

**SECOND RESTATED BYLAWS
OF THE ASSOCIATION OF APARTMENT
OWNERS OF KIHEI SHORES**

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**SECOND RESTATED BYLAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF KIHEI SHORES**

WHEREAS, Maui Court Apartment Limited Partnership, a Hawaii limited partnership, whose post office address is 1270 Ala Moana Boulevard, Suite 100, Honolulu, Hawaii 96815 (hereinafter referred to as "Developer"), is the owner in fee simple of those certain parcels of land (herein referred to as the "Land") more particularly described in the Amended and Restated Declaration of Condominium Property Regime of Maui Court dated August 31, 1994 (the "Declaration") and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 94-153400; and

WHEREAS, the Association desires to restate the Amended and Restated Bylaws of the Association of Apartment Owners of Maui Court dated August 31, 1994 and recorded in said Bureau as Document No. 94-153401, as amended (the "Bylaws").

NOW, THEREFORE, the Association declares that the Land is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of such property. These Bylaws shall constitute covenants running with the Land and the sixteen (16) apartments established thereon and shall be binding upon all parties having or acquiring any right, title or interest therein.

ARTICLE I
ASSOCIATION OF APARTMENT OWNERS

Section 1. Membership. All owners of apartments of the Project shall constitute the association of apartment owners, herein called the "Association". The owner of any apartment, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason at which time such owner's membership in the Association shall automatically cease. The purchaser of an apartment pursuant to an agreement of sale recorded and/or filed as aforesaid shall have all the rights of an apartment owner, including the right to vote, provided that the seller may retain the right to vote on matters substantially affecting such seller's security interest in the apartment.

Section 2. Place of Meetings. Meetings of the Association shall be held at the Project or such other suitable place within the State of Hawaii convenient to the apartment owners as may be designated by the Board.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held not later than 180 days after recordation of the first apartment conveyance, provided that forty percent

(40%) or more of the Project has been sold and is recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one year, an annual meeting shall be called upon request by ten percent (10%) of the apartment owners. Thereafter, the annual meetings of the Association shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary.

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to members of the Association, according to the Association's record of ownership, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, date and time of such meeting, the items on the agenda for such meeting, in any of the following ways: (a) by delivering it to a member personally, or (b) by leaving it at a member's apartment in the Project or at a member's usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to a member at a member's address as it appears on the Association's record of ownership. Each such notice shall also contain a standard proxy form authorized by the Association, if any, which shall be valid only for the meeting to which the notice pertains and its adjournment and may designate any person as proxy and may be limited as the apartment owner desires and indicates. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless such owner shall at the opening thereof object to the holding of meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners present at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interest as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interest.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association and shall be by secret ballot. A personal representative, guardian or trustee may vote in person or by proxy at the meeting of the Association the percentage of vote for any apartment owned or controlled by such person in such capacity, whether or not the same shall have been transferred to such person's name in the Association's record of ownership, provided that such person shall first present evidence satisfactory to the Secretary that such person owns or controls such apartment in such capacity. The vote for any

apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to such co-tenant's share of ownership in such apartment. Votes allocated to any area constituting a common element shall not be cast at any Association meeting.

Section 8. Proxies.

(a) Requirements. The authority given by any owner to another person to represent him at meetings of the Association must be in writing, and to be valid must:

(1) 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 month to which it pertains;

(2) 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, and the apartments for which the proxy is given, and the date that the proxy is given; and

(3) 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.

(HRS § 514A-83.2(a))

(b) Limitations On Proxy Votes.

(i) If the Board of Directors intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 5 above, it shall post notice of its intent to distribute proxies in prominent locations within the project at least thirty (30) days prior to its distribution of proxies; provided, that if the board receives within seven (7) days of the posted notice a request by an owner for use of Association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either: (A) a proxy form containing the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statement; or (B) a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall not exceed 100 words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies. (HRS § 514A-82(b)(4))

(ii) A managing agent or resident manager employed by the Association shall not solicit any proxies for his use nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

(iii) 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 set forth above in Section 8(b)(i); provided that this shall not prevent an individual member of the board from soliciting proxies as an apartment owner under Section 8(b)(i). (HRS § 514A-83.2(c))

(iv) 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.

