

RESTATED MAKENA SURF BY-LAWS
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RESTATED MAKENA SURF BY-LAWS

WHEREAS:

1. MAKENA SURF, an Oregon partnership, whose principal place of business and post office address is at 16th Floor, Lloyd Building, 700 N. E. Multnomah Street, Portland, State of Oregon 97208, hereinafter called the "DECLARANT", is the owner of those certain parcels of land (the "Land") more particularly described in the Declaration of Condominium Property Regime ("DECLARATION") (to reflect the redesignation in 1988 of "Horizontal" Property Regime to "Condominium" Property Regime) filed concurrently in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and the Bureau of Conveyances of the State of Hawaii, with these Makena Surf By-Laws.

2. Declarant has submitted the Land, including the building and structures to be constructed thereon in accordance with the Declaration, and in accordance with the floor plans thereof showing the layout, location, apartment numbers, and dimensions of the apartments (the "Condominium Map"), which has been filed concurrently with the Declaration in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and in the Bureau of Conveyances of the State of Hawaii, and all easements, rights and appurtenances belonging thereto, as a fee simple condominium property regime under and pursuant to the provisions of the Hawaii Condominium Property Act, and as the same may from time to time be subsequently amended and reenacted (the "Condominium Property Regime" or the "Property", as the case may be).

3. The Condominium Property Regime consists of one hundred and seven apartments (the "Apartments"), and certain common elements (the "Common Elements").

4. These By-Laws shall govern the operation of the Property. These By-Laws also provide for the government of the Makena Surf Association Of Apartment Owners (the "Association"), an unincorporated association, organized under the Hawaii Condominium Property Act, and created by the Declaration; the regulation of the Property; and impose certain uniform restrictions, covenants and conditions upon the Apartments and the Common Elements (which "run with the land") for the mutual benefit of all of the owners of apartments of the Condominium Property Regime.

5. Declarant desires to and does hereby withdraw from the Office of the Assistant Registrar of the Land Court of the State of Hawaii and the Bureau of Conveyances of the State of Hawaii the Makena Surf By-Laws, dated October 6, 1982, and does hereby substitute with the Office of the Assistant Registrar of the Land Court of the State of Hawaii and the Bureau of Conveyances of the State of Hawaii these By-Laws as the Makena Surf By-Laws.

NOW THEREFORE, Declarant hereby declares that each apartment and all of the common and limited common elements that constitute the Condominium Property Regime be, and the same is hereby held, and the same shall be held, used, conveyed, hypothecated, encumbered, leased, rented, repaired, reconstructed, renovated, rebuilt, improved, regulated and governed in every respect, in accordance with and subject to the limitations, restrictions, covenants, conditions and By-Laws herein contained, which shall "run with the land", and as the same may from time to time be amended, under and pursuant to the provisions of the Hawaii Condominium Property Act, and as, from time to time, the same may be amended and reenacted. Declarant, as the owner of all of the apartments of the Condominium Property Regime, does hereby approve, adopt and establish the by-laws herein contained for the regulation of the Property and the government of the Association.

1. Statutory Basis.

The Condominium Property Regime has been established under and pursuant to the Hawaii Condominium Property Act, and the terms used herein shall have the same meaning given by such statute. In the event of any conflict between these By-Laws and such statute, the statute shall control. If such statute should be amended or reenacted, such amendment or reenactment shall govern and regulate the Condominium Property Regime and the Association, without any amendment to or of the Declaration or these By-Laws.

2. Voting Owners.

There shall be one "Voting Owner" of each apartment. The voting owner, who need not be an owner, shall be designated by the owner or owners of each apartment by written notice delivered to the

Board of Directors. Such designation shall be revocable at any time by written notice delivered to the Board of Directors by any owner, or by the death or judicially declared incompetence of any owner. Any designation of a voting owner that is circulated with any notice for a meeting of the Association shall be valid only for that meeting (including any reconvened meeting following any adjournment thereof) for which that notice of meeting was given. Such powers of designation and revocation may be exercised by any guardian or the personal representative of the estate of a deceased owner, if, and in such case, the interest of such owner in such apartment is subject to administration in his estate. In the absence of any such designation of a voting owner, the owner or owners of an apartment shall be deemed to be the voting owners of that apartment; and if any apartment be Owned by more than one owner (and whether such owners shall hold such apartment jointly, commonly or by the entireties), anyone of such owners present in person at any meeting of the Association shall be deemed to be the voting owner of such apartment, and if there be more than one of such owners present at any meeting, and if there be any dispute among them as to which of them shall be deemed to be the voting owner of such apartment, then the majority of them then present shall select a voting owner (irrespective of their relative interests, inter se, to such apartment). An owner shall have the right to irrevocably designate some person or persons (natural or corporate) as the voting owner of an apartment.

2A. Proxies.

(a) A voting owner shall have the power to appoint one or more persons as his proxy to attend a particular annual or special meeting of the Association for such voting owner, to vote and act at such meeting of the Association for such voting owner, subject to such conditions, restrictions or instructions, if any, as such voting owner may impose.

(b) A proxy, to be valid, must:

- (i) 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;
- (ii) Contain at least the name of the Association, the date of the meeting of the Association, the printed names and signatures of the persons giving the proxy, the apartments for which the proxy is given, and the date that the proxy is given; and
- (iii) Contain boxes wherein the owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Board; or
 - (D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage. (Hawaii Revised Statutes (IIHRS") § 514A-83.2(a))

(c) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the voting owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. (HRS § 514A-83.2(b))

(d) Neither the Board of Directors nor a member of the Board shall use Association funds to solicit proxies except for the distribution of proxies as described below in Section 2A. (g); provided that this shall not prevent an individual member of the Board from soliciting proxies as an apartment owner under Section 2A.(g). (HRS § 514A-83.2(c))

(e) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment. (HRS § 514A-83.2(d))

(f) The proxy form prepared by the Association also shall contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report. (HRS § 514A-96)

(g) If the Board of Directors intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 4(d), it shall first post notice of its intent to distribute proxies in prominent locations within the Property at least thirty (30) days prior to its distribution of proxies. Any owner has seven (7) days from the time the Board posts notice to request Association funds to

solicit proxies accompanied by a statement. The statement shall not exceed one hundred words and shall disclose the owner's qualifications to serve on the Board and the reasons for wanting proxies. The Board shall promptly mail to all owners a proxy form containing either (i) the names of all owners who requested the use of Association funds to solicit proxies, together with their statements, or (ii) without any names but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements. (HRS § 514A-82(b)(4))

(h) In no event shall any resident manager or Managing Agent employed by the Association solicit, for use by the resident manager or Managing Agent, any proxies from any voting owner, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. (HRS § 514A-82(b)(4))

(i) The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by apartment owners; provided the Board of Directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations. (HRS § 514A 83.3)

(j) A copy, facsimile, telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile, telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy. (HRS § 514A-83.2(d))

3. Votes.

Each voting owner shall have a vote at each meeting of the Association equal to the common interest appurtenant to the apartment for which he votes. The votes for all of the apartments total one hundred. The term "majority of apartment owners" or any other term or phrase used herein relating or referring to any stated fraction or percentage of the apartment owners or voting owners shall refer to the vote appurtenant to each apartment, the total of all such votes, or, as the case may be, the stated percentage or fraction of the total of all such votes.

