylaws:

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1. Authority for Bylaws. The Developer, acting as the present Association of Apartment Owners of the Project, hereby approves and adopts these Bylaws pursuant to the Act.

Section 2. Purpose of Bylaws: Covenants to Run with the Land. The Land and the Improvements are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following Bylaws all of which are declared and agreed to be in furtherance of the plan set forth in the Declaration, to constitute a Condominium Property Regime under the Act and for the purposes of enhancing and perfecting the value, desirability and attractiveness of said Project. These Bylaws shall run with the Land and Apartments and shall be binding upon all parties having or acquiring any right, title or interest therein.

Section 3. Definitions. The terms used herein with initial capital letters shall have the meanings given to them in the foregoing Declaration, except as expressly otherwise provided herein.

Section 4. Conflicts. These Bylaws are set forth to comply with the requirements of the Act. In any case where any of these Bylaws conflicts with the provisions of the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

Section 5. Binding Effect of Bylaws on Owners, Mortgagees and Lessees. All present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and occupants of Apartments and their employees, 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 conveyance or mortgage or Agreement of Sale or the entering into of a lease or the act of occupancy of an Apartment shall constitute an acceptance, ratification and agreement to comply with the

provisions of these Bylaws, the House Rules and the Declaration, as the same may be amended from time to time.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. Purpose and Voting. The Association shall be organized and operated for the purposes of managing, maintaining, acquiring, constructing and caring for the Association property which includes the Common Elements, funds and other property held by the Association or the nominee of the Association, property owned in common by one (1) or more Apartment Owners, but held by the Association, property within or forming part of the Project privately held by one (1) or more Apartment Owners, but which may be subject to a common maintenance assessment by the Association for such purposes as insurance, and property owned by a government agency, public utility or other third party and used for the benefit of the Association or one (1) or more Apartment Owners. Each Apartment Owner shall be a member of the Association and shall be entitled to that fraction of the total vote of all of the Apartment owners which equals the percentage of the Common Interest appurtenant to such Apartment as set forth in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. The vendee of an Apartment pursuant to a recorded Agreement of Sale shall have the right to vote unless the vote is retained by the vendor as may be provided in said Agreement of Sale pursuant to Section 514A-83 of the Act. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association, the percentage of vote for any Apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such Apartment in such capacity. The vote for any Apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such Apartment. Corporations and general partnerships and limited partnerships which are Owners shall designate a general partner or officer for the purpose of exercising the vote; such representative of an Owner which is a corporation, general partnership or limited partnership shall present satisfactory written evidence to the secretary of their designation as representative not later than the commencement of the meeting.

Section 2. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners having not less than one-half (1/2) of the total authorized votes of all Apartment Owners shall constitute a quorum at all meetings of the Apartment Owners.

Section 3. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding upon all Apartment Owners for all purposes, except where a higher percentage vote is required in the Declaration or these Bylaws or by law.

Section 4. Majority of Apartment Owners. As used in these Bylaws, the term "Majority of Apartment Owners" shall mean those Apartment owners having more than fifty percent (50%) of the total authorized votes present at any meeting of the Apartment Owners, and any specified percentage of the owners means owners having the specified percentage of the total votes.

Section 5. Cumulative Voting. Election of Directors shall be by cumulative voting and each Owner may cast for any one or more nominees to the Board a vote equivalent to the votes which such Owner is entitled to multiplied by the number of Directors to be elected. Each owner shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as he shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected.

Section 6. Proxies and Pledges. A proxy, to be valid, must be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Apartment or Apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, may be limited as the Apartment Owner desires and indicates, and may be given to the Board; provided that any such proxy shall permit the Owner to elect that each Director vote an equal share of the proxy or that the Majority of the Board vote the entire proxy; in those instances where the Owner fails to make such election, the entire proxy shall be voted by the Majority of the Board. No proxy shall be irrevocable unless coupled with a financial interest in the Apartment. Proxies shall be revoked by writing filed with the Secretary or by the death or incapacity of such Owner or by the attendance of such Owner at the meeting.

Voting rights transferred or pledged by a recorded lease, mortgage, or Agreement of Sale of any Apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. No resident manager, or Managing Agent shall solicit, for use by such manager or Managing Agent, any proxies from any Apartment Owner, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

Section 7. Place of Meetings. All meetings of the Association shall be held at such place within the Project, or as close thereto as may be practical within the state, as may be designated by the Board.

Section 8. Annual Meetings. The first annual meeting of the Apartment Owners shall be held as called by the Developer and shall be held not later than one hundred eighty (180) days after recordation of the first Apartment Deed, provided that Apartment Deeds for not less than forty percent (40%) of the Apartments in the Project has been sold and recorded in the Bureau of Conveyances. If Apartment Deeds for less than forty percent (40%) of the Apartments in the Project shall not have been sold and recorded within one (1) year of the recordation of the first Apartment conveyance, an annual meeting shall be called if ten percent (10%) of the Apartment Owners so request. The term "sold and recorded" shall mean and refer to the sale of Apartments in the Project, and the recordation of Apartment Deeds transferring the Apartments to an owner. At such meeting the Apartment owners shall elect a Board. Prior to that time, the Association shall consist solely of the Developer which shall have authority to act in all matters as the Association. Thereafter, the annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year as selected by the Board or 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 in accordance with the requirements of Article III, Section 1 of these Bylaws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

Section 9, Regular Meetings. In addition to annual meetings as provided in Section 8 of this Article II, the Board by resolution or a Majority of the Apartment Owners by petition may establish regular meetings at semiannual, quarter annual, or other regular intervals.

Section 10. Special Meetings. Special meetings of the owners of the Apartments may be held at any time upon the call of the President or of any three (3) Directors, or upon the written request of not less than twenty-five percent (25%) of all of the Apartment Owners presented to the Secretary.

Section 11. Notice of Meetings and Other Notices. Written notice of all meetings, annual or special, stating the date, time and place of the meeting and whether it is annual or special and stating briefly the business proposed to be transacted thereat and items on the agenda for such meeting, and a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws shall be given by mailing such notice, postage prepaid, at least fourteen (14) days before the date assigned for the meeting, to the Owners of the Apartments at their address at the Project or at the address given to the Board for the purpose of service of such notices. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage from any Owner of an Apartment may obtain a copy of any and all notices permitted or required to be given to the Owner of an Apartment, whose interest is subject to said mortgage. Upon notice being given in accordance with the provisions hereof, the failure of any Owner of an Apartment to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each such Owner shall keep the Board informed of any changes in address.

Section 12. Adjournment of Meetings. If any meeting of Apartment owners cannot be held because a quorum is not present, a majority in Common Interest of those Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 13. Conduct of Meetings and Order of Business. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order. The order of business at all meetings of the Apartment Owners shall be as follows:

- a. Roll call.
- b. Proof of notice of meeting.
- c. Reading of minutes of preceding meeting.
- d. Reports of Officers.
- e. Report of the Chairman of the Governors.
- f. Reports of committees.
- g. Election of inspectors of election (when so required)
- h. Election of members of the Board (when so required)
- i. Unfinished business; and
- j. New business.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number and Qualification. The affairs of the Project shall be governed by a Board of Directors who shall owe a fiduciary duty to the Association. The Board shall be composed of nine (9) people, unless not less than seventy-five percent (75%) of all Apartment Owners vote by mail ballot or at a special or annual meeting to reduce the minimum number of Directors. Each member of the Board shall be an Owner, co- Owner, a vendee under Agreement of Sale, designated general partner, or officer of an Owner which is a corporation, general partnership or limited partnership. There shall not be more than one representative on the Board from any one Apartment. Neither the resident manager of the Project, nor the manager of the Park Place Club, nor any employee of the Managing Agent shall serve on the Board.