(c) Facsimile Proxies. 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))

(d) Termination. Proxies shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the apartment with respect to which the proxy has been issued. (HRS § 514A-83.2(b)) Any one of two or more persons owning an apartment may revoke a proxy for the entire vote of such apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. A proxy given by a co-owner for only a share of an apartment's vote in proportion to the share of ownership of such co-owner shall be revocable only by such co-owner.

(e) 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)

(f) 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)

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

At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

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

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

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

ARTICLE II BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of at least (9) persons, each of whom shall be the sole owner or co-owner of record of an apartment, or a vendee under an agreement of sale of an apartment, or a partner in a general partnership if such partnership is an owner of record or a general partner of a limited partnership if such partnership is an owner of record. Notwithstanding the above, the minimum number of directors may be reduced by a vote of not less than sixty-five percent (65%) of all apartment owners by mail ballot, or at a special annual meeting. If a corporation is an apartment owner, any officer of such corporation shall be eligible to serve as director so long as such officer remains an officer of such corporation. There shall not be more than one representative on the Board of Directors from any one apartment. No resident manager of the Project shall serve as a director. The directors shall serve without compensation and shall not expend Association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority of owners approve of these expenses. (HRS § 514A-82(b)(101))

Section 2. Powers and Duties. The Board of Directors shall have all powers and shall perform all duties necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these Bylaws directed to be exercised or done only by the apartment owners. A director shall not cast any proxy vote at any Board meeting, nor shall a director vote at a Board meeting on any issue in which such director has a conflict of interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

Section 3. Election and Term. Election of directors shall be by a cumulative voting by secret ballot at each annual meeting and any special meeting called for that purpose. Directors shall hold office for a period of one (1) year and until their respective successors have been elected, subject to removal as herein provided.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until a successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or a continuous absence from the State of Hawaii for more than six (6) months, without notifying the Association, or a director's ceasing to be the sole owner or co-owner of an apartment or vendee under an agreement of sale or officer of a corporate apartment owner or general partner of a general partnership or a limited partnership, which is an apartment owner, shall cause such director's office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting. Such removal and replacement shall be in accordance with all applicable requirements and procedures herein for Association meetings, including, without limitation, except where the same shall conflict with the provisions of this Article II, Section 5, in which event the provisions of this Article II, Section 5 shall control, the provisions regarding quorum, voting and proxies set out in Article I, Sections 6, 7 and 8. 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 these Bylaws. Except as otherwise provided herein, such meeting for the removal and replacement from office of a director shall be scheduled, noticed and conducted in accordance with these Bylaws.

Section 6. Annual Meeting. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to the meeting. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held as such time and place as shall be determined from time to time by a majority of the directors, but at least one (1) such meeting shall be held during each calendar quarter of every year. Notice of regular

meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least five (5) days, if practicable, prior to the date of such meeting.

Section 8. Special Meetings. Except as otherwise provided herein or by law, special meetings of the Board of Directors may be called by the President on at least eight (8) hours' notice to each director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to such director of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

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

Section 11. Conduct of Meetings. All meetings shall be conducted in accordance with the most current edition of Robert's Rules and Order, and transcribed by the Secretary or a reporter in summary form.

Section 12. Fidelity Bonds. If the Project contains six or more apartments, the Board of Directors shall require that all officers, employees and agents of the Association handling or responsible for its funds, shall furnish fidelity bonds in an amount not less than that specified by its applicable provisions of Section 514A-95.1, Hawaii Revised Statutes. The premiums on such bonds shall be paid by the Association.

Section 13. Board Meetings. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion, other than Board of Directors, with the approval of majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session. Whenever practicable, notice of all Board meetings shall be posted by the resident manager 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 members.

Section 14. Miscellaneous.