4. Notices.

Any notice permitted or required to be delivered as herein provided may be delivered either personally or by mail. If delivery is by mail, such notice shall be deemed to have been delivered seventy-two (72) hours after the deposit of such notice with any government mail service, postage prepaid, addressed to the person entitled to such notice at his last known address on file with the Secretary of the Association. After filing a written request for notice with the Secretary of the Association, the mortgagee under any recorded mortgage or other security interest to any apartment shall have a right to any notice required to be given to an owner or voting owner of such an apartment, and the delivery of such notice, which shall be in addition to the notice required to be delivered to the owner or voting owner, shall not be complete until notice shall have been delivered to such mortgagee. Such request for notice need not be renewed, and shall remain in effect until the same be withdrawn or the security interest in such apartment released. The Secretary of the Association shall give each voting owner written notice of each annual and special meeting of the Association. Such notice of meeting shall be delivered not less than fourteen (14) days prior to the day fixed for the assembly of such meeting. Such notice of meeting shall contain at least:

(a) The time and the day for the assembly of such meeting.

b) The place for such meeting.

(c) The items on the agenda for such meeting.

(d) A standard form of proxy / if any, authorized by the Board of Directors of the Association.

5. Meetings of Association of Apartment Owners.

There shall be an annual meeting of the voting owners of the Association within three months following the end of the fiscal year established for the Association at the Property / or elsewhere within the State of Hawaii as determined by the Board of Directors. The Board of Directors shall fix the exact time and the day for each annual meeting of the Association. Special meetings of the Association shall be held:

(i) When requested by the President;

(ii) When requested by a member of the Board of Directors; or

(iii) When requested by the voting owners representing not less than one-fifth (1/5) of the apartments.

Each request for a special meeting shall be in writing, and shall set forth the purpose for that meeting and the items of business proposed to be considered at the requested special meeting. Each request for a special meeting shall be delivered to the Secretary. The President shall forthwith fix a reasonable time and day for the requested special meeting, and shall prepare the agenda for the requested special meeting, which agenda shall permit the consideration of the items of business proposed for consideration in the request for the special meeting. Every special meeting of the Association shall be held at the Property. Declarant shall call the first meeting of the Association. (The first meeting of the Association shall be held not later than one hundred and eighty (180) days after the recordation of the first instrument executed by the Declarant that conveys an apartment, if forty percent (40%) or more of the apartments have been sold and recorded. If forty percent (40%) of the apartments are not sold and recorded at the end of one year after such recordation of the first instrument executed by the Declarant that conveys an apartment, an annual meeting shall be called; provided ten percent (10%) of the apartment owners so request.) Voting owners representing a majority of the apartment owners shall constitute a quorum at any meeting of the Association. Unless expressly otherwise herein provided, any action may be taken or ratified, any resolution enacted, and any administrative rules and regulations governing the details of the operation and use of the common elements or the apartments may be adopted or amended, at any meeting of the Association, upon the affirmative vote of a majority of the voting owners present at any such meeting. Only the items of business on the agenda for an annual or special meeting, as set forth in the notice for that meeting, shall be considered or acted upon at that meeting. In the absence of a quorum at any meeting of the Association, a majority of the voting owners present may, without providing for further notice of meeting, adjourn such meeting from time to time in order to secure the presence of a quorum. Each meeting of the Association shall be conducted in accordance with the most recent edition of Robert's Rules of Order. (HRS § 514A-82(a) (16))

6. Board of Directors.

At each annual meeting of the Association the voting owners shall elect members of the Board of Directors for the forthcoming year. The Board of Directors shall consist of nine (9) persons, all of whom shall be either an owner of an apartment, a co-owner of an apartment, an officer of a corporate owner of an apartment, a general partner of an apartment owned by a partnership, or the purchaser of an apartment purchased under an agreement of sale. There shall not be more than one representative on the Board of Directors from anyone apartment. Each director shall be elected for a term of two years. Each member of the Board of Directors shall owe the Association a fiduciary duty in the performance of the director's responsibilities. (HRS § 514A-82.4) At any annual meeting of the Association, or any special meeting of the Association for which the notice shall state the election of a director or directors as business to be conducted at such special meeting, any voting owner may nominate from the floor one or more persons for election as a director. If one director is to be elected at such meeting, the nominee who receives the highest number of votes shall be elected. If two or more directors are to be elected at such meeting, and the number of nominees is larger than the number of directors to be elected, the directors shall be elected as follows: (a) each voting owner shall have a number of votes equal to the common interest appurtenant to the apartment for which he votes multiplied by the number of directors to be elected at such meeting; (b) when voting each voting owner shall be entitled to cumulate his votes and to give all thereof to one nominee or to distribute his votes in such manner as the voting owner shall determine among any or all of the nominees; (c) the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at such meeting, shall thereby be elected directors. Any vacancy in the Board of Directors shall be filled by the remaining members thereof. Meetings of the Board of Directors shall be called, held and conducted in accordance with the most current edition of Robert's Rules of Order (HRS § 514A-82 (a) (16)). A manager or resident manager for the Association shall not be a member of the Board of Directors. Nor shall any officer or employee of a Managing Agent for the Association,

or any person affiliated with such a Managing Agent, be a member of the Board of Directors. At any regular or special meeting of the Association duly called, anyone or more of the members of the Board of Directors may be removed, with or without cause, by a vote of eighty-one percent (81 %) of the voting owners and a successor may then and there be elected to fill the vacancy thus created. 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 the By-Laws. (HRS § 514A-82(b) (1)) (Also, prior amendment dated May 22, 1985, recorded as Land Court Document No. 1339480 and in Liber 19166 on Page 154 at the Bureau of Conveyances)

7.1. Officers.

The principal officers of the Association shall be a President, a Secretary and a Treasurer. The Board of Directors may appoint an assistant treasurer, an assistant secretary, and such other subordinate officers as in the discretion of the Board of Directors may be necessary. An owner shall not act as an officer of an Association and an employee of the managing agent employed by the Association. (HRS § 514A-82(b) (7))

7.2. Appointment of Officers.

The Board of Directors shall each year elect a President from among its members, who shall preside over meetings of the Association and the Board of Directors. The Board of Directors shall each year also elect a Secretary and a Treasurer, who need not be members of the Board of Directors or owners or voting owners of apartments. In the event of the absence or incapacity of the President the Secretary shall act as the acting President.

7.3. Removal of Officers.

Each officer shall hold office for one year following his appointment, at the pleasure of the Board of Directors, and until his successor is qualified. Upon the affirmative vote of a majority of the members of the Board of Directors any officer may be removed, with or without cause.

7.4. President.

The President shall exercise general supervision and direction of the business and affairs of the Association. The President shall also have the powers and duties customarily incidental to such office, and such other powers and duties as may be given to him elsewhere in these By Laws or as may be assigned to him by the Board of Directors.

7.5. Secretary.

The Secretary shall keep the list of owners and voting owners and the minutes of all meetings of the Association and of the Board of Directors. The Secretary shall determine whether a voting owner is present and entitled to vote at meetings of the Association. The Secretary shall record all votes upon resolutions voted upon at meetings of the Association and at meetings of the Board of Directors. The Secretary shall keep the minute book for the Association, wherein all resolutions shall be recorded, and such other books and records of the Association as the Board of Directors shall direct. The Secretary shall keep the minute book for the Association at the Property, at a particular place thereat designated by the Board of Directors. The Secretary shall also have the powers and duties customarily incidental to such office, and such other powers and duties as may be given to him elsewhere in these By Laws or as may be assigned to him by the President or the Board of Directors.

7.6. Treasurer.

The Treasurer shall be responsible for the money and funds of the Association, and he 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. The Treasurer shall be responsible for the deposit of all money of the Association in the name of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall also have the powers and duties customarily incidental to such office, and such other powers and

duties as may be given to him elsewhere in these By Laws or as may be assigned to him by the President or the Board of Directors.