Section 2. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and for the maintenance, upkeep and repair of the Project in good order and condition and may do all such acts and things except as by law or by the Declaration or by these Bylaws may not be delegated to the Board by the Apartment Owners. The Board shall have all rights set forth in the Act subject to any and all approval requirements as set forth in the Act, the Declaration and these Bylaws. A Director shall not

cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a conflict of interest. The Director shall disclose the nature of the conflict of interest prior to a vote at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. The powers and duties of the Board shall include, but shall not be limited to, the following;

- a. Enforcing the provisions of the Declaration, these Bylaws and the House Rules;
- b. Making payment of all taxes and assessments which are or could become a lien on the Project, the Common Elements or Limited Common Elements or some portion thereof. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and costs incurred by the Board by reason of such lien or liens;
- c. Delegating of its powers to committees, agents, officers, representatives and employees;
- d. Contracting for materials and/or services for the Common Elements or the Association, provided that any contract for goods or services shall provide that such contract may be terminated by either party thereto, without the necessity of cause and without penalty, upon not more than ninety {90} days written notice.
- e. Contracting for fire, casualty, liability and other insurance on behalf of the Association, pursuant to the provisions of Article VII hereof;
- f. Exercising a right of entry in or upon any privately owned Apartment at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, but only where necessary (in connection with construction, maintenance or repair) to protect the Common Elements and Limited Common Elements, or any Apartment or Apartments;
- g. Making repairs to Apartments if for any reason an Owner fails or refuses to maintain and repair such Apartment within a reasonable time after written notice of the necessity of such maintenance or repair is delivered by the Board to said Owner, provided that the Board shall levy a special assessment against such Apartment for the cost of such maintenance or repair;
- h. Making a determination of the Common Expenses and special assessments required for the affairs of the Project, including, without limitation, the operation and maintenance of the Project;
- i. collecting the Common Expenses and special assessments from the Apartment owners;
- j. Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements;
- k. Subject to the provisions of Article X, Section 1 of these Bylaws, adoption and amendment of House Rules covering the details of the operation and use of the Common Elements of the Project;
- l. Opening bank accounts on behalf of the Association and designating the signatories required therefor;

- m. To the extent permitted by law and upon obtaining an Opinion of Counsel prior to exercise of such power, purchasing or leasing or otherwise acquiring in the name of the Board or its designee, corporate or otherwise, on behalf of all Apartment Owners, Apartments offered for sale or lease for use by a resident manager or other person or persons engaged in the operation, repair or maintenance of the Project, but only with prior approval of Apartment Owners owning not less than sixty-five percent (65%) of the Common Interests provided, however, that the purchase of the first such Apartment by the Association shall require only Board approval. The expense of any leasing, acquiring, maintaining or operation of any such Apartment by the Board shall be a Common Expense;
- n. To the extent permitted by law and upon obtaining an Opinion of Counsel prior to exercise of such power, purchasing of Apartments at foreclosure or other judicial sale in the name of the Board or its designee, corporate or otherwise, on behalf of all Apartment Owners, but only with prior approval of Apartment Owners owning not less than sixty-five percent (65%) of the Common Interests;
- o. To the extent permitted by law and upon obtaining an Opinion of Counsel prior to exercise of such power, selling, leasing, subleasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), or otherwise dealing with Apartments acquired by the Board or its designee, corporate or otherwise, on behalf of all Apartment Owners;
- p. Organizing corporations to act as designees of the Board in acquiring title to or leasing of Apartments on behalf of all Apartment Owners;
- q. Making of repairs, additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the other provisions of these Bylaws;
- r. To the extent permitted by law and upon obtaining an Opinion of Counsel prior to the exercise of such power, the Board may borrow funds from time to time on behalf of the Association for (i) the purchase of property, or (ii) the making of repairs, additions or improvements from one (1) or more lenders, up to One Hundred Thousand and No/100 Dollars (\$100,000.00) in the aggregate, without any prior approval and may borrow in excess of such amount, but only with the prior approval of Apartment Owners owning not less than sixty-five percent (65%) of the Common Interests, provided that this One Hundred Thousand and No/100 Dollar (\$100,000.00) limit may be adjusted from time to time by the Board by multiplying such dollar limit by the Cost-of-Living Factor;
- s. Procuring legal and accounting services, including Opinions of Counsel, necessary or proper in the operation of the building(s) or enforcement of these Bylaws;
- t. Paying for all Common Expenses which the Board is required to pay for pursuant to the terms of these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation of the Project or for the enforcement of these Bylaws, provided that if any such payment is required

because of the particular actions or negligence of the Owners of particular Apartments, the cost thereof shall be specially assessed to the Owners of such Apartments;

- u. Keeping, or causing the resident manager or Managing Agent to keep, an accurate and current list of members of the Association and their current addresses and names and addresses of the vendees under Agreements of Sale, if any, as provided in Article X, Section 18 of these Bylaws;
- v. Maintaining an accurate and current file of all Apartment Deeds and Agreements of Sale for resolution of such questions as ownership and voting rights; and
- w. Reviewing for the purpose of approval or disapproval of any Apartment Owner's requests to alter their respective Apartments.

Section 3. Operation of The Park Place Club. The Board shall govern the operation of the Park Place Club and the use and maintenance of its facilities and shall have all powers and duties necessary for the efficient operation and management thereof.

- a. **Powers of the Governors of the Park Place Club.** The Board shall appoint five (5) members of the Park Place Club to serve as the Governors of the Park Place Club. The Governors shall have a Chairman who shall be a member of the Board and who shall both call and conduct all meetings of the Governors. Meetings of the Governors may be held at such time and place at the Project as shall be determined from time to time by the Chairman. Notice of meetings of the governors shall be given to each member of the Governors personally or by mail, telephone, or telegraph at least seven (7) business days, if practicable, prior to the day named for such meeting. All meetings of the Governors shall be open to all members of the Association, and Association members who are not on the Governors may participate in any deliberation or discussion unless a majority of a quorum of the Governors determines that such non-Governor members shall not so participate in the meeting. The Governor, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in private 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. Any member of the Governors may at any time waive notice of any meeting of the Governors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Governors at any meeting of the Governors shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board are present at any meeting of the Governors, no notice shall be required and any business may be transacted at such meeting. The Governors shall have all powers necessary to oversee, operate and manage the day-to-day affairs of the Park Place Club, including, without limitation:

- i. the power to enforce the House Rules pertaining to the Park Place Club, provided that the Governors shall not have the power to (A) impose monetary sanctions, or (B) impose on a member any

- suspension on the use of any or all of the Facilities of the Park Place Club which suspension shall exceed twenty-four (24) hours;
 - ii. the power to establish the duties and responsibilities of Association employees with respect to duties to be performed at the Park Place Club, and to hire, fire and supervise employees in employment positions: which positions have been established by Board action;
 - iii. the power to oversee food and beverage operations, if any, for the Park Place Club;
 - iv. the power to safeguard and maintain any of the Facilities of the Park Place Club and to prevent damage thereto by reason of abuse or negligence or otherwise;
 - v. the power to preserve order and to prevent any member from unreasonably infringing on the rights of other members in connection with the use of the Facilities of the Park Place Club,
- b. **Board to Act Based Upon Advice of Governors.** As to the following matters, the Board shall act only after receiving the advice of the Governors; unless the proposed Board action shall be with the approval of the Governors, the Board shall not act unless not less than sixty-five percent (65%) of the members of the Board so approve:
 - i. establishing the annual budget and staffing requirements for the Park Place Club;
 - ii. establishing House Rules for the operation and use of the Park Place Club and
 - iii. establishing charges for guests and user fees for facilities such as the bowling alley.

Section 4. Managing Agent and Manager.

- a. The Board shall at all times employ a responsible Managing Agent duly qualified to act as a Managing Agent under the requirements of the Act 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 to said managing Agent by the Board, including powers and functions with respect to the Park Place Club; provided that the term of any such management contract shall be limited to a duration of one (1) year, except with the approval of a Majority of Apartment Owners, provided further that such management contract shall also comply with Section 1.d of this Article III. If Developer or a division, subsidiary or affiliate of Developer acts as the first Managing Agent, such management contract shall be subject to termination by either party thereto on not more than sixty (60) days written notice.
- b. 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 exterior of the building(s) and other Common Elements and any additions or alteration thereto; (iii) purchase, maintenance and replacement of any equipment,

- (iv) servicing of all utilities to the building(s) 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 assessments, and payment of bills to third parties, (ix) purchase of such insurance as is contemplated by these Bylaws, and (x) custody and control of 11 funds and maintenance of books and records and preparation of financial reports.
- c. The Board may in its discretion limit any of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent.
 - d. Upon written request of any Apartment Owner or the holder, insurer or guarantor of a mortgage of an interest in any Apartment and upon payment of a reasonable charge therefor, the Managing Agent shall deliver to such party a certified statement of the status of the account of such Apartment.
 - e. The appointment and terms of compensation of the Managing Agent (after the initial Managing Agent) shall be submitted to the Association for approval at each annual meeting but if not ratified by a majority of the Apartment Owners, such contract shall be deemed terminated thirty (30) days after such non-ratification by the Association, and the Board shall give prompt written notice thereof to the Managing Agent and appoint a qualified successor Managing Agent subject to ratification by the Association in the manner set forth above.
 - f. The Managing Agent, subject to the direction of the Board, may represent the Apartment owners or any two or more Apartment Owners similarly situated, as a class, in any action, suit, or other proceeding concerning the Apartment Owners, the Common Elements, or more than one (1) Apartment, or the Association.

Section 5, Election and Term of Office. At the first annual meeting of Apartment Owners three (3) Directors shall be elected for a term of three (3) years, three (3) Directors shall be elected for a term of two (2) years, and three (3) Directors shall be elected for a term of one (1) year. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment owners in case of delay in the election of a successor.

Section 6, Removal of Members of the Board. 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 the Apartment Owners, and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however: that an individual member of the Board may not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one member of the Board by cumulative voting present at such meeting shall vote against his removal. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's record of

ownership; and provided further that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of Article II, Section 11 hereof. Any member of the Board whose removal has been proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting.