(a) Directors may expend Association funds, which shall not be deemed to be compensation to 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 include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of Article II, Section 1.

(b) The Association shall, at its expense, provide all Board members with a current copy of the Association's Declaration, Bylaws, house rules and, annually a copy of the Act, with amendments.

(c) Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities.

ARTICLE III
OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Secretary, and a Treasurer, all of whom shall be elected by, and in the case of the President from the Board of Directors. The Board may appoint an Assistant Treasurer, and Assistant Secretary and such other officers as in its judgment may be necessary. No apartment owner shall act as an officer of the Association and an employee of the managing agent employed by the Association.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board.

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

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

Section 5. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors wherein resolutions shall be recorded, give all notices

thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary. If the Secretary is not present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.

Section 6. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. Such duties may be delegated to a managing agent.

ARTICLE IV ADMINISTRATION

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

- (a) Supervision of its immediate management and operation;
- (b) Preparation and adoption at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year and distribution to the apartment owners, all in accordance with the provisions of the Act;
- (c) Purchase, maintenance and replacement of any equipment and provisions of all water, sewer and other utility services required for the common elements;
- (d) Provision to the outer perimeter of each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;
- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project, including, without limitation, the maintenance, repair and replacement of the common elements;
- (f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year;
- (g) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

(h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

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

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

(k) Establishment of such late fees, penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the house rules adopted pursuant to these Bylaws; provided such penalties and fines are not inconsistent with the Act or the provisions herein, and the unpaid amount of such penalties and fines against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or managing agent in the same manner as provided in the Act for common expenses.

Section 2. Access to Apartments. The apartment owners shall have the irrevocable right to be exercised by the Board, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

Section 3. Managing Agent. The Board of Directors may employ a responsible corporation authorized to do business in Hawaii, licensed as a real estate broker and registered as a condominium managing agent in compliance with Chapter 467 and § 514A-95 of the Hawaii Revised Statutes, and the rules and regulations of the Real Estate Commission or a corporation authorized to business under Chapter 406, Hawaii Revised Statutes, as managing agent to manage and control the Project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish.

Section 4. Representation. Except as provided for in Article V, Section 5 hereof, the President or managing agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or managing agent. Every managing agent shall also be the agent of the respective lessees under any apartment leases filed with the Board for the

collection, custody and payment of all rent, taxes, assessments and other charges thereunder payable to their lessor.

Section 5. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President and the Treasurer or the Secretary (two signatures being required).

Section 6. Books of Receipts and Expenditures: Unpaid Assessments; Availability for Examination.

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

(b) All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board of Directors. The managing agent or Board of Directors shall not transfer by telephone Association funds between accounts, including, but not limited to, the general operating account and reserve fund amount.

(c) A managing agent employed or retained by the Association may dispose of the records of the Association which are more than five (5) years old without liability if the managing agent first provides the Board of Directors with written notice of the managing agent's intent to dispose of the records if not retrieved by the Board of Directors within sixty (60) days, which notice shall include an itemized list of the records of which the managing agent intends to dispose.

(d) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or Association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or Association.

Section 7. Employees; Background Check. The Board of Directors or the managing agent, upon the written authorization of an applicant for employment as security guard or manager or for a position which would allow the employee access to the keys of or entry into the apartments in the Project or access to Association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the Board of Directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as a

condominium employee with access to Association funds or the keys of or entry into the apartments in the Project, and the judgment of conviction has not been vacated. For the purpose of this section the criminal history disclosure made by the applicant may be verified by the Board, manager, or other responsible party, if so directed by the Board of the manager, by means of information obtained through the Hawaii criminal justice data center. Failure of an Association or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an Association or manager for acts and omissions of the employee hired.

Section 8. Association's Employees Acts. The Association's employees shall not engage in selling or renting apartments in the Project in which they are employed except Association-owned apartments, unless such activity is approved by an affirmative vote of sixty-five (65%) of the membership of the Association.

Section 9. Association Funds; Handling and Disbursement.