8. Committees.

The Board of Directors shall have the power to create, by resolution or resolutions enacted by a majority of the entire Board of Directors, such standing and ad hoc committee or committees which may have and exercise such power or powers of the Board of Directors provided by statute, the Declaration, or these By Laws, with respect to the management of the business and affairs of the Association, or the administration of the common elements of the Property, as the Board of Directors shall from time to time deem necessary. Each such committee shall include not less than one member of the Board of Directors, and may include such number of apartment owners or voting owners, as the case may be, as the Board of Directors shall provide by resolution. Such a committee may be established to investigate and to report to the Board of Directors with respect to a particular problem, in which case such committee shall not exercise any power or powers of the Board of Directors, and such committee need not include one member of the Board of Directors. No such committee shall have the power to fill any vacant directorship, nor the power to appoint or remove any person from any of the principal or subordinate offices of the Association, nor the power to determine the common expenses or to adopt the annual budget for the Association. Each such committee shall have such name as shall be stated in the enabling resolution enacted by the Board of Directors.

9. Appointment of Auditor.

(a) The voting owners shall annually appoint, by the adoption of an appropriate resolution at any meeting of the Association, a certified public accountant, who shall examine and audit the records, books of account, and transactions of business of the Association.

(b) The Association shall conduct an annual audit of the Association financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant.

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

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

(2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

(d) If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. (HRS § 514A-96)

10. Indemnification.

The Association shall indemnify every director, officer or employee, or any former director, officer or employee (hereinafter called "indemnitee"), and their respective heirs, executors and administrators, against reasonable costs and expenses, including judgments, fines, penalties, amounts paid in settlement and attorney's fees (hereinafter called "expenses"), incurred in connection with any civil or criminal action, suit or administrative proceeding to which an indemnitee shall be made a party by reason of his being or having been a director, officer or employee of the Association, except however, in relation to those expenses attributable to such portion or portions of the matters involved as to which it shall be adjudged in such proceeding that he has been guilty of negligence or misconduct in the performance of his duties to the Association. In the event of a settlement, indemnification shall be provided only as to the matters covered by the settlement as to which the Association is advised by its counsel that the indemnitee was not guilty of negligence or misconduct in the performance of his duties to the Association. The foregoing right of indemnification shall be in

addition to any rights provided by law.

11. Powers of Board of Directors.

The affairs of the Association shall be administered by the Board of Directors, through the President, Secretary, Treasurer and Manager or Managing Agent, if any, for and on behalf of the apartment owners. The Board of Directors shall meet at least once during each fiscal year and that meeting shall be called the annual meeting of the Board of Directors. The Board of Directors may hold such additional meetings during each fiscal year as may be necessary or convenient for the administration of the affairs of the Association. Written notice of each meeting of the Board of Directors shall be mailed to each director not less than fourteen (14) days prior to the date for such meeting. Written notice of the annual meeting of the Board of Directors shall be given to each apartment owner and each voting owner in a reasonable manner at least fourteen (14) days prior to such meeting. Whenever practicable, notice of all Board meetings shall be posted by the managing agent or a member of the Board in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors. (HRS § 514A-82(b) (9)) The Board of Directors shall have such powers reasonably necessary or convenient for the administration of the affairs of the Association and may do all such acts and things, except such acts and things as by law, the Declaration, or these By-Laws, are expressly reserved to the voting owners or to the apartment owners, and shall have the power to enter upon such contract or contracts for and on behalf of the Association, as may be necessary to exercise such power. Such powers of the Board of Directors shall include, without limitation, the following:

- (a) To operate, care for and maintain the common elements.
- (b) To determine the common expenses required for the administration of the affairs of the Association, and for the operation, care, upkeep, security and maintenance of the common elements.
- (c) To collect the common expenses from the apartment owners.
- (d) To employ, supervise and dismiss the personnel necessary for the maintenance, care, repair, replacement and operation of the common elements and for the administration of the affairs of the Association.
- (e) To establish and maintain reasonable reserves and sinking funds for the future repair, maintenance and replacement of the common elements, and for general administrative and operating expenses.
- (f) To obtain such utility service (if not separately metered or charged) as may be necessary for the apartments, and such utility service as may be necessary for the common elements.
- (g) To purchase apartments of the Condominium Property Regime at foreclosure or other judicial sale in the name of the Association.
- (h) To obtain and pay the premiums for insurance in the amount of the full replacement value of the Property which shall insure the Property against loss or damage by fire and such other insurable perils as shall appear to be reasonably necessary, and such other insurance (including without limitation general liability insurance) as may be required in the course of the administration of the affairs of the Association and in the operation, care, upkeep, security and maintenance of the common elements.
- (i) To borrow money on behalf of the Association to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the project, or the making of any additions, alterations, and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the project; provided that owners representing fifty percent (50%) of the common interest and apartments give written consent to such borrowing, having been first notified of the purpose and use of the funds. (HRS § 514A-82.3)
- (j) To deposit and withdraw funds of the Association with and from banks and like institutions.
- (k) To establish a fiscal year for the Association.
- (l) To enforce the provisions of these By-Laws, the Second Restated Declaration, and any Administrative Rules and Regulations duly enacted for the use of the apartments or the common elements.

(m) Notwithstanding any other language contained in the Restated Declaration, these By-Laws, or the administrative rules and regulations, the Board shall make reasonable accommodations to the provisions of these By-Laws, the Restated Declaration, the administrative rules and regulations, or any other regulations or restrictions of the project, if those accommodations become necessary to afford a handicapped person equal opportunity to use and enjoy the project premises. (42 U.S.C. § 3604(f) (3) (B))

(n) Upon the approval of the Owners of seventy-five percent (75%) of the common interests appurtenant to the Apartments, to change the use of the common elements. (HRS § 514A-13(d) (1))

(o) To lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the Board of Directors; provided that unless the approval of the Owners of seventy-five percent (75%) of the common interest appurtenant to the Apartments is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice. (HRS § 514A-13(d) (2))

(p) To lease or otherwise use for the benefit of the Association those common elements not falling within subparagraph (o) above, upon obtaining:

(A) the approval of the Owners of seventy-five percent (75%) of the common interests appurtenant to the Apartments, including all directly affected Owners and all Owners of Apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on Apartments with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees. (HRS § 514A-13(d) (3))

The voting owners may, except as otherwise provided by law, by resolution prospectively restrict any of the powers of the Board of Directors; provided that the enactment of such a resolution by the voting owners shall not, in any event, (i) impair the validity of any contract or obligation previously entered upon by the Board of Directors, or under the authority of the Board of Directors, or of any transfer of property, or any interest in property, previously made by the Board of Directors or under the authority of the Board of Directors, or (ii) conflict with any provision of the Declaration, or conflict with any provision of these By-Laws. The Board of Directors shall not, in any event, have the power to conduct a business for profit on behalf of the apartment owners or any of them; nor shall the Board of Directors have the power to convey, transfer, mortgage or encumber any of the common elements of the Property.

12. Power of Board of Directors With Respect To Public Common Element~.

The Board of Directors shall exercise the power reserved to the Association under the foregoing Declaration to regulate the use of the Public Common Elements, which are parts of the common elements of the Condominium Property Regime. Any such regulation adopted by the Board of Directors with respect to the use of the Public Common Elements shall be binding upon, and shall be observed by, every apartment owner, every occupant of an apartment, and any person who is on the Property, as a member of the public, for the purposes of using any of the Public Common Elements. The Board of Directors shall use Association funds to operate, maintain and care for the Public Common Elements. The policy or policies of general public liability insurance which, under section 24, the Board of Directors shall obtain and pay the premiums therefore, shall also cover any liability incurred in respect of the Public Common Elements. "Common Expenses", as defined under section 14, shall include, without limitation, all costs, expenses, fees and charges incurred by the Association for the operation, care, repair and maintenance of the Public Common Elements, and the premiums for such policy or policies of general public liability insurance.

13. Manager.

The Board of Directors shall have the power to engage a Manager or Managing Agent (who may be a corporate person). The Board of Directors shall have the power to delegate to such Manager or Managing Agent, subject to such restriction or restrictions as the voting owners may from time to time impose on the exercise of such powers by the Board of Directors, the following powers of the Board of Directors:

- (a) To operate, maintain and care for the common elements.
- (b) To collect the common expenses from the apartment owners.
- (c) To employ, supervise and dismiss personnel necessary for the maintenance, care and operation of the common elements and for the administration of the affairs of the Association.
- (d) To obtain such utility service (if not separately metered or charged) as may be necessary for the apartments, and such utility service as may be necessary for the common elements.