Section 7. Vacancies. Vacancies in the Board caused by any reason other than the removal of a member thereof by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a Quorum, and each person so elected shall be a member of the Board for the remainder of the term of the member whose vacancy he filled (unless sooner removed). A vacancy will be deemed to occur upon the death, mental incapacity, or voluntary resignation of any Director, or upon such person ceasing to have the qualifications for a Director as defined in Article III, Section I.

Section 8. Organization Meeting and Conduct of Meetings. The first meeting of the members of the Board shall be held immediately after the first annual meeting of the Apartment owners and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, provided that a majority of the whole Board shall be present thereat. All meetings of the Board (whether organization, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order. The Association shall provide each Director with a current copy of the Declaration, Bylaws, House Rules and Hawaii Revised Statutes Chapter 514A. Minutes of all meetings shall include the recorded vote of each Director on all motions, except motions voted on in executive session.

Section 9. Regular Meetings.

- a. Regular meetings of the Board 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 one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, or telegraph at least fourteen (14) business days, if practicable, prior to the day named for such meeting. Notice of all meetings of the Board shall be posted at two (2) or more prominent locations within the Project at the same time that notice is given to Directors. All meetings of the Board shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion unless a majority of a quorum of the Board determines that such non-Board members shall not so participate in the meeting.
- b. The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in private in executive session to discuss and vote upon

personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 10. 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, or telegraph, which notice shall state the time, place and purpose of the meeting and on posting of notice as provided in Section 9 of this Article III. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) members of the Board.

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 giving of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Meetings by Phone or Written Consent. Provided that all requirements of notice as provided herein have been complied with (or that the same have been waived or provided herein) and provided further that the provisions contained herein for regular meetings of the Board to be open to Association members have been complied with, the Board may conduct meetings by telephone or by unanimous decision in writing signed by all Board members.

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, 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 obtain a fidelity bond covering the acts of the Managing Agent and all officers and employees of the Association handling or responsible for Association funds. The amount of such fidelity bond shall be the greater of (a) One Hundred Thousand and No/100 Dollars (\$100,000.00), (b) the amount of the fidelity bond required by the Act, or (c) the amount of the fidelity bond required by regulations published by the Federal National Mortgage Association or by the United States Department of Housing and Urban Development (but only to the extent that one or more Apartments are subject to a mortgage affected by such regulations). The premiums on such bond shall constitute a Common Expense. The Managing Agent shall likewise obtain a fidelity bond in the amount required by the Act and shall provide evidence of the same to the Association.

Section 15. Compensation. No member of the Board shall receive any compensation from the Association for acting as such, or reimbursement for any expense, including without limitation, travel expense and per diem expense, except as may be approved by a Majority of the Owners at any annual meeting.

Section 16. Liability and Indemnity of the Board and Officers. The members of the Board, Officers and Governors shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own individual gross negligence or willful misconduct. The Association shall obtain and maintain at the Association's expense a policy of directors' and officers' liability insurance covering the Board, Officers and Governors of the Association and shall defend and indemnify each Director, Officer and Governor of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for reasonable attorneys' fees and other related expenses which may be incurred by or imposed on the Directors, members of the Governors and Officers in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted, or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director, member of the Governors or Officer, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such Director, member of the Governors or Officer, whether or not he continues to be such Director, member of the Governors or Officer at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which he is liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such Director, member of the Governors or Officer. As to whether or not a Director, member of the Governors or Officer was liable by reason of gross negligence or willful misconduct toward the Association in the performance of his duties as such Director, member of the Governors or Officer, in the absence of such final adjudication of the existence of such liability, each Director, member of the Governors and Officer may conclusively rely upon an Opinion of Counsel obtained by the Board. The foregoing right of indemnification shall not be exclusive of other rights to which any such Director, member of the Governors or Officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executor, administrators and assigns of each such Director, member of the Governors and Officer.

ARTICLE IV

OFFICERS

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, the secretary, and the Treasurer, all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board. The Secretary and Treasurer may be the same

person, and also the Assistant Secretary and Assistant Treasurer may be the same person. Neither the resident manager of the Project, nor the manager of the Park Place Club, nor any employee of the Managing Agent shall be designated as an officer.

Section 2. Election of Officers. The officers of the Association shall be elected annually at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any officer of the Association may be removed, either with or without cause, and his 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. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are incident to the office of a president of a stock corporation organized under Hawaii law, including but not limited to the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

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

Section 6. Secretary. The Secretary shall keep the Minutes Book wherein all resolutions shall be recorded and shall keep the minutes of all meetings of the Apartment owners and of the Board; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to and performed by the Managing Agent under the Secretary's supervision.

Section 7. Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the Board, and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation. The duties of the Treasurer may be delegated to the Managing Agent under the Treasurer's supervision.

Section 8. Audit. The Association shall require a yearly audit of the books of the Association and no less than one yearly unannounced verification of the Association's cash balance by a public accountant, provided that the yearly audit and the yearly unannounced

cash balance verification may be waived by a vote of the Majority of Apartment owners taken at an Association meeting. Unless such audit is waived as provided above, the Association will elect annually a public accountant or accounting firm as auditor, who shall not be an officer or own any interest in any Apartment, to audit the books and financial records of the owners.

Section 9. Execution of Agreements. Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, necks, and other instruments of the Association shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board.

Section 10. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

ARTICLE V

REPAIR, MAINTENANCE, USE AND AIR CONDITIONING CHARGES

Section 1. Repair and Maintenance.

- a. Every Owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his Apartment the omission of which, as determined by the Board, would adversely affect any Common Element, any other Apartment, or the exterior appearance of the Project and shall be responsible for all loss and damage caused by his failure to do so.
- b. All repairs of internal installations within each Apartment such as water, light, gas, power, sewage, telephone, sanitation, doors, windows, lamps, and all other appliances, equipment, fixtures and accessories belonging to such Apartment, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Apartment shall be at the Owner's expense.
- c. The Association shall be responsible for changing the filters, for cleaning the fan coils and for otherwise maintaining the central air conditioning system in each Apartment.
- d. The Association shall have the right from time to time, but not the duty (unless the owner shall give notice of a specific problem or deficiency), to inspect the air handlers, coils, filters and other components of the air conditioning system and the washer hoses and to clean, replace, maintain and repair the same.
- e. Any repair, maintenance or alteration work which may affect the Common Elements in a material way shall be performed by a licensed contractor.
- f. Every owner shall reimburse the Association for any expenditures incurred in repairing damage to, or in preventing or attempting to prevent damage to the Common Elements or to furniture, furnishings, or other property of any other Apartment Owner damaged or lost through the fault of such owner or any person using the Project under him, and such Owner shall give prompt notice to the

Managing Agent or Manager of any such damage, loss, or other defect when discovered.

- g. At all times when the Apartment is not occupied, any exterior doors or windows shall be closed.
- h. No Owner shall use or keep anything on the grounds or any other Common Element not located within his Apartment which would in any way hinder the full use and enjoyment thereof by any other owner or occupant.
- i. No Owner shall remove any floor tiles in the lanai area or deface or damage the tiles, or place any object (other than appropriate plants and outdoor lanai furniture as determined by the Board) on the lanai without first having received the approval of the Board and the Project Architect. Any missing or damaged floor tiles or lanai railings shall be replaced by the Association through the contractor or contractors selected by the Board for such purpose with building standard tiles or railings. Repair or replacement of lanai floor tiles or lanai railings resulting from the intentional or negligent misuse of the lanai area shall be at the Owner's expense. All other lanai floor tile and lanai railing replacements shall be a Common Expense.
- j. It is intended that the exterior of the building(s) shall present a uniform appearance, and to effect that end the Owners of the Apartments hereby agree that the Board may arrange for the application or repair of solar reflective film to be applied to the interior or exterior surfaces of all glass windows and doors and for painting or repair of each lanai, lanai ceiling, patio, outside doors, windows, trim, fences, railings and other exterior portion of the building and regulate the type and color of paint to be used. The Board is authorized to contract for said painting, application of solar reflective film and repair and to assess each Owner for his proportional share of such painting and repair, as Common Expenses of the Project, subject to direct charges for negligence, misuse or neglect, as provided in Section 4 of Article X.
- k. All owners shall shut off water valves leading to the washer during such time the appliance is not in use and should inspect and replace such hoses periodically to prevent water leakage. The Association shall have the right, but not the duty to replace, or to require Owners to replace washer hoses on a periodic basis for purposes of preventive maintenance.

Section 2. Use.

- a. Except as permitted by the Declaration, no Owner or occupant of an Apartment shall post any advertisement, bill, poster, or other sign on or about the Project, except as authorized by the Board.
- b. All Owners and occupants shall exercise extreme care about causing or permitting excessive noises that may disturb other occupants.
- c. No Owner or occupant shall permit any child residing or visiting with him to loiter or play in any common areas of the Project except in those areas which the Board may designate as play areas for children.
- d. No garbage, refuse, or trash of any kind shall be thrown, placed or kept on any Common Element other than disposal facilities provided for such purposes.