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities such as rental operations, nor shall a managing agent commingle any Association funds with the managing agent's own funds.

(b) For purposes of subsection (a) of this Section 9, rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association.

(c) All funds collected by the Association, or by a managing agent for the Association shall be:

- (i) Deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government;
- (ii) Held by a corporation authorized to do business under Article 8, Chapter 412, Hawaii Revised Statutes; or
- (iii) Invested in the obligations of the United States government.

Records of the deposits and disbursements shall be disclosed to the Real Estate Commission upon request. All funds collected by the Association shall only be disbursed by employees of the Association under the supervision of the Association's Board of Directors. All funds collected by the managing agent from the Association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the Association's Board of Directors.

(d) The managing agent or the Board of Directors shall not transfer Association funds by telephone between accounts, including but not limited to, the general operating account and reserve fund account.

(e) The managing agent or the Board of Directors shall keep and disburse funds collected on behalf of the apartment owners in strict compliance with any agreement made with the apartment owners, Chapter 467, Hawaii Revised Statutes, the rules of the Real Estate Commission, and all other applicable laws.

Section 10. Audit.

(a) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant; provided that, if the Association is comprised of less than twenty (20) apartment owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an Association meeting.

(b) The Board of Directors shall make available a copy of the annual audit to each apartment owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon all official proxy forms a box wherein the apartment owner may indicate that the apartment owner wishes to obtain a copy of the annual audit report. The Board shall not be required to submit (HRS § 514A-96) 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:

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

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

ARTICLE V
OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. All apartment owners shall pay to the managing agent or the Association in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the Project in accordance

with the Declaration, any assessments against an apartment. In the event all said monthly charges are not received by the managing agent or the Association on or before the 15th day after said charges are due, the managing agent or the Association may assess a late payment charge in an amount not in excess of ten percent (10%) of the amount delinquent to the appropriate apartment owner; and if said charges, including said late payment charge, are not received within thirty (30) days after said monthly charges are due, an additional late charge in an amount not in excess of ten percent (10%) of the amount delinquent and interest at the rate of one percent (1%) per month calculated from such due date may be assessed. The amount of the late charge and interest rate may be adjusted by the Board of Directors; provided, however, that the Board shall not deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees (other than amounts remitted by an apartment owner in payment of late fees) unless it delivers or mails a written notice to such apartment owner, at least seven days prior to the first such deduction, which states that (a) failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist; and (b) late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payment.

Section 2. Assessment Disputes.

(a) 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:

- (i) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (ii) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (iii) The amount of attorneys' fees and costs, if any, included in the assessment;
- (iv) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;
- (v) 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
- (vi) That payment in full of the assessment does not prevent the apartment owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing herein shall limit the rights of an apartment owner to the protection of all fair debt collection procedures mandated under federal and state law.

(b) An apartment owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of the Act; 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 Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all Association assessments within thirty (30) days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the apartment owner fails to pay all Association assessments by the end of the thirty (30) 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.

Section 3. Default in Payment of Assessments. Each monthly assessment and each special assessment of the Association and all other assessments chargeable to an apartment owner under this Article V shall be the separate, distinct and personal debt and obligation of the apartment owner against whom the same are assessed. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies herein or by law provided, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the managing agent. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the apartment owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorneys' fees in such amount as the court may adjudge against such defaulting apartment owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of any such default, the Board may give a notice to the defaulting apartment owner, with a copy to the mortgagee of such apartment owner, if such mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the apartment of such delinquent apartment owner. Such claim of lien shall state (1) the name of the delinquent apartment owner or reputed apartment owner, (2) a description of the apartment against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant

to the terms of these Bylaws and of Chapter 514A, Hawaii Revised Statutes, as amended, and (5) that a lien is claimed against said described apartment in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Upon recordation of a duly executed original or copy of such claim of lien with the Bureau of Conveyances or the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, the Board shall have all remedies provided in Section 514A-90, Hawaii Revised Statutes, as amended. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the person conducting the sale.