The Manager or Managing Agent shall not have the power to enter upon or execute any contract or to assume any liability on behalf of the Board of Directors, or of the Association, in an amount in excess of FIVE THOUSAND DOLLARS (\$ 5,000.00), pursuant to any power delegated by the Board of Directors. Any power or powers delegated to the Manager or Managing Agent by the Board of Directors may be prospectively revoked by the Board of Directors without notice to the Manager or Managing Agent or to any third person. The Board of Directors shall require the Manager or Managing Agent, their employees, and any other employees or agents of the Association whose duties involve handling any funds of the Association, to obtain appropriate fidelity bonds that name the Association as obligee, in amounts not less than the minimum amounts fixed by the Hawaii Condominium Property Act.

13A. Administrative Provisions.

(a) The Board of Directors or managing agent will maintain or cause to be maintained accurate and complete books of account and other financial records in accordance with recognized accounting practices. The records shall include, without limiting the generality of the foregoing, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration and replacement of the common elements and any other expenses incurred, all vouchers authorizing payment of such expenses and monthly statements showing the total current delinquent amount of unpaid assessments for common expenses. All records and the vouchers authorizing the payments and statements affecting the common elements of the project shall be kept at the project or at such other convenient place within the State of Hawaii as the Board shall designate. (HRS § 514A-85(a) and (b))

(b) (i) The Association's most current financial statement and minutes of the Board of Directors' meetings, once approved, shall be available to any owner at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board of Directors. (HRS § 514A-83.5(a))

(ii) Minutes of meetings of the Board of Directors and the Association for the current and prior year shall be available for examination by owners at convenient hours at a place designated by the Board. The minutes shall include the recorded vote of each Board member on all motions except those voted on in executive session. Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS § 514A-83.5(b))

(iii) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by owners at convenient hours at a place designated by the Board; provided:

1. That the Board may require owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both; and

2. That owners pay for administrative costs in excess of eight (8) hours per year.

3. Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS § 514A-83.5(c))

(iv) Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty (30) days following any Association meeting; provided:

1. That the Board may require owners to furnish to the Association a duly executed and

acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

2. That owners pay for administrative costs in excess of eight (8) hours per year. Proxies and ballots may be destroyed following the thirty day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. (HRS § 514A-83.5(d))

(v) Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request. (HRS § 514A-83.5(e))

(c) No employee of the Association shall engage in selling or renting apartments in the project except Association owned apartments, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the owners. (HRS § 514A-82(b)(8))

(d)

(1) The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following: (1) The estimated revenues and operating expenses of the Association;

(2) Information as to whether the budget has been prepared on a cash or accrual basis;

(3) The total replacement reserves of the Association as of the date of the budget;

(4) The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association.

(5) A general explanation of how the estimated replacement reserves are computed; and

(6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

(ii) The Association shall assess the apartment owners to fund a minimum of fifty percent (50%) of the estimated replacement reserves or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the Association's plan, except the Association may fund in increments, over three years, estimated replacement reserves which have been substantially depleted by an emergency.

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

(1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

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

(iv) No Association or director, officer, managing agent, or employee who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

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

(vi) The requirements of this Section 13A.(d) shall override any other requirements in the Declaration, these By-Laws, or any other Association document relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

(1) any provisions relating to the repair and maintenance of property,

(2) any requirements in the Declaration, these By-Laws, or any other Association documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

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

(vii) Subject to the procedures of Section 22A. and any rules adopted by the Hawaii Real Estate Commission, in the event the Board of Directors fails to comply with this Section 13A.(d), any apartment owner may enforce compliance by the Board. In any proceeding to enforce compliance, if the Board has not prepared an annual operating budget and reserve study, the Board shall have the burden of proving it has complied with this Section 13A. (d).

(viii) As used in this Section 13A.(d): "Capital expenditure" means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Emergency situation" means any of the following:

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain any part of the Project for which the Association is responsible where a threat to personal safety on the Project is discovered;

(3) An extraordinary expense necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;

(4) An extraordinary expense necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

(5) Necessary for the Association to obtain adequate insurance for the property which the Association must insure. "Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the Property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain. (HRS § 514A-83.6)

(e) (i) Minutes of meetings of the Board of Directors and the Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

(ii) Minutes of meetings of the Board of Directors and the Association shall be approved at the next succeeding meeting; provided that for Board of Directors meetings, no later than the second succeeding meeting.

(iii) Minutes of all meetings shall be available within seven (7) calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. (HRS § 514A-83.4)

(f) Members of the Board of Directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii all other travel expenses incurred under this subsection shall be subject to the requirements of Section 6. (HRS § 514A-82(b)(12))

14. Collection Of Common Expenses.

"Common Expenses" shall mean all costs, expenses, fees and charges incurred by the Association, or which the Board of Directors expects the Association will incur, for the administration of the affairs of the Association and for the operation, care, repair and maintenance of the common elements, including without limitation the costs and expenses incurred for the operation, care, repair and maintenance of all central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, heating, refrigeration, air-conditioning, television, sewage disposal, and other utilities, and for any premiums for insurance against loss or damage by fire and such other perils to

the Property as the Board of Directors shall deem to be reasonably necessary, for any premium for general liability insurance as hereafter provided, and for any utility service (if not separately metered or charged) as may be necessary for the apartments, and for the common elements, and for the maintenance of any reasonable reserve or sinking fund for the future repair, maintenance or replacement of the common elements, for general administrative and operation expenses of the Association, and all costs, expenses, fees and charges called "common expenses" by the Hawaii Condominium Property Act, as amended or reenacted, or by the foregoing Second Restated Declaration. Not less than sixty (60) days before the beginning of each fiscal year established for the Association, the Board of Directors shall prepare and adopt a budget for the next fiscal year and shall determine the amount of the total common expenses for the next fiscal year as provided in Section 13A. (required by the application of HRS § 514A-83.6) (which shall include the amount of any deficit in the common expenses for the current fiscal year or for any prior fiscal year). The total amount of such common expenses for the next fiscal year, as approved by the Board of Directors, shall be assessed against, charged to, and as provided by law shall (together with any interest) constitute a lien upon, each apartment on the first day of such fiscal year in proportion to the common interest appurtenant to each apartment. The share of such common expenses for each apartment shall be paid in monthly installments, which shall be due and payable on the first day of each month of each fiscal year established for the Association. (If the Board of Directors should change the fiscal year established for the Association, or if the estimate of the common expenses for any fiscal year should appear to be incorrect, the Board of Directors, subject to the provisions of Section 13A. (required by the application of HRS § 514A 83.6), shall have the power to revise its budget as of the first day of the next quarter of the current fiscal year.) No less than thirty (30) days (HRS § 514A-92.2) before the beginning of each fiscal year established for the Association, the Board of Directors shall notify each apartment owner of the amount of the total common expenses determined for the next fiscal year, and the proportion thereof for which his apartment will be liable. (If the Board of Directors should revise its budget for any current fiscal year, then the Board of Directors shall give each apartment owner written notice, not less than thirty (30) days (HRS § 514A-92.2) before the effective date of such revised budget, of the revised amount of the total common expenses determined for the remaining part of the current fiscal year, and the proportion thereof for which his apartment is liable. If the Board of Directors increases the current budget, then the amount of such increase for which each apartment is liable shall be assessed against, charged to, and as provided by law shall (together with any interest) constitute a lien upon, each apartment on the effective date of such revised budget.) In the event of any default in the payment of any assessment for common expenses, the unpaid amount of such assessment shall bear interest at the rate of twelve percent (12%) per year from and after fifteen (15) days following the date on which the same came due. (prior amendment dated May 22, 1985, recorded as Land Court Document No. 1339480 and in Liber 19166 on Page 154 at the Bureau of Conveyances)