- e. No Owner or occupant, except as otherwise permitted by the Declaration, shall install any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the building(s) or protruding through the walls, windows, or roof thereof, without the prior written consent of the Board.
- f. Nothing shall be allowed, done, or kept in any Apartment or Common Element which will overload or impair the floors, walls, or roofs of the building(s), or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.
- g. In furtherance of the building(s) presenting a uniform exterior appearance, no Owner or occupant shall do anything to change the exterior appearance of the building(s), without the prior written consent of the Board.
- h. All items of equipment belonging to the Project shall be subject to rules and regulations adopted from time to time by the Board, in the Board's discretion.
- i. Livestock, poultry or any animals other than dogs (adult weight twenty-five (25) pounds or less), cats, parakeets, canaries, or fish in aquaria shall not be allowed or kept in any part of the Project. Only one (1) dog or two (2) cats (neutered, if female) per Apartment will be allowed. Dogs and cats must be carried at all times while in the common areas of the Project. No dogs or cats are permitting in any of the Facilities of the Park Place Club. Visiting pets are not allowed on the Project. An animal which is at or around an Apartment for more than a total of twelve (12) hours is considered to be kept. Pet owners are responsible for undue noise made by their pets. Any pet causing a nuisance or any unreasonable disturbance to any other occupant of the Project shall be permanently and promptly removed upon notice given by the Board or the Managing Agent. All pets must be registered with the Board or the Managing Agent immediately upon being kept in an Apartment. The Board or the Managing Agent shall provide registration forms for pets in the office of the resident manager or at such other place or places as shall be posted at the Project.
- j. The two (2) bedroom apartments will have no more than five (5) persons residing therein permanently; the one (1) bedroom apartments will have no more than three (3) persons residing therein permanently, whether such occupants are owners or tenants. Permanent residence is hereby defined as residence of thirty-two (32) consecutive days or more.

Section 3. Air Conditioning. For purposes of allocating the cost of operating the central air conditioning system, the Project shall be divided into two (2) zones, designated Zone A and Zone B, respectively. Zone A shall consist of the enclosed area of the forty (40) story tower from the third through the fortieth floors inclusive containing, without limitation, apartments, hallways, stairways and elevators. Zone B shall consist of, without limitation, the enclosed areas of the Facilities of the Park Place Club, the office of the resident manager, the employee kitchen and lounge, any maintenance, equipment and custodial storage rooms, hallways and any other enclosed and air conditioned Common Element areas not

included within Zone A. The Board shall allocate the cost of operating the air conditioning system in the following manner;

- a. The Board shall determine the total cost of electrical energy to produce and distribute chilled water (the "Energy Cost") for the entire Project, and the Energy Cost for Zone B, by metering if practicable and, if not, by a licensed engineer's estimate¹ the Energy Cost for Zone A shall be determined by subtracting the Energy Cost for zone B from the Energy Cost for the entire Project. All of the Energy Cost for zone B and ten percent (10%) of the Energy cost for zone A shall be a Common Expense as provided in Section 3.e below: ninety percent (90%) of the Energy Coat for Zone A shall be an expense of the individual Apartments, based on metered usage by those Apartments (in aggregate, the Apartment Energy Cost").
- b. The Board shall determine the allocation of the Apartment Energy Cost for each individual Apartment by individual metering for each such Apartment such metering shall be based upon the measurement of electrical energy consumption for the fan motor within the fan coil unit (or the fan motors within the fan coil units, in the event that there are multiple fan coil units within any Apartment) (the "Apartment Fan consumption") during the time that the following two (2) conditions exist with respect to each such fan coil unit;
 - i. the fan is on, and
 - ii. the thermostat is causing chilled water to be circulated through the coil (thereby using the chilled water to cool the Apartment).
- c. The Board will determine each Apartment's pro rata share of the Apartment Energy Cost by multiplying such cost by a fraction, the numerator of which is the Apartment Fan Consumption for each Apartment (as determined by metering as provided in Section 3.b above) and the denominator of which is the aggregate Apartment Fan Consumption for all Apartments in the Project,
- d. The Board shall assess the Owner of (each Apartment a monthly air conditioning charge which shall be the pro rata share for that Apartment of the Apartment Energy Cost, determined in accordance with Section 3.c above.
- e. The remaining costs of the central air conditioning system, as set forth below, shall be common Expenses
 - i. the cost of any electrical energy to produce and distribute chilled water for Zone A which is not recovered under assessments to individual Owners under Section 3,d above,
 - ii. the cost of electrical energy to produce and distribute chilled water for Zone B;
 - iii. all costs of maintenance and repair of the air conditioning system;
 - iv. all costs of maintaining and repairing the air handlers, coils, filters and other components of the air conditioning system for individual Apartments and
 - v. all costs of replacement of components of the air conditioning system and any other miscellaneous expenses of the system. f f.

- f. Notwithstanding any provision of these Bylaws to the contrary, any repair or replacement of any components of the central air conditioning system necessitated by reason of the negligence, misuse or neglect of the air conditioning system by any owner shall be at the expense of such Owner.
- g. Apartment owners are advised that;
 - 1. the lower the fan speed (of the fan coil unit used in cooling the Apartment), the more efficient the cost of such cooling;
 - 2. smoke from tobacco products and from other sources may necessitate the changing of filters on a more frequent basis than the normal maintenance routine established by the Board and the cost of any such additional filters will be charged to the Apartment Owner; and
 - 3. keeping drapes drawn, especially during daylight hours, will help to reduce the cost of air conditioning.
- h. Monthly assessments to Owners for air conditioning charges under Section 3.d above shall be subject to collection in the same manner as the Common Expenses of the Project.
- i. The provisions in this Section 3 are based upon the plans and specifications for the air conditioning system for the Project and not upon actual operational experience. Accordingly, this Section 3 should be liberally interpreted to allocate the cost of electrical energy to produce and distribute chilled water in a fair and equitable manner. The Board shall have the power to adjust individual assessments based upon malfunctioning air conditioning equipment or malfunctioning metering devices, as certified by a licensed engineer. In the event that it is not feasible or possible to make measurements in the manner provided in this Section 3, the Board is empowered and authorized to make measurements in an alternative manner, provided that such alternative measurement is based upon the written opinion of a licensed engineer and is reasonable under the circumstances. Any other change to the basic formula and methodology of this Section 3 shall be done by amendment to these Bylaws.

ARTICLE VI

COMMON EXPENSES, APARTMENT EXPENSES AND TAXES

Section 1. Common Expenses.

- a. As provided in the Declaration, the owner of each Apartment shall be liable for and pay a share of the common Expenses in proportion to his proportionate share of the Common Interest. In the event that the owner shall be a vendee under Agreement of Sale, the vendor shall also be responsible, along with vendee for the payment of a share of the Common Expenses. In addition to the provisions for Common Expenses

- contained in the Declaration, Common Expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including without limitation all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Apartment and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any fire, accident or nuisance thereon, cost of repair, reinstatement, rebuilding and replacement of the premises, yard, janitorial, and other similar services, wages, accounting and legal fees, management fees, startup fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the Common Elements, including Limited Common Elements, and the cost of all utility services, including water, electricity, gas, garbage disposal, telephone, and any other similar services, unless separately metered or otherwise separately attributable to an Apartment or group of Apartments, in which case the amount charged or attributable to each Apartment or group of Apartments, as determined by the Board with the advice of an engineer or a certified public accountant, or other such consultant shall be payable by the owner of such Apartment or Owners of Apartments as the case may be as a surcharge or special assessment. The Common Expenses may also include such amounts as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. 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 or these Bylaws; provided, however, that the Board shall first obtain an Opinion of Counsel prior to any purchase of an Apartment# and provided further that the Board may not acquire and hold by way of lease or purchase more than one (1) Apartment, without first obtaining the approval of the owners of at least sixty-five percent {65%} of the Apartments. Payments of Common Expenses shall be made to the Board, as agent of the Owners of the Apartments, and the Board shall transmit said payments on behalf of each such Owner to the third person entitled to said payments from each Owner.
- b. The Board shall establish and maintain a General Operating Reserve by monthly assessment against (and payment by) all Owners in proportion to their respective Common Interests in such additional amount as the Board determines to be adequate to provide financial stability in the administration of the Project, which additional amount shall be deemed conclusively to be savings of the owners held for their benefit for Common Expenses not payable from monthly assessments. Unless otherwise determined by the Board, the General Operating Reserve assessment for each month shall be not less than five percent (5%) of the total monthly assessment for current Common Expenses during the initial three (3) years of the Project, from and after the first meeting of the Association. Thereafter, the Board shall from time

to time determine the amount of the General Operating Reserve assessment; such assessment shall be in such amount that the General Operating Reserve shall be sufficient for projected repairs and replacement of Common Elements. The Board shall deposit the General Operating Reserve in an account with a safe and responsible depository as required by Section 10 of this Article VI. The General Operating Reserve may be kept in an account segregated from other Association accounts if the Board determines that a segregated account is in the best interests of the Association. At the discretion of the Board, the General Operating Reserve may be used to meet any deficiencies in operating funds from time to time resulting from delinquency by owners in the payment of assessments for Common Expenses but shall not operate to exempt any Owner from liability to contribute his proportionate share of such expenses or to pay any such assessments therefor, and any funds withdrawn from the General Operating Reserve for that purpose shall be reimbursed upon the payment of such delinquent assessments. The proportionate interest of each Owner in the General Operating Reserve shall not be withdrawn, partitioned or assigned separately but shall be deemed to be transferred with each Apartment even though not mentioned or described expressly in the instrument of transfer. If the Condominium Property Regime established by the Declaration is terminated, the General Operating Reserve remaining after payment of all Common Expenses shall be distributed to all Owners in proportion to their respective Common Interests, provided that in the event the Condominium Property Regime shall be reconstituted after termination as a Condominium Property Regime as to less than the entire original Project, the share of the Apartment Owners who will become Apartment Owners under the reconstituted Condominium Property Regime shall be paid to the Association for the reconstituted Condominium Property Regime.