(c) For the purposes of this Section, a certificate executed by the managing agent or by any two members of the Board shall be conclusive upon the Board and the apartment owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained (except for any subsequently dishonored checks), and any apartment owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to such owner's apartment (the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee as established by the Board. In the event any claims of liens have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the apartment owner or such owner's successor, and payment of a reasonable fee, as established by the Board, the managing agent or the Board, acting by any two members, shall execute and acknowledge (in the manner provided above) a release of lien stating the date of the original claim of lien, the amount claimed, the date, the recordation data if recorded in the Bureau of Conveyances or the document number if filed in the Land Court, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the apartment owner or such owner's successor upon payment of the fee.

Section 4. Maintenance of Apartments. Every apartment owner shall at such owner's own expense at all times well and substantially repair, maintain, amend and keep such owner's apartment, and such owner's limited common element(s), if any, including, without limitation, all internal installations therein such as water, electricity, gas, telephone, drainage pipes, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by such owner's failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the managing agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing, maintaining, or replacing any uninsured loss or damage to such owner's

or occupant's limited common element(s), if any, and to the common elements or any existing trees, utilities, improvements, furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the managing agent of any such loss or damage or other defect in the Project when discovered.

Section 5. Use of Project.

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

(b) All common elements and all limited common elements of the Project shall be used only for their respective purposes as designed and in accordance with all applicable laws, rules, and regulations.

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

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

(e) No apartment owner or occupant shall make or suffer any strip or waster or unlawful, improper or offensive use of such owner's apartment, such owner's limited common element(s), or the Project nor alter or remove any furniture, furnishings or equipment of the common elements.

(f) All apartment owners and occupants shall avoid making noises and using musical instruments, radios, televisions and amplifiers in such manner as may disturb other apartment owners and occupants.

(g) No garments, rugs or other objects shall be hung from the windows or facades of any apartment or otherwise be displayed in public view.

(h) No rugs or other objects shall be dusted or shaken from the windows or doors of any apartment or cleaned by beating or sweeping on any walkways, entries or other exterior part of the Project.

(i) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements and limited common element(s) of the Project outside of the disposal facilities provided for such purpose.

(j) No agricultural or commercial or illegal crops, livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project. (prior amendment dated November 13, 2001, recorded as Document No. 2001-206743)

(k) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any apartment or protruding through the walls, windows or roof thereof.

(l) No apartment owner or occupant shall erect, place or maintain any television or other antennas or solar energy systems or any other types of objects or equipment on any apartment visible from any point outside of his apartment.

(m) Nothing shall be allowed, done or kept in any apartments, limited common element(s) or common elements of the Project which would overload or impair the floors, walls, or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(n) Anything to the contrary notwithstanding an apartment owner may engage in real estate sales activities in such owner's apartment for the purpose of selling such owner's apartment.

(o) No signs whatsoever, including, without limitation, commercial, political or similar signs, visible from neighboring property or other apartments shall be erected or maintained upon or within any apartment except:

- (i) Such signs as may be required by legal proceedings;
- (ii) Apartment identification signs of a combined total face area of one square foot or less for each apartment; and
- (iii) Not more than one "For Sale" or "For Rent" sign having a maximum face area of three square feet, such sign to refer only to the premises on which it is situated.

(p) No boat or trailer or truck of more than one-ton capacity shall be kept, placed or maintained upon or within the Project.

Section 6. House Rules. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon, may adopt, amend or repeal any administrative or supplemental rules and regulations (sometimes referred to as "house rules") governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these Bylaws.

Section 7. Attorneys' Fees and Expenses of Enforcement.

(a) All costs and expenses including reasonable attorneys' fees, incurred by or on behalf of the Association for (i) collecting any delinquent assessments against any apartment; (ii) foreclosing any lien thereon; or (iii) enforcing any provision of the Declaration, Bylaws, house rules, and the Act 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 an Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, Bylaws, house rules, or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by an owner shall be awarded to such owners; provided that no such award shall be made in any derivative action unless: (i) the owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or (ii) the owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

(c) 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, Bylaws, house rules, or the Act, 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 Part VII of the Act, and made good faith effort to resolve the dispute under any of those procedures.