15. Special Assessments.

The voting owners shall have the power, by the affirmative vote of a majority of the voting owners of all the apartments, to levy a special assessment against the apartments, which shall be apportioned among the apartments in proportion to the common interest appurtenant to each apartment, and which (together with interest) shall constitute a lien upon each such apartment as provided by law, to fund the renovation, reconstruction, or alteration of the common elements, or of some substantial portion thereof, or the construction of some addition to the common elements, or to fund the purchase of an apartment of the Condominium Property Regime or to satisfy any extraordinary expense or liability of the Association. Such special assessment shall be due and payable at such time or times as such voting owners shall provide. In the event of any default in the payment of any portion of such special assessment, the unpaid amount of such special assessment shall bear interest at the rate of twelve percent (12%) per year from and after fifteen (15) days following the date on which the same came due. The Secretary shall, within thirty (30) days (HRS § 514A-92.2) after the enactment by such voting owners of the resolution authorizing such special assessment, notify each apartment owner of the amount of the special assessment for which his apartment is liable and the date or dates at which

the same will be due. As hereinafter provided in section 26, if a deficiency (as therein defined) exists for the reconstruction of any damaged or destroyed common elements, then, unless a seventy-five percent (75%) majority of the voting owners of all the apartments vote in favor of a resolution instructing the Board of Directors not to proceed with such reconstruction, a special assessment in the amount of the deficiency shall be levied and shall exist upon the apartments (without any further vote or action on the part of the voting owners). The power of the voting owners to levy a special assessment for such purposes is not intended to preclude either: (a) the power of the Board of Directors to include in its budget for any fiscal year common expense items for the same such purposes, and the power of the Board of Directors to expend such funds so provided in such budget; or (b) the power of the Board of Directors to establish and maintain a reserve fund for the same such purposes, and the power of the Board of Directors to expend such reserve funds.

16. Liability Of Apartment Owners.

Each apartment owner or owners shall be personally liable (and if there be more than one owner of any apartment, they shall be jointly and severally liable) for the full amount of any special assessment or assessment for common expenses against his apartment, irrespective of the date or dates on which such assessments, or portions thereof, be due. The Board of Directors shall have the right to enforce such personal liability of each apartment owner by an action for a money judgment for the unpaid amount of any such assessment; provided, that no such action shall be filed until fifteen (15) days after the date on which the unpaid amount came due. Any such action shall be brought in the name of the Association. Any judgment rendered in any such action shall include a sum for reasonable attorney's fees, costs and expenses of collection incurred by the Association in such amount as the court may adjudge against such" owner in default. Upon full satisfaction of any such judgment, the Board of Directors, through the President, Secretary or Treasurer, shall execute and deliver to the judgment debtor an appropriate instrument to evidence such satisfaction. If the Association should as provided by law foreclose its lien upon an apartment for any unpaid assessment for common expenses or for any unpaid special assessment, while the foreclosure proceeding is pending, and until title to the apartment has vested in a purchaser following the foreclosure sale of the apartment: (i) the owner of the apartment shall continue to be personally liable for the full amount . of any additional special assessment or additional assessment for common expenses chargeable to the apartment; and (ii) the owner of the apartment shall be obligated to pay the Association a reasonable rental for the continued right to the use and possession of the apartment, which rentals shall be applied by the Association to discharge any accrued and unpaid assessment for common expenses, or any accrued and unpaid special assessment, which constitutes a lien upon the apartment. No apartment owner shall withhold any assessment claimed by the Association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;

(5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law. An apartment owner who pays the Association the full amount claimed by the Association for any accrued and unpaid assessment for common expenses may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's

claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 21 of the Declaration, provided that an apartment owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the apartment owner fails to keep all assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed. (HRS § 514A-90(c) and (d))

17. Certificates Of Payment.

The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not any common expense or special assessment is due and payable for a particular apartment, and, if such a delinquency exists, the amount of any such delinquent common expense or special assessment, and the date the same came due. Any such certificate signed by an officer of the Association shall be binding and conclusive upon the Association and may be relied upon by any person as an accurate statement of the facts shown therein

18. Transfer Of Ownership Of Apartment.

The Secretary shall maintain at the Property a list of the names and addresses of the apartment owners, a list of the names and addresses of the voting owners, and a list of the names and addresses of each apartment purchaser under an agreement of sale. The Secretary shall not register any change in the ownership of an apartment until he has been furnished with a certified copy of a recorded (with the Office of the Assistant Registrar of the Land Court of the State of Hawaii and the Bureau of Conveyances of the State of Hawaii) instrument to evidence such transfer. The Secretary shall not register any change in the designation of a voting owner until he has been furnished with an appropriate notice thereof, and, if a voting owner has been irrevocably designated, the name of such irrevocably designated voting owner shall not be removed from such list without his written consent or release. The Association, each apartment owner and voting owner, the Board of Directors, President, Secretary, Treasurer and Manager or Managing Agent, shall have a right to rely upon such lists and shall have a right to regard any person whose name appears on such list as the owner, voting owner, or purchaser, as the case may be, of the apartment specified. The Board of Directors shall have the right to fix and collect for the Association a reasonable, uniform fee to cover the costs and expenses incurred by the Association in connection with the transfer of an apartment. Any unpaid transfer fee shall be a lien against the apartment transferred with like effect, and to the same extent, as any assessment for common expenses, and shall bear interest at the rate of twelve percent (12 %) per year from and after fifteen (15) days following the date on which the same came due.

19. Collection Of Rent From Tenants.

If an owner shall at any time rent or lease his apartment and shall thereafter be in default in the payment of any common expense, special assessment, or any other payment due the Association, for which his apartment is liable, the Board of Directors may, at its option, and so long as such default shall continue, demand and receive from such tenant of the owner up to an amount sufficient to pay all of such unpaid common expense, special assessment, or other payment due the Association, including interest, and any such payment of rent to the Board of Directors by the tenant shall be sufficient discharge of such tenant, as between such tenant and the owner to the extent of the amount so paid; such demand for, or the acceptance of, such rent from any tenant shall not be deemed to be a release or discharge of any of the obligations or duties owed by the owner. If the Board of Directors shall make such demand upon any tenant as aforesaid, such tenant shall not have the right to question the right of the Board of Directors to make such demand, but such tenant shall be obliged to make such payments to the Board of Directors, with the effect as aforesaid. If and when a mortgagee of such an apartment obtains the appointment by a court of a receiver (or a similar court officer) to collect any of such rent, then and thereafter the right of the Association to collect such rent

from a tenant of the apartment owner shall be subordinate and subject to the duty of such receiver to collect such rent and to apply the same in satisfaction of the indebtedness secured by the mortgage of such apartment.

20. Failure To Determine Common Expenses.

Any failure by the Board of Directors to determine the common expenses for any ensuing fiscal year, or the failure of the Board of Directors to notify any or all of the apartment owners of the amount of such common expenses, shall not be deemed to be a waiver or release of any apartment or of any apartment owner of any obligation or liability for such common expenses. In such event, the last determination of the Board of Directors as to the total amount of such common expenses shall continue, from year to year, and until the Board of Directors make such determination, and each apartment and apartment owner shall continue to be liable for the share of such common expenses charged to each apartment.

21. Waivers.

The failure of the Board of Directors to require, in anyone or more instances, a strict performance of or compliance with any of the limitations, restrictions, covenants or conditions herein contained by any apartment owner, or to exercise any right or option herein contained, or to serve or receive any notice, or to institute any action, shall not be construed as a waiver or relinquishment of such limitation, restriction, covenant, condition, right, option or right to serve or receive notice, but the same shall continue and remain in full force and effect. Nor shall the receipt by the Board of Directors, or any of its agents, of any payment from any apartment owner be construed as such a waiver.