- c. The Developer shall collect from each initial purchaser of an Apartment at closing a sum equal to two (2) months' assessment for current Common Expenses. Said sums shall be held for the Developer by the initial Managing Agent until the earlier of (a) four (4) months after seventy-five percent (75%) of the Apartments have been conveyed to owners, or (b) three (3) years after the first Apartment has been conveyed to an Owner, at which time said sums shall be transferred to the Association. While such funds are in the possession of the Developer, the Developer shall not use such funds to defray construction costs or other expenses of the Developer, to make any reserve contributions, or to make up any deficit in the maintenance of the Project. At such time as the Developer transfers such sums to the Association, the Developer will be required to advance to the Association, in addition to the amount collected, an additional sum equal to the two (2) months' assessment for current Common Expenses as to those Apartments, if any, which remain unsold on the date such sums are transferred by the Developer to the Association. Thereafter, the Developer shall be entitled to be reimbursed for the amount, if any, so advanced out of the sales of the then remaining unsold units. Such sums received from the Developer shall be held by the Association as a segregated

fund to be used only to meet unforeseen expenditures or to purchase any additional equipment. At the end of one (1) year from the date the Association receives such sums, the Association shall transfer any such sums then remaining to the General Operating Reserve account.

- d. From time to time, as specifically directed by the Association at any annual or special meeting, the Board may establish and maintain a Capital Improvements Reserve Fund and one (1) or more subparts thereof, by the monthly assessment against and payment by all the Owners in proportion to their respective Common Interests. Each subpart of the Capital Improvements Reserve Fund shall be earmarked for specific new improvements or additions to the Project which shall have been specifically authorized by the Association at any annual or special meeting and the amount of each such subpart of the Capital Improvements Reserve Fund shall be such annual amount as the Association determines to be adequate (but no more) to provide for specific new improvement or addition to the Project. The assessments for each such subpart of the Capital Improvements Reserve Fund shall be deemed conclusively to be savings of the Owners held for their benefit for Common Expenses of a capital nature. Disbursements from said Capital Improvements Reserve Fund shall be made only upon authorization of the Board. The proportionate interests of each Owner in said Capital Improvements Reserve Fund and all interest earned thereon shall not be withdrawn, partitioned or assigned separately but shall be deemed to be transferred with each Apartment even though not mentioned or described expressly in the instrument of transfer. If the Condominium Property Regime established hereby is terminated, or if the Capital Improvements Reserve Fund or subpart thereof exceeds the cost of the particular new improvement or addition to the Project, or if the planned improvement is for any reason not implemented within a reasonable time (in any event not more than ten (10) years) after creation of said Capital Improvements Reserve Fund or subpart thereof, said Capital Improvements Reserve Fund remaining shall be distributed to all Owners in proportion to their respective common Interests, provided that in the event the Condominium Property Regime shall be reconstituted after termination as a Condominium Property Regime as to less than the entire original Project, the share of the Apartment owners who will become Apartment Owners under the reconstituted Condominium Regime shall be paid to the Association for the reconstituted Condominium Property Regime.
- e. At the end of any year, if there shall be any excess assessments or General Operating Reserve or Capital Improvements Reserve Fund on hand, and if such funds shall be qualified to be treated as "exempt function income", as that term is defined by Internal Revenue Code Section 528, then the Association may file such documents as may be required to have such income treated as tax exempt.

Section 2. Collection and Payment of Common Expenses. All Owners shall pay to the Association or the Managing Agent all monthly and special assessments of the Common Expenses against their respective Apartments as the Board from time to time may approve as being necessary or advisable for the payment of or other provision for the Common

Expenses of the Project. Except as otherwise provided in these Bylaws or the Declaration, all of such assessments shall be assessed among and against the Apartments in proportion to their respective common Interests. Regular monthly assessments shall be payable in advance on or before the first day of each and every month and without notice or demand. Special assessments for Common Expenses and costs, expenses and fees recoverable by the Association under Section 514A-94, Hawaii Revised Statutes and the provisions of these Bylaws, and any penalties and late charges shall be payable on written statements therefor as from time to time rendered by the Board or the Managing Agent. The Association will pay or cause to be paid, for and on behalf of the Owners, all Common Expenses. The Board will annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year. Members of the Board and the Managing Agent shall not be liable as principals to third persons for the obligations of the Association or of any Owner or Owners,

Section 3. Taxes and Assessments. Except as may be otherwise provided in the Declaration, each Owner of an Apartment shall be obligated to have the real property taxes for his own Apartment and its appurtenant interest in the Common Elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Apartment and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes, other taxes and assessments.

Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the Common Elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the Common Elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 4 of this Article VI.

Section 4. Default in Payment of Assessments; Lien. Each monthly assessment, each special assessment and each obligation of an owner under these Bylaws which is enforceable as a special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. All sums chargeable to an Apartment for Common Expenses which have been assessed but which are unpaid shall constitute a lien against the Apartment¹ the priority of such lien shall be as set forth in the Act. If the owner shall fail to pay his assessment when due, then he shall pay an additional assessment of Twenty-Five and No/100 Dollars (\$25.00) for each such failure and all delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date, provided that this Twenty-Five and No/100 Dollar (\$25.00) limit

may be adjusted from time to time by the board by multiplying such dollar limit by the cost of Living Factor. In the event of a default or defaults in payment of any such assessment or assessments, in addition to any other remedies herein or by law provided hereof, the Board may enforce each such obligation as follows:

- a. By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted on behalf of the Association by the Board or by the Managing Agent, if the latter is so authorized by the Board in writing. Each such action shall be brought in the name of the Association by its Board and the Board shall be deemed to be acting on behalf of all the owners. Any judgment rendered in any such action shall include where permissible under any law, interest and a sum for reasonable attorneys' fees and costs in such amount as the Court may adjudge against such defaulting owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two (2) members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.
- b. At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting} may give a notice to the defaulting Owner, with a copy to the mortgagee of such owner, if such mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. Any Owner and any holder, insurer or guarantor of a mortgage on any Apartment may file a written demand for notice with the Board; upon filing such demand, such party will be entitled to receive written notice from the Board of any delinquency in the payment of assessments with respect to the Apartment in excess of sixty {60} days. If such delinquency is not paid within ten {10} days after delivery of such notice, the Board may elect to record in the Bureau of Conveyances a notice of lien against the Apartment of such delinquent Owner. Such notice of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Apartment against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these Bylaws and the Act, and (5) that a lien is claimed against said described Apartment in an amount equal to the amount of the stated delinquency. Any such notice of lien (or the release thereof) shall be signed and acknowledged by any two (2) members of the Board or by the Managing Agent acting on the direction of the Board and shall be dated as of the date of the execution by the last such Board member (or Managing Agent) to execute said notice of lien. Upon recordation of a duly executed original or copy of such notice of lien in the Bureau of Conveyances, the Board shall have all remedies provided in the Act. Each default shall constitute a separate basis for a notice of lien or a lien. Such lien may be foreclosed as provided by law and the Association shall be entitled to all such fees and expenses as may be allowed by law.

- c. For the purposes of this Section 4, a certificate executed by any two (2) members of the Board or by the Managing Agent shall be conclusive upon the Board and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee not to exceed Twenty-Five and No/100 Dollars (\$25.00), provided that this Twenty-Five and No/100 Dollar (\$25.00) limit may be adjusted from time to time by multiplying such dollar limit by the Cost of Living Factor.

Section 5. Collection from Tenant. If the Owner shall at any time rent or lease his Apartment and shall default for a period of thirty (30) days or more in the payment of the Owner's monthly or special assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Apartment, the rent due or becoming due from such lessee to the owner up to an amount sufficient to pay all sums due from the Owner, including interest, if any, and any such payment of such rent to the Board by the lessee shall be sufficient discharge of such lessee, as between such lessee and the Owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the owner hereunder or an acknowledgment of surrender of any rights or duties hereunder. If the Board makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid, provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

Section 6. Attorneys' Fees and Expenses of Enforcement.