Section 8. Record of Ownership. Every apartment owner shall promptly cause to be duly recorded and/or filed of record the deed, agreement of sale or other conveyance to such owner of such apartment or other evidence of such owner's title thereto and shall file such document with and present such other evidence of such owner's title to the Board of Directors through the managing agent. The managing agent shall maintain all such information together with accurate and current

list of members of the Association which shall include their current addresses and shall also maintain a record of the names and addresses of the vendees of an apartment under an agreement of sale, if any. The list shall be maintained at a place designated by the Board of Directors and a copy shall be available at cost to any member of the association as provided in the project rules or, in any event, to any member who furnishes to the managing agent or the board of directors an affidavit stating that the list will be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters and that the list will not be used or furnished to any other person for any other purpose. (HRS § 514A-83.3)

Section 9. Mortgages.

(a) Notice to Board of Directors. An apartment owner who mortgages such owner's interest in an apartment shall notify the Association of the name and address of such owner's mortgagee and within ten (10) days after the execution of the same shall file a true and correct copy of such mortgage with the Association. The Association shall maintain such information in a book entitled "Mortgages of Apartments".

(b) Notice of Unpaid Common Expenses. The Association, whenever so requested in writing by an owner of mortgagee of an interest in an apartment, shall promptly report any then unpaid assessments or common expenses due from the apartment owner involved.

(c) Notice of Default. The Board, when giving notice to an apartment owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such apartment or interest therein whose name and address has theretofore been furnished to the Association. In each and every case where the lender-mortgagee has made a request, the Association shall notify the lender-mortgagee of any unpaid assessment that is thirty (30) days delinquent or more.

(d) Examination of Books. Each apartment owner and each mortgagee shall be permitted to examine the books and records of the Association or the Project at reasonable times on business days, and each mortgagee shall have the right to require the submission of annual reports and other financial data.

(e) Mortgage Protection. Notwithstanding all of the provisions hereof:

(i) The liens created hereunder under any apartment and its appurtenant interest in the common elements shall be subject and subordinate to and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage under such interest, made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such apartment if falling due after the date of such foreclosure sale;

- (ii) All taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Hawaii shall relate only to the individual apartments and not to the condominium Project as a whole;
- (iii) The Declaration and Bylaws shall not give an apartment owner or any other party under him, priority over any rights of first mortgagees of apartment units pursuant to their mortgages in the case of a distribution to apartment owners of insurance proceeds or condemnation awards for losses to or a taking of apartment units and/or common elements; and
- (iv) Notwithstanding any other provisions of these Bylaws, no amendment to this Section 9(e) shall affect the rights of the holder of any such mortgage recorded or filed in the Bureau of Conveyances, State of Hawaii or the Office of the Assistant Registrar of the Land Court, State of Hawaii, as the case may be, prior to the recording and/or filing of such amendment who does not join in the execution thereof.

ARTICLE VI
MISCELLANEOUS

Section 1. Amendment. Subject to the reservation in Article V, Section 9(e)(iv) and excepting this paragraph, these Bylaws may be amended in any respect not inconsistent with the provisions of law or the Declaration by vote or written consent of not less than sixty-five percent (65%) of the apartment owners at any meeting of the Association duly called for such purpose, effective only upon the recording of an amendment to these Bylaws setting forth such amendment and vote and duly executed by the apartment owners or by any two officers of the Association; provided that each one of the particulars required by the Act shall always be embodied in the Bylaws; and provided further that any proposed Bylaws, along with the rationale for the proposal, may be submitted by the Board or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership. The proposed Bylaws, rationale and ballots for voting on any proposed Bylaw shall be mailed by the Board to all the apartment owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed Bylaw shall not be less than sixty-five percent (65%) of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the Bylaw is duly adopted, then the Board shall cause the Bylaw amendment to be recorded in the Bureau of Conveyances and/or filed in the Land Court, as the case may be. The volunteer apartment owner's committee shall be precluded from submitting a petition for a proposed Bylaw which is substantially similar to that which has been previously mailed to the apartment owners within one (1) year after the original petition was submitted to the Board. This

section shall not preclude any apartment owner of voluntary apartment owners' committee from proposing any Bylaw amendment at any annual Association meeting.