22.1. Adoption Of Administrative Rules And Regulations.

The voting owners, by the vote of a majority of them present at any meeting of the Association for which the notice of meeting shall have stated that the adoption or amendment of administrative rules and regulations will be considered, shall have the power to adopt, and from time to time amend, administrative rules and regulations governing the details of the operation and use of the common elements, and such rules and regulations with respect to the use of the apartments as may be deemed reasonable and necessary for the common welfare.

22.2. Sanctions For Violation Of Administrative Rules/Regulations.

The Board of Directors shall have the power to impose the following sanctions for the violation of an Administrative Rule/Regulation:

(a) The power to order an apartment owner to stop violating an Administrative Rule/Regulation (a "Performance Order").

(b) The power to suspend the right of an Apartment Owner, and all persons who claim under him, to use those parts of the common elements which are not required for access to his apartment for a period not to exceed thirty (30) days.

(c) The power to impose a fine payable to the Association which shall not exceed the amount of TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00) for each violation. If after the issuance of a Performance Order an apartment owner willfully fails or refuses to stop violating the Administrative Rule/Regulation, or fails to correct the condition which caused such violation of the Administrative Rule/Regulation, each day thereafter during which the apartment owner continues to violate such Administrative Rule/Regulation shall be the basis for the imposition of a fine which shall not exceed the amount of TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00); provided, that the aggregate amount of all fines for any such continuing violation shall not exceed the sum of ONE THOUSAND and 00/100 DOLLARS (\$1,000.00). The Board of Directors shall from time to time adopt and publish a "Schedule Of Maximum Fines For Administrative Rule/Regulation Violations" which shall prescribe the maximum fine that may be imposed for the violation of each particular Administrative Rule/Regulation.

(d) The power to suspend, or to condition, the imposition of a fine for a violation of an Administrative Rule/Regulation.

(e) After the third willful violation of a particular Administrative Rule/Regulation by any occupant of an apartment in any calendar year, the power to require that the owner of such apartment give a bond, naming the Association as obligee, with a corporate surety licensed to do a surety business in the

State of Hawaii as surety, to continue for a term not to exceed twenty four (24) months, in a principal amount, to be determined by the Board of Directors, approximately equal to a judgment for damages, costs and expenses that the Association and any aggrieved apartment owner might reasonably expect to obtain against such apartment owner in an action for damages or injunctive relief, or both, brought under the Hawaii Condominium Property Act, for any past violations and the next violation of such Administrative Rule/Regulation. The Board of Directors shall give such apartment owner notice of the amount of the bond required, and such bond shall be delivered to the Treasurer by such apartment owner within thirty (30) days after the delivery of such notice. If such apartment owner should fail to give such bond, then there shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses, in the principal amount of the required bond after the failure of such apartment owner to give such bond. The right of the Association to foreclose such lien shall be conditioned upon the entry of a judgment in favor of the Association and an aggrieved apartment owner under the Hawaii Condominium Property Act. In the event of the foreclosure of such a lien, the proceeds received in satisfaction of such lien shall be distributed or applied in accordance with the judgment entered under the Hawaii Condominium Property Act.

(f) If an Administrative Rule/Regulation has been violated by a tenant of an owner, and such tenant willfully fails or refuses to stop such violation, the power to enter into the apartment in which, or as to which, such violation exists, and to evict such tenant therefrom, as the irrevocably appointed agent of the owner; if the Association shall incur any expense in such eviction, the full amount of such expense shall be a lien against such apartment with like effect, and to the same extent, as any assessment for common expenses.

22.3. Imposition Of Sanctions For Violation Of Administrative Rules/ Regulations.

Any officer of the Association or any apartment owner may by a written complaint filed with the Board of Directors request the Board of Directors to impose sanctions upon an apartment owner for an alleged violation of an Administrative Rule/Regulation. The complaint shall describe the nature of the alleged violation of a particular Administrative Rule/Regulation. Upon the filing of a complaint the Secretary shall immediately fix a date, time and place for the hearing thereof by the Board of Directors (which date shall not be less than five days after the delivery of notice of the hearing upon the apartment owner alleged to be in default) and shall forthwith deliver a copy of the complaint and the notice of hearing to the apartment owner alleged to be in default. At the hearing the Board of Directors shall hear the apartment owner alleged to be in default, and all others interested, and shall hear and consider such testimony and evidence as it deems pertinent. The Board of Directors may exclude and refuse to hear irrelevant, immaterial or unduly repetitious testimony or evidence. The Board of Directors shall make a written decision of its findings and conclusions in the matter after the hearing, and shall file the same with the Secretary. If the Board of Directors concludes that the apartment owner alleged to be in default has violated an Administrative Rule/Regulation, the written decision shall specify the sanctions to be imposed upon that apartment owner. The written decision entered by the Board of Directors after such a hearing shall be final and binding among the apartment owners and the Association and the same shall not be subject to judicial review or appeal. The Secretary shall forthwith deliver a certified copy of the written decision entered by the Board of Directors in the matter to the apartment owner alleged to be in default.

22A. Attorney's Fees and Expenses of Enforcement.

(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- (1) Collecting any delinquent assessments against any owner's apartment;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the Declaration, By-Laws, administrative rules and regulations, and Chapter 514A Haw. Rev. Stat.; or the rules of the real estate commission; against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the Property shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and

expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.

(b) If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, By-Laws, administrative rules and regulations, or Chapter 514A Haw. Rev. Stat., then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

(1) The owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or,

(2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless. If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, By-Laws, administrative rules and regulations, or Chapter 514A Haw. Rev. Stat., then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under Section 21 of the Restated Declaration, and made a good faith effort to resolve the dispute under any of those procedures. (HRS § 514A-94)

23. Addition To And Alteration Of Apartment.

An owner shall not undertake any addition to, or the alteration of, the structural parts of his apartment without first obtaining the written consent of the Board of Directors or, failing to obtain such consent, the consent of a majority of the voting owners present at any Association meeting. An owner who seeks such consent shall first file with the Board of Directors a copy of the plans for the proposed alteration or addition which shall have been prepared by an architect or engineer licensed by the State of Hawaii. Such consent shall not be required for the redecoration, repainting or any aesthetic change in any apartment. The cost of any such addition to, or the alteration or repainting of, an apartment shall not be charged to the Association. The Board of Directors shall have the right to require that any addition to, or the alteration of, an apartment shall not be commenced until after the contractor performing the work obtains a construction performance and payment bond for the work as provided under section 28.

24. Liability Insurance.

The Board of Directors shall obtain and pay the premium for a policy or policies of general liability insurance in which the limits of liability shall be not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for injury to anyone person, ONE MILLION DOLLARS (\$1,000,000.00) for injury to more than one person in anyone accident or occurrence, and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) against claims for property damage. Such policy or policies shall cover liability incurred in respect of the common elements of the Property and any sidewalks and sidewalk areas adjacent to the Property. Such policy or policies shall insure each apartment owner, any apartment mortgagee, any occupant of every apartment, each member of the Board of Directors, their agents and the agents of the Association, the Manager or Managing Agent employed by the Board of Directors, and the agents of such Manager or Managing Agent. The premiums for such insurance shall be a common expense.