- a. All costs and expenses, including reasonable attorneys' fees and costs, incurred by or on behalf of the Association by the Board for:
 - 1. Collecting any delinquent assessments against any Owner's Apartment;
 - 2. Foreclosing any lien thereon;
 - 3. Enforcing any provision of the Declaration, Bylaws, House Rules, and the Act; or
 - 4. The Rules of the Real Estate Commission of the State of Hawaii; against an owner, occupant, tenant, employee of an owner, or any person who may in any manner use the Project shall be promptly paid on demand to the Board by such person or persons; provided that if the claims upon which the Board takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees and costs, incurred by any such person or persons as a result of

the action of the Board, shall be promptly paid on demand to such person or persons by the Board on behalf of the Association, as a Common Expense.

- b. If any claim by an Owner is substantiated in any action against the Association, any of its officers or directors, or its Board to enforce any provision of the Declaration, these Bylaws, the House Rules, or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless the requirements of Section 514A-94, Hawaii Revised Statutes are complied with.
- c. Any holder, insurer or guarantor of a mortgage on any Apartment may file a written demand for notice with the Board; upon filing such demand, such party shall be entitled to receive written notice from the Board of any default by the Owner of the Apartment in question arising under the Declaration, Bylaws or House Rules, which default has continued for not less than sixty (60) days.

Section 7. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of an owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision hereof, shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board.

Section 8. Notification of Maintenance Fee Increases. The Managing Agent or the Board shall notify the Apartment Owners in writing of increases in any assessments at least thirty (30) days prior to such an increase.

Section 9, Financial Records.

- a. The Board, or the Managing Agent at the direction and under the supervision of the Board, shall maintain, at the Project or at such other place within the State of Hawaii and convenient to the Apartment Owners as may be designated by the Board and Board of Governors, accurate and detailed books of account and other financial records, which shall enumerate, in chronological order, all receipts and expenditures of the Association, shall specify and itemize all expenses paid or incurred in connection with the restoration, repair, maintenance, and replacement of the Common Elements, and any other expenses incurred and shall include all vouchers authorizing the payment of such expenses and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for Common Expenses. The financial records of the Association, including such records, vouchers and statements shall be available at all reasonable and convenient hours of

weekdays for examination and copying by any Owner at his cost, all as is more fully set forth in Section 17 of Article X.

- b. Neither the Board nor Managing Agent shall transfer by telephone any Association funds between accounts including, but not limited to, the general operating account and General Operating Reserve and Capital Improvements Reserve Fund accounts.
- c. The funds in the general operating account of the Association shall not be commingled with funds of other activities, such as rental operations, nor shall the Managing Agent commingle any Association funds with its own funds.

Section 10. Deposits in Financial Institution. All funds collected by the Managing Agent shall be:

- a. deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government; or
- b. held by a corporation authorized to do business as a trust company under Hawaii Revised Statutes Chapter 406; or
- c. invested in obligations of the United States Government,

ARTICLE VII

INSURANCE AND RESTORATION

Section 1. Fire and Extended Coverage Insurance.

The Association shall procure, purchase, and at all times maintain insurance which covers the Apartments and fixtures therein and the Common Elements and, whether or not part of the Common Elements, all exterior and interior walls, floors, and ceilings, and, at the option of the Association, all exterior glass, in accordance with the as-built condominium plans and specifications, against loss or damage by fire, with endorsements for extended coverage, vandalism and malicious mischief and, during time of war, to the extent that the same is reasonably available, against war risks (from any source), sufficient to provide for the repair or replacement thereof in the event of such loss or damages. The insurance coverage shall be written in the name of the Association. Premiums shall be Common Expenses. The insurance policy ("Policy"):

- a. shall contain no provision limiting or prohibiting other insurance by the Owner of any Apartment, such right being provided by statute but, if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any such other insurance. If any loss intended to be covered by insurance carried by the Board shall occur and the proceeds payable thereunder shall be reduced by reason of any insurance carried by any Apartment owner, such Apartment owner shall assign the proceeds of such insurance carried by it, to the extent of such reduction to the Board for application to the same purpose as the reduced proceeds are to be applied:

- b. shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building(s), whether or not within the control or knowledge of the Association or Board or, if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Association or the Board or the Owner or tenant of any Apartment or any other person under any of them, or by reason of any act or neglect of the Association or the Board or the Owner or tenant of any Apartment or any other person under any of them;
- c. shall provide that the Policy may not be cancelled or substantially modified (whether or not requested by the Association) except by giving to the Association and the Board and to the Owner and/or mortgagee of each Apartment who shall have requested such notice of the insurer in writing addressed to him at the premises, thirty (30) days' written notice of such cancellation;
- d. shall contain a provision waiving any right of subrogation by the insurer to any right of the Association, Board, or Owner against any of them or any other persons under them;
- e. shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to Section 5 of this Article VII not to repair, reinstate, rebuild or restore the damage or destruction;
- f. shall provide that any loss shall be adjusted with the Association and the mortgagee of any Apartment directly affected by the loss;
- g. shall contain a standard mortgage clause which:
 - (i) shall name the holder of any mortgage affecting any Apartment whose name shall have been furnished to the Board;
 - (ii) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Association, Board, or the Owner or tenant of any Apartment or any person under any of them;
 - (iii) shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Association shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the right of any mortgagee against the Owner or lessee of any Apartment or the Association or the Board or to require an assignment of any mortgage to the insurer;
 - (iv) shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate trustee selected by the Board who shall be a substantial bank or trust company doing business in Hawaii, herein referred to as the "Insurance Trustee" or "Trustee";

- (v) shall provide that any reference to a mortgagee in the Policy shall include all mortgagees on any Apartment, in order of preference whether or not named therein;
- h. shall provide for payment of the proceeds to the Insurance Trustee; and
- i. shall contain a provision requiring the insurance carrier, at the inception of the Policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the Policy. The summary shall include the type of Policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The Board shall provide this information to each Apartment Owner.

Section 2. Comprehensive Liability Insurance. The Association shall procure and maintain from a reputable company or companies a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the officers, each Apartment owner, and the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the Project or activities thereon or on sidewalks or contractors of construction work under a Comprehensive General Liability form to include but not to be limited to (1) Water Damage Legal Liability and (2) Fire Damage Legal Liability. Premiums shall be common expenses. The Policy:

- a. shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Association or the Board, or by any breach of warranty or condition caused by the Owner of any Apartment, or by any act or neglect of the Association, the Board, or the Owner of any Apartment or any persons under any of them;
- b. shall provide that the Policy may not be cancelled (whether or not requested by the Association) except by giving to the Association and the Board and to the Owner of each Apartment and any mortgagee, who shall have requested such notice of the insurer in writing, thirty (30) days' written notice of such cancellation.
- c. shall contain minimum limits of not less than \$2,000,000.00 for injury to one or more persons in any one accident or occurrence and \$300,000.00 for property damage, or such higher limits as the Board may from time to time establish with due regard to then prevailing prudent business practice; and
- d. to the extent reasonably obtainable, shall contain a waiver by the insurer of any right of subrogation to any right of the Association, the Board, or the Owner of any Apartment against any of them or any other persons under them.
- e. contain a "severability of interest" indorsement which shall preclude the insurer from denying the claim of the apartment owner because of the negligent act of the Association or any other apartment owner.

Section 3. Flood Insurance and Insurance Against Additional Risks. If the Project is located in an identified flood hazard area aa designated by the federal Department of

Housing and Urban Development, the Association shall procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973 with the same coverage and terms as required for fire insurance under Section I of this Article VII, but only to the extent required by law or otherwise deemed advisable by the Association. The Association may also procure insurance against such additional risks as the Association may deem advisable for the protection of the Apartment Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

Section 4. Miscellaneous Insurance Provisions. All insurance required hereunder will be obtained and maintained by the Association acting through the Board. 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 action taken on such review to the Owner of each Apartment, and to the holder, insurer or guarantor of any mortgage on any Apartment who shall have requested a copy of such report. At the request of the holder, insurer or guarantor of any mortgage of any Apartment, the Board shall furnish to such party a copy of the Policy described in Section 1 of this Article and of any other Policy to which a mortgagee endorsement shall have been attached, and proof satisfactory to such mortgagee that payment of premiums on such policy has been made for the period for which the party may request such proof. Copies of every policy of insurance procured by the Association shall be available for inspection by any Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) at the office of the Managing Agent. Any holder, insurer, or guarantor of a mortgage on any Apartment may file a written demand for notice with the Board: upon filing such demand, the party will be entitled to receive notice of any casualty loss to the Apartment or to the Project. Any coverage procured by the Association shall be without prejudice to the right of the Owners of Apartments to insure such Apartments and the contents thereof for their own benefit at their own expense.