Section 2. Liability and Indemnification of Directors and Officers. The members of the Board of Directors and officers shall not be liable to the apartment owners for any mistake of judgment or otherwise except for their own individual gross negligence or wilful misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted, or threatened in which such director or officer may be involved as a party or otherwise by reason of such director or officer being or having been a director or officer, or by reason of any action taken or authorized or approved by such director or officer or any omission to act as director or officer, whether or not such director or officer continues to be a director or officer at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which such director or officer is liable by reason of such director's or officer's negligence or misconduct toward the Association in the performance of such director's or officer's duties as such director or officer. As to whether or not a director or officer was liable by reason of negligence or misconduct toward the Association in the performance of such director's or officer's duties as such director or officer, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each director and officer may conclusively rely upon an opinion of legal counsel selected by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such director or officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, personal representatives, and assigns of each such director and officer.

Section 3. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the apartment owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the apartment owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied, by the Board of any provisions hereunder shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board of Directors.

Section 4. Association Documents.

(a) The Association's most current financial statement 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.

(b) Minutes of meetings of the Board of Directors and the Association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the Board. Minutes of meetings of the Board and the Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any owner upon the apartment owner's request provided that the apartment owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. Minutes of meetings of the Board of Directors and Association shall be approved at the next succeeding meeting; provided that for Board of Directors' meetings, no later than the second succeeding meeting. 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.

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

- (i) That the Board may require owners to furnish to the Association a duly executed and acknowledged affidavit stating the information is requested in good faith for the protection of the interests of the Association or its members or both; and
- (ii) That apartment owners pay for all administrative costs incurred in excess of eight (8) hours per year.

Copies of these items shall be provided to any apartment owner upon the apartment owner's request, provided that the apartment owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

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

- (i) 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
- (ii) That apartment owners pay for administrative costs in excess of eight (8) hours per year.

Proxies and ballots may be destroyed following the thirty (30) day period. Copies of tally sheets, owners' check-in list, and the certificates of election from the most recent Association meeting shall be provided to any apartment owner upon the apartment owner's request, provided that the apartment owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

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

(f) An accurate copy of the Declaration of Condominium Property Regime, the Bylaws of the Association, the house rules, if any, the master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office. The managing agent shall provide copies of those documents to apartment owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. In the event that Project is not managed by a managing agent, the foregoing requirements and all other requirements set forth in these Bylaws, as applicable, shall be undertaken by a person or entity, if any, employed by the Association.

Section 5. Disposition of Unclaimed Possessions.

(a) When personalty in or on the common elements of the Project has been abandoned, the Board of Directors may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

- (i) The Board notifies the owner in writing of:
 - (1) The identity and location of the personalty, and
 - (2) The Board of Directors' intent to sell, store, donate, or dispose of the personalty.

Notification shall be by either hand delivery or certified mail, return receipt requested to the owner's address as shown by the records of the Association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; and

- (ii) If the identity or address of the owner is unknown, the Board of Directors, at its discretion, may first advertise the sale, donation or

disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

(b) The proceeds of any sale or disposition of personalty under subsection (a) of this Section 5 shall, after deduction of any accrued costs of mailing, advertising, storage, and sale be held for the owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association.

Section 6. Association May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the voting apartment owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the articles and bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

Section 7. Subordination. These Bylaws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Act which shall control in case of any conflict. All terms herein (except where clearly repugnant to the content) shall have the same meaning as in the Declaration or said Act.

Section 8. Interpretation. In case any provision of these Bylaws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these Bylaws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the apartment owners.