25. Casualty Insurance.

The Board of Directors shall obtain and pay the premiums for a policy or policies of insurance against the loss or damage of the Property by fire, and such other insurable perils as the Board of Directors shall deem to be reasonably necessary, for the full replacement value of the Property. Such insurance shall be issued in the name of the Board of Directors, as trustees for the apartment owners, and their respective mortgagees, if any, as their respective interest shall appear, in proportion to the common interests appurtenant to the apartments owned by each of them. The premiums for such insurance shall be a common expense. The voting owners, by the vote of a majority of them present, shall have the power to designate any bank or trust company licensed to do business within the State

of Hawaii, and the power to revoke any such designation previously made, as the insurance trustee (the "INSURANCE TRUSTEE") to receive any proceeds of insurance. Any such designation, or revocation, shall be effective upon the acceptance thereof by the issuing insurer. The insurer shall fairly apportion any such insurance proceeds between the common elements and each apartment damaged or destroyed in proportion to the relative loss suffered by the common elements and each apartment. The Insurance Trustee shall permit the Board of Directors to use that portion of such insurance proceeds paid for the loss suffered by the common elements for the repair and reconstruction of the common elements. The Insurance Trustee shall permit the Board of Directors to use that portion of such insurance proceeds paid for the loss suffered by any apartment for the repair and reconstruction of such apartment. All such policy or policies of insurance (the "POLICY") shall:

(a) Contain no provision limiting or prohibiting an apartment owner from obtaining other like insurance, but 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;

(b) Contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the Property, whether or not within the control of the Board of Directors, and, if obtainable, shall not relieve the insurer from liability by reason of any breach of warranty or condition caused by the Board of Directors or any owner of an apartment, or any occupant of an apartment, or by reason of any act or neglect of the Board of Directors, any owner of an apartment, or any occupant of an apartment;

(c) Contain a waiver by the insurer of any right of subrogation for any loss paid by the insurer under the policy against any member of the Board of Directors, any apartment owner, or the occupant of any apartment;

(d) Shall provide that the policy cannot be canceled or substantially modified by the insurer except by giving the Board of Directors, each apartment owner, and each mortgagee of an apartment who has requested such notice from the insurer, not less than thirty (30) days prior written notice of such cancellation or modification;

(e) Contain a provision waiving any right of the insurer to repair, rehabilitate or reconstruct the Property, if after a loss the voting owners vote not to repair, rehabilitate or reconstruct the Property.

(f) Contain a standard mortgagee clause which:

(i) Shall name the mortgagee (the "MORTGAGEE") of any mortgage affecting any apartment whose name shall have been given to the Association and to the insurer;

(ii) Shall provide that the policy, as to the interest of the Mortgagee, shall not be invalidated by any act or neglect of the Board of Directors, an apartment owner, or the occupant of any apartment;

(iii) Shall waive (A) any provision invalidating such mortgagee clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or vacancy, (B) any requirement that the Mortgagee pay any premium for the policy (provided, that if the Board of Directors fails to pay any premium due or to become due under the policy, the Mortgagee may pay the same prior to termination of the policy by reason of nonpayment of such premium), (C) any contribution clause, and (D) any right to be subrogated to the right of any mortgagee against an apartment owner, the occupant of an apartment, or the Board of Directors, or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the Mortgagee if the insurer shall claim no liability against the mortgagor or apartment owner, but without impairing the Mortgagee's right to sue any person for any loss or deficiency not covered by the insurance proceeds;

(iv) Shall provide that, without affecting the protection afforded to the Mortgagee by such mortgagee clause, any insurance proceeds payable under such clause, if in excess of ten thousand dollars (\$10,000.00), shall be payable to the Insurance Trustee.

(v) Shall provide that any reference to a mortgagee in the policy shall include all

mortgagees of any apartment in the priority of their respective liens upon the apartment.

(g) Provide that at the inception of the policy, and on each anniversary date thereof, the insurer shall furnish the Board of Directors with a written summary (the "INSURANCE SUMMARY") of the policy in layman's terms, including without limitation a description of the policy, the coverage provided by the policy and the limits thereof, the amount of the annual premium, and the renewal dates. The policy shall be delivered to the Board of Directors with a certificate signed by a licensed insurance broker or licensed agent certifying that the policy includes all of the provisions herein set forth and complies with and satisfies all of the requirements herein set forth (the "INSURANCE CERTIFICATE"). Upon the receipt of each Insurance Summary and Insurance Certificate the Board of Directors shall forthwith deliver copies of the same to each apartment owner. Any proceeds of insurance paid for any damage or destruction suffered by the Property, or any part thereof, shall be held by the Board of Directors or by the Insurance Trustee free of any claim by any apartment owner, or his creditors, the holder of any lien upon any apartment, or the creditors of the Board of Directors or of the Association, or of any receiver, assignee or trustee in bankruptcy for any such creditor, and the same shall be held free of any action by any such creditor or on behalf of any such creditor and free of any writ of execution, attachment or garnishment obtained by any such creditor or on behalf of any such creditor, and free of any action to foreclose any lien upon any apartment, until the portions of the Property so damaged or destroyed be reconstructed (and such proceeds of insurance may be used to pay for such reconstruction), or the voting owners determine that the same should not be reconstructed, as the case may be.

26. Repair And Reconstruction Of Common Elements.

The Board of Directors shall be responsible for the repair, rehabilitation and reconstruction of the common elements. The Board of Directors shall have the power to expend from the funds of the Association set aside for such purpose and from any proceeds of insurance available to the Board of Directors for the repair and reconstruction of the common elements such amounts as may be necessary for the repair or rehabilitation of the common elements. Any such repair or rehabilitation of the common elements shall be in accordance with the original plans and specifications therefore to the extent practicable, except that the Board of Directors may vary from the original specifications to utilize new or better materials when doing so will improve the project. When significant variations are proposed, the Board of Directors shall be required to obtain a vote in support of the variation of a majority of the members of the Association at any meeting thereof. (prior amendment dated November 9, 2000, and recorded as Land Court Document No. 2668492 and Document No. 2000-169612 at the Bureau of Conveyances) If any of the common elements should suffer substantial damage or destruction as the result of any casualty, the Board of Directors shall call and hold a special meeting of the Association within ninety (90) days after such damage or destruction shall have occurred. The Board of Directors shall, before the assembly of such special meeting, obtain not less than two (2) firm bids from two or more responsible building contractors for the reconstruction of the common elements so damaged or destroyed, in accordance with the original plans and specifications therefore, to the extent practicable. At such special meeting the voting owners shall determine whether the common elements so damaged or destroyed should be reconstructed. The Board of Directors shall proceed with the reconstruction of such damaged or destroyed common elements unless at such special meeting of the voting owners a seventy-five per cent (75%) majority of the voting owners of all the apartments vote in favor of a resolution instructing the Board of Directors not to proceed with such reconstruction. If the aggregate amount of the proceeds of insurance available to the Board of Directors for the repair and reconstruction of the common elements and any other funds of the Association set aside for such purpose should be less than the aggregate estimated cost for the reconstruction of such common elements (the "DEFICIENCY"), then, unless at such special meeting of the voting owners a seventy-five per cent (75%) majority of the voting owners of all the apartments vote in favor of a resolution instructing the Board of Directors not to proceed with such reconstruction, a special assessment shall be levied and shall exist upon the apartments (without any further vote or action on the part of the voting owners) in the amount of the Deficiency, which shall be apportioned among the apartments in

proportion to the common interest appurtenant to each apartment, with the same effect (except as herein otherwise provided) set forth in section 14. Such special assessment for the Deficiency shall be due and payable at such time or times as the Board of Directors shall provide.