Section 5. Damage and Destruction. If the building(s) is{are) damaged by fire or other casualty which is insured against and said damage is limited to a single apartment, the insurance proceeds shall be used by the Trustee for payment of the contractor employed by the Board to rebuild or repair such Apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor (and including improvements of the Apartment Owner but only if such improvements are covered by insurance carried by the Board pursuant to Paragraph (a) of Section I of this article and then only to the extent made possible by actual recovery of the insurance proceeds thereunder). If such damage extends to two or more Apartments or extends to any part of the Limited Common Elements or to the Common Elements

- a. The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Apartments so damaged, as well as the Common Elements, in accordance with plans and specifications therefor, (and including improvements of the Apartment Owner but only if such improvements are covered by insurance carried by the Board pursuant to Paragraph (a) of Section 1 of this

article and then only to the extent made possible by actual recovery of the insurance proceeds thereunder), which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board as provided in Section J of the Declaration; provided that in the event said modified plan or any decision not to rebuild made pursuant to the Declaration eliminates any Apartment and such Apartment is not reconstructed, the Insurance Trustee shall pay to the Owner of said Apartment and/or said Owner's mortgagee, if any, the portion of said insurance proceeds allocable to said Apartment (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Sections. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such common Elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the General Operating Reserve and the Capital Improvements Reserve Fund and, if such funds are insufficient for this purpose, the Board shall levy a special assessment on the Owners of Apartments in proportion to their respective Common Interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Apartment shall be specially assessed against such Apartment and said special assessment shall be secured by the lien created under Section 4 of Article VI hereof.

- b. The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:
 - (i) An architect or engineer (who may be an employee of the Board) shall be in charge of the work.
 - (ii) Each request for payment shall be made on seven {7} days' prior notice to the Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Trustee the sum requested does not exceed the value of the work done to the date of such certificate.
 - (iii) Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed contractor or by other evidence satisfactory to the

- Trustee, that there has not been filed with respect to the premises any mechanics or other lien or instrument for the retention of title in respect of any part of the work not discharged of record.
- (iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.
 - (v) The fees and expenses of the Trustee as determined by the Board and the Trustee shall be paid by the Association as Common Expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.
 - (vi) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.
- c. Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the owners of the Apartments (or to the holder of any mortgage on an Apartment if there be a mortgage) in proportion to their respective Common Interests.
 - d. To the extent that any loss, damage or destruction to the building(s) or other property is covered by insurance procured by the Association, the Association shall have no claim or cause of action for such loss, damage or destruction against any Apartment Owner or lessee. To the extent that any loss, damage or destruction to the property of any Apartment Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Apartment Owner, or the Association. All policies of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation.

ARTICLE VIII

MORTGAGES

Section 1. Notice to Board. An Apartment Owner who mortgages his interest in an Apartment shall notify the Board of the name and address of his mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the mortgage with the Board; the Board shall maintain such information in a book entitled "Mortgages of Apartments".

Section 2. Notice of Unpaid Common Expenses. The Board, whenever so requested in writing by an owner or the holder, insurer or guarantor of any mortgage of an interest in an Apartment, shall, upon receipt of payment of a reasonable charge therefor, promptly report any then unpaid assessments for Common Expenses due from the Owner of the Apartment involved.

Section 3. Notice of Default. The Board, when giving notice to an Apartment Owner of a default in paying Common Expenses or other default, shall send a copy of such notice to

each holder, insurer or guarantor of a mortgage covering such Apartment or interest therein who has requested such notice in writing.

Section 4. Examination of Books. Each Owner and each holder, insurer or guarantor of any mortgage of an interest in 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. Upon written request, each Owner and each holder, insurer or guarantor of any mortgage of an interest in an Apartment shall be entitled to a copy of budgets, financial statements and other such reports prepared in connection with the Project upon payment of a reasonable charge therefor.

Section 5. Mortgagee Protection. Notwithstanding all other provisions hereof:

- a. The liens created hereunder upon any Apartment and its appurtenant interests in the Common Elements shall be subject and subordinate to, and shall not affect the rights of, the holder of any indebtedness secured by any recorded mortgage under such interests made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Apartment if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Section 4 of Article VI hereof;
- b. The Association shall not terminate professional management and assume self-management of the Project without the prior written consent of all such mortgagees.
- c. No amendment to this Section 5 shall affect the rights of the holder of any such mortgage recorded in the Bureau prior to the filing or recordation of such amendment who does not join in the execution thereof.

ARTICLE IX

CONDEMNATION

Section 1. Condemnation. If there is a taking in condemnation or by eminent domain of part or all of the Project, all compensation payable for or on account thereof shall be payable to a condemnation trustee, who shall be designated by the Board and who shall be a substantial bank or trust company doing business in Hawaii ("Condemnation Trustee"). If the entire Project is taken or so much thereof that the Association terminates the Condominium Property Regime with respect to the Project, then the Condemnation Trustee shall pay to each Apartment Owner and mortgagee, as their interests may appear, the portion of the condemnation proceeds allocable to the Owner's Apartment. Otherwise, the Board shall arrange for the repair and restoration of the building(s) and improvements in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board. In the event of a partial taking in which any Apartment is eliminated or not restored,

the Condemnation Trustee shall disburse the portion of the proceeds of such award allocable to said Apartment (exclusive of such portion thereof as shall be allocable to the interest of said Apartment in the land), less the proportionate share of said Apartment in the cost of debris removal, to the Owner of said Apartment and his mortgagee, if any, as their interests may appear, in satisfaction of their interests in said Apartment. The Condemnation Trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs thereof the Board is expressly authorized to pay such excess costs from the General Operating Reserve and Capital Improvements Reserve Fund and if the General Operating Reserve and Capital Improvements Reserve Fund are insufficient for this purpose the Board shall levy a special assessment on the Owners of the Apartment in proportion to their Common Interests. In the event sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, such excess proceeds shall be divided among the Owners of the Apartments in accordance with their interests in the Common Elements. In the event all or any of the Apartments are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each Apartment so taken, the amount allocable to each Apartment (including the Apartment's appurtenant interest in the Common Elements) shall be determined by a real estate appraiser who shall be a member of the American Institute of Real Estate Appraisers or any successor association and who shall have acted on behalf of the Association in the condemnation proceedings: or, if no such appraiser shall have acted on behalf of the Association, or if more than one (1) appraiser shall have so acted, then the Board shall select the appraiser; provided, however, if the Owners of the Apartments taken, within fifteen (15) days after all of such Owners have received notice of the appointment of such appraiser, shall elect, by a majority vote, to have the allocation determined by a panel of three (3) appraisers, then the Board shall select three (3) qualified appraisers and the decision of any two of them shall determine the allocation of the condemnation proceeds.

Section 2. Notice to Mortgagees. Any holder, insurer or guarantor of any mortgage of an interest in any Apartment may file a written demand for notice with the Board; upon filing such notice, such Party shall be entitled to receive notice of any condemnation proceeding.

ARTICLE X

GENERAL PROVISIONS

Section 1. Rules and Regulations. Each Owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations ("House Rules") as the Board may deem necessary for the management and control of the Project, including, without limitation the Park Place Club, the Common Elements and Limited Common Elements and, if necessary for the protection of the Project the Apartments, and the Owner agrees that the owner's rights under the Declaration and Bylaws shall be in all respects subject to appropriate House Rules consistent therewith, which shall be taken to be a part hereof; and the Owner agrees to obey all such House Rules as the same now are or may

from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees and under-tenants of the owner; and the House Rules shall uniformly apply to and be binding upon all occupants of the Apartments. The following provisions shall govern the promulgation of the House Rules authorized herein, which shall include the establishment of a system of fines and penalties:

- a. The Board shall have the power to adopt such House Rules, including any amendments thereof, as are consistent with and in furtherance of existing law, these Bylaws and the Declaration. Upon the vote or written consent of a majority of the Board, such House Rules or amendments shall take effect.
- b. The Board in its discretion shall recommend to the owners a list of specific fines and penalties for the violation by any owner of the provisions of these Bylaws, the Declaration and the House Rules. Upon the vote or written consent of a majority of the Owners, such fines and penalties shall be binding on all Owners and shall be enforceable by the Association as a special assessment enforceable under Section 4 of Article VI of these Bylaws. such a remedy shall not be deemed to be exclusive and the Board shall have such other remedies as are provided for by applicable law, these Bylaws, the Declaration and the House Rules.
- c. Any House Rules promulgated pursuant to this Section shall provide that no fine or penalty shall be levied without the following procedural safeguards which safeguards may be waived by the Owner or other person against whom the Association proposes to impose a penalty:
 - (i) A written statement of the alleged violations shall be provided to any Owner or other person against whom such charges are made, and such written statement shall provide a date on which the charges shall be heard;
 - (ii) No proceedings under this Section shall be brought against any Owner or other person unless such owner or other person shall have received a written statement of charges at least fifteen (15) days prior to that hearing;
 - (iii) No proceeding shall be brought against any Owner or other person more than sixty (60) days after the occurrence of the events upon which the charge is based, unless such Owner or the other parties involved are unavailable during such sixty (60) day period;
 - (iv) The Board shall appoint a panel of three capable persons (one of whom shall be designated as chairman) who may or may not be Owners, and who shall hear the charges and evaluate the evidence of the alleged violation;
 - {v} At such hearing, the Owner or other person so charged shall have the right to present oral and written evidence and to confront and cross-examine adverse witnesses;
 - (vi) The panel shall deliver to the Owner or other person so charged within seven (7) days after the hearing a written decision which specifies the fines or penalties levied, if any, and the reasons therefor.

Section 2. Abatement and Enjoinment of Violations

by Apartment Owners. The violation of any House Rules, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws:

- a. to enter the Apartment in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass: or
- b. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees and costs, shall be borne by the defaulting Apartment Owner; provided, however, that the Board shall not summarily alter or demolish any improvements constructed by an Owner without first initiating judicial proceedings.

Section 3. Maintenance and Repair of Apartments.

All maintenance of and repairs to any Apartment, other than (a) maintenance of and repairs to any part of the exterior of the building(s), (b) maintenance and repair of lanai tiles or railings, or (c) maintenance and repairs of any Common Elements contained in an Apartment, shall be made by the Owner at the owner's expense. Any maintenance or repairs to the exterior of the building(s), lanai tiles or railings or to Common Elements contained in an Apartment necessitated by the negligence, misuse or neglect of the Owner of an Apartment shall be charged to the Owner of such Apartment.

Section 4. Maintenance and Repair of Common Elements and Certain Other Areas. All maintenance, repairs and replacements to the Common Elements, whether located inside or outside of the Apartments, the exterior of all buildings, lanai tiles and railings shall be made by the Board and shall be charged, subject to the provisions of the Declaration, to all the owners as a Common Expense, unless necessitated by the negligence, misuse or neglect of an Apartment Owner in which case such expense shall be charged to such Apartment Owner as a special assessment enforceable under Section 4, Article VI of these Bylaws. Maintenance of the yards and landscaping of the Project is the responsibility of the Board and no Apartment owner shall alter or affect the appearance thereof.

Section 5. Additions or Alterations by Board.

Whenever in the judgment of the Board the Common Elements shall require additions or alterations costing less than Fifty Thousand and No/100 Dollars (\$50,000.00), the Board may proceed with such additions or alterations and shall assess all Owners for the cost thereof as a Common Expense subject to the provisions of the Declaration. Any additions or alterations costing in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) may be made by the Board only after obtaining approval of the Owners of sixty-five percent (65%) of the interests in the Common Elements, provided that this Fifty Thousand and No/100 Dollar (\$50,000.00) limit may be adjusted from time to time by the Board by multiplying such dollar limit by the Cost of Living Factor.

Section 6. Additions or Alterations by Apartment Owners. Except as set forth in the Declaration, no owner shall make any addition or alteration in or to his Apartment.

- a. **Written Submission of Request for Approval and Requirement of Board Action.** No Owner shall commence work on any alterations or additions within an Apartment until the Owner has submitted to the Board a written request (which may include plans and specifications if the Board requires) and a quorum of the Board (or a subcommittee of the Board) approves the request in writing, or the Board is deemed to have approved the request as provided in Section 6.b below.
- b. **Time Limit for Board Response.** The Board must respond to the submission of a request within sixty (60) days of the receipt thereof by the Board, if the Board shall fail to disapprove the request or to request revisions or amendments by the Owner, the request shall be deemed to be approved, provided that nothing contained in this Section shall authorize or permit any work affecting the Common Elements, the exterior appearance of the Project or the rights of any other Owner.
- c. **Board May Impose Reasonable Conditions.** The Board may impose reasonable conditions on its approval of any such request including, without limitation, requiring (i) changes or amendments to the request, (ii) supervision of the work by an architect, or engineer, or other construction professional, or (iii) performance of the work by a licensed contractor in cases where the work may affect the Common Elements, the exterior of the Project, or the rights of any other Apartment Owners.
- d. **Board May Require a Halt in Construction or Removal of Unauthorized Work.** The Board may inspect the work from time to time and direct a halt in construction for any reason and the Board may require the removal or correction of any work which was (1) not authorized by the Board, or (ii) which may adversely affect the Common Elements, the exterior of the Project or the rights of any other Apartment Owner.

Section 7. Right of Access. The Association, acting through its Board, shall have the right of access to each Apartment from time to time during reasonable hours as may be necessary for the operation of the Project, or for making emergency repairs in the Apartment necessary to prevent damage to the Common Elements or to another Apartment or Apartments.

Section 8. Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners set forth hereunder may be exercised and enforced by a non-profit, membership corporation, formed under applicable laws for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the voting Owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and Bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect. Nothing contained herein shall permit the Association from forming a non-profit corporation for the purpose of holding title to real property.

Section 9, Sales or Rental Activities by Employees of the Association. Unless authorized by a vote of not less than sixty-five percent (65%) of the Apartment owners, employees of

the Association shall not, except as to any Apartment owned by the Association, act as sales or rental agents with respect to Apartments in the Project.

Section 10. Notices. Except as otherwise expressly provided herein, all notices hereunder shall be sent by first class mail, postage prepaid, to the Board, c/o the Managing Agent, by notice in writing to all Owners and to all mortgages of Apartments. All notices to any Owner shall be sent by first class mail, postage prepaid, to the Project or to such other address as may have been designated by him from time to time, in writing, to the Board. Except as otherwise expressly provided in these Bylaws, all notices to mortgages of Apartments shall be sent by first class mail, postage prepaid, to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 11. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions thereof.

Section 12. Gender. The use of any gender in these Bylaws shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

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

Section 14. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform Condominium Property Regime whereby the owners of Apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

Section 15. Amendment. The provisions of these Bylaws, other than this paragraph, may be amended at any time by the vote or written consent of the Owners of Apartments to which are appurtenant not less than sixty-five percent (65%) of the Common Interest, which amendment shall be effective upon recording in the Bureau of Conveyances an instrument in writing, signed and acknowledged by such Owners or by two (2) officers of the Association; provided, however, that each one of the particulars set forth in Section 514A-82(b) of the Act shall always be embodied in these Bylaws; and provided further that any proposed bylaws together with the rationale for the proposal may be submitted by the Board or by a volunteer Apartment Owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five (25%) percent of the Apartment Owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the Apartment Owners at the expense of the Association for vote or written

consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five percent (65%) of all Apartment Owners, provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the bylaw is duly adopted, then the Board shall cause the amendment to the Bylaws to be recorded in the Bureau of Conveyances. The volunteer Apartment Owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board.

This Subsection shall not preclude any Apartment Owner or voluntary Apartment Owner's committee from proposing any bylaw amendment at any annual association meeting.

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

Section 17. Examination of Documents of the Association. The minutes of meetings of the Board and Association and the Association's financial records, including, without limitation, audit reports and budgets, shall be available for examination by Apartment owners or by the holder, insurer or guarantor of any mortgage pertaining to any Apartment. Copies of such minutes of meetings and financial records shall be provided to any Owner and to the holder, insurer or guarantor of any mortgage pertaining to any Apartment upon such party's request and upon payment of a reasonable charge for duplicating, postage, stationery and other administrative charges. Such Association documents shall be made available as follows:

- a. The Association's most current financial statement and minutes of the most current Board meeting, once approved, shall be available to any Owner at no cost or on twenty-four-hour loan, at a convenient location designated by the Board.
- b. The following documents shall be available at convenient hours at a place designated by the Board:
 - (i) Minutes of meetings of the Board and the Association for the current and prior year; such minutes of meetings shall include the recorded vote of each Director on all motions except motions voted on in executive session.
 - (II) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the Association and the list of delinquent assessment accounts of ninety (90) days or more for the current and prior year.
- c. Proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election shall be available for inspection for a period of thirty (30) days following any association meeting, after which time proxies and ballots may be destroyed. Tally sheets, Owners' check-in lists, and the certificate of election shall be retained as Association records.
- d. An owner may file a written request with the Board to examine other documents of the Association. The Board shall give written authorization for inspection or written

refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

- e. As to any request for inspection under the above Sections 17.b, c or d, the Board may require the party requesting inspection to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith and that in the event that the administrative time to respond to such request exceeds eight (8) hours in any calendar year, the party requesting inspection shall pay for administrative time in excess of eight (8) hours per year.

Section 18. Membership List. Each owner shall promptly file with the Board a true and complete copy, as recorded in the Bureau of Conveyances, of each Apartment deed, recordable lease, mortgage, Agreement of Sale, condominium conveyance document, or other instrument whereby such owner acquires, encumbers or disposes of an interest in his Apartment. The Board or Managing Agent, under the direction of 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. The list shall be maintained at a place designated by the Board and a copy shall be available, at a reasonable charge, to any Owner who furnishes to the resident manager or Managing Agent or 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 votes or proxies or providing information to other Owners with respect to Association matters and (b) shall not be used by such Owner or furnished to anyone else for any other purpose.

Section 19. Project Documents. The Managing Agent shall maintain at its office accurate copies of the Declaration, these Bylaws, a current list of all Apartment owners, the House Rules, a sample original Apartment Deed, and all public reports issued for the Project and any amendments thereto. The Managing Agent shall provide copies of those documents to Apartment Owners, mortgagees, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.