27. Repair And Reconstruction Of Apartments.

Each apartment owner shall be responsible for the repair, rehabilitation and reconstruction of the parts of his apartment -(exclusive of the common elements that enclose each apartment). Any such repair and replacement shall be in accordance with the original plans and specifications therefore, except to the extent that changes are approved in advance, in writing, by the Board of Directors. Each apartment owner shall have the right (at his or her own expense) to make changes to the common elements and/or limited common elements immediately adjacent or appurtenant to the apartment, but solely to the extent approved in advance, in writing, by the Board of Directors. Provided that if the proposed change would materially impact other apartments, the Board shall require unanimous approval of all owners so impacted and a vote of (75%) seventy five percent of the owners at any meeting of the owners. Should any changes be made to the apartment or to the common elements or limited common elements without the foregoing prior approval of the Board, the Board shall be entitled to enter into the Apartment and to restore the apartment, and/or its common elements or limited common elements to their prior condition and to charge the cost for the same to the Apartment owner which charge shall become a lien upon the apartment. (prior 'amendment dated November 9, 2000, and recorded as Land Court Document No. 2668492 and Document No. 2000-169612 at the Bureau of Conveyances) If an apartment should suffer any damage or destruction as the result of any casualty, the apartment owner shall immediately cause the part of his apartment so damaged or destroyed to be reconstructed in accordance with the original plans and specifications therefore, to the extent practicable, and, in such event, if any common element has been damaged or destroyed by the same casualty, the Board of Directors shall arrange for and coordinate such repair and reconstruction of such apartment, in conjunction with the reconstruction of the damaged or destroyed common element, for and on behalf of such apartment owner. The Board of Directors shall have the power to, and shall, expend from that portion of any proceeds of insurance held DY the Board of Directors, or by the Insurance Trustee, which has been allocated by the insurer for the loss suffered by such apartment, for the repair and reconstruction of such apartment. If in such event such proceeds of insurance should not be sufficient to complete the reconstruction of such apartment, the apartment owner shall be obliged to pay the Board of Directors the full amount of such deficiency upon the completion of such reconstruction. If such apartment owner should fail to pay the amount of such deficiency, then there shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses, and such lien may be foreclosed, as provided by law, at any time after the failure of such apartment owner to make such payment. If any apartment should suffer any damage or destruction as the result of any casualty, and if, in such event, any common element has been damaged or destroyed by the same casualty, and if the Board of Directors should be instructed by the voting owners not to proceed with the reconstruction of such damaged or destroyed common element, and if the Board of Directors should therefore lack the power to reconstruct such damaged or destroyed common element, then, and in such event, such apartment owner shall not be obliged to cause his apartment so damaged or destroyed to be reconstructed.

28. Performance And Payment Bond.

Before undertaking or permitting the repair, rehabilitation or reconstruction of any common element, or any part of any apartment, and if the total cost thereof exceeds FIVE THOUSAND DOLLARS (\$5,000.00), the Board of Directors shall cause the contractor performing the work to obtain a bond, with a surety company licensed to do business in the state of Hawaii as surety, in a principal amount equal to one hundred per cent (100%) of the cost of such construction, guaranteeing the full and faithful performance of such construction contract and the full payment of all subcontractors, laborers, and materialmen, engaged in the work, and naming each apartment owner, their respective mortgagees, if any, and the Association, as obligees.

29. Abatement Of Common Expenses.

If, as a result of the damage or destruction of some portion of the common elements by fire or other casualty, an apartment be rendered uninhabitable, then the common expense for which such apartment be liable shall abate from the time such damage or destruction of the common elements shall have occurred until such damage or destruction of the common elements be repaired or reconstructed, or the voting owners determine that such damage or destruction of the common elements shall not be reconstructed, as the case may be; and the common expense for which such apartment would normally be liable shall be deemed to be common expenses for which all of the other apartments shall be liable in accordance with their relative common interests. The liability of such apartment for special assessments shall not abate; nor shall the liability of such apartment, or the owner thereof, to pay real property taxes assessed against the apartment by the State of Hawaii or the County of Maui abate.

30. Clearing Debris.

After the common elements have suffered substantial damage or destruction and after the voting owners have determined that the common elements so damaged or destroyed should not be reconstructed, but either before or after the initiation of an action to partition the Property, the Board of Directors shall be entitled to expend from the proceeds of any insurance received as a result of such damage or destruction such amount as may be necessary to effect the removal from the Land of any building, structure or improvement damaged or destroyed which is not economically repairable, the removal of all debris resulting from such damage or destruction, and the restoration of the Property to a good and orderly condition and even grade. The Board of Directors shall have the power to contract for the removal of such damaged or destroyed building and debris and the restoration of the Property. If, in such event, such proceeds of insurance should not be sufficient to pay for such removal and the restoration of the Property, the voting owners shall have the power to levy a special assessment to make up such deficiency.

31. Eminent Domain.

If any authority exercising the power of eminent domain should condemn the Property, some part or parts thereof, or any right, easement, privilege, or appurtenance belonging or appertaining thereto, then the entire award attributable to the condemnation of the Property (whether for land, buildings, improvements, a right, easement, privilege or appurtenance), any money paid by the condemning authority for the interruption of any business conducted on the Property, and any money paid for any damage resulting from such condemnation, or any money paid by any condemning authority to settle any such threatened condemnation (collectively referred to as the "CONDEMNATION PROCEEDS"), shall be paid to the Board of Directors and shall be divided and distributed as follows: (1) any of such condemnation proceeds fairly attributable to an apartment shall be distributed to the owner thereof; (2) any of such condemnation proceeds which cannot be fairly attributed to an apartment, and any of such condemnation proceeds attributable to the common elements of the condominium property regime, shall be divided and distributed to the owners of apartments affected by such condemnation in proportion to the common interest appertaining to the apartments owned by each of them. The Board of Directors, for the Association and for and on behalf of each apartment owner, shall have the right to contest any issue involved in such condemnation proceedings. Each apartment owner hereby irrevocably appoints the Board of Directors of the Association as his attorney-in-fact to represent him in the negotiation of any settlement of a threatened condemnation action, and to appear for him in any such condemnation proceeding. (The foregoing irrevocable power vested in the Board of Directors is intended to be a "power given as security" and a "power coupled with an interest".) The apartment owners understand that it would be impracticable, and not in their best collective interest, to permit any of them to individually negotiate a separate settlement of a threatened condemnation action Or to appear individually in any such condemnation proceeding. The apartment owners therefore irrevocably surrender to the Board of Directors of the Association any right which they may individually hold to negotiate a separate settlement of any threatened condemnation action or to appear individually in any such condemnation action. The Board of Directors shall approve a proposed settlement of a threatened condemnation action upon obtaining the affirmative vote in favor of the proposed settlement by a majority of all the voting

owners at a meeting of the Association.

32. Apartment Purchased By Board Of Directors.

The voting owners shall have the power to levy a special assessment to fund the purchase of an apartment authorized by the voting owners. The Board of Directors shall have the power to borrow money from an established financial institution, on the credit of the Association, to fund the purchase of an apartment authorized by the voting owners, and, if such funds should be borrowed, the Board of Directors shall have the power to mortgage such apartment to secure such loan. Any apartment purchased by the Board of Directors shall be held in the name of the Board of Directors, as trustees for the apartment owners in accordance with the relative common interests of their respective apartments.

33. Reserved.

34. Rules For Construction.

The headings and marginal notations of this document are for convenience only, and, if there be any conflict, the text shall control. The use of any gender shall include all genders. Whenever any words are used herein in the singular, they shall be construed as though they were also used in the plural in all cases where they would so apply, and vice versa.

35. Interpretation.

The provisions of this document shall be basically construed to effect the creation of a uniform plan for the development and operation of a fee simple condominium property regime, and shall be construed with reference to the Hawaii Condominium Property Act, and as the same may from time to time be amended or reenacted, any published decision of any court of record of the State of Hawaii interpreting such statute, and any published decision of any court interpreting a similar statute, and with reference to the Declaration.

36. Amendment.

This document may be amended at any time by the vote or written consent of sixty-five percent (65%) of all owners; provided that any proposed bylaws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the 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 of Directors to the 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 of Directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five percent (65%) of all 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 bylaw amendment to be recorded in the Bureau of Conveyances of the State of Hawaii. The volunteer owners' committee shall be precluded from submitting a petition for a proposed by-law which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the Board. The foregoing shall not preclude any owner or voluntary owners committee from proposing any bylaw amendment at any annual Association meeting. (HRS § 514A-82(b)(2))