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/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

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Return by Mail () Pickup (X) To:

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BYLAWS
OF THE ASSOCIATION OF APARTMENT OWNERS
OF
MOANA PACIFIC

WHEREAS, KC RAINBOW DEVELOPMENT CO. LLC, a Hawaii limited liability company (the "Developer"), whose mailing address is 615 Piikoi Street, Suite 1111, Honolulu, Hawaii 96814, is the owner in fee simple of the land described in Exhibit "A" attached hereto and made a part hereof (the "Land"); and

WHEREAS, the Developer is also the current owner of the lands described herein as "Adjacent Lands"; and

WHEREAS, the Developer intends to develop the Land and the improvements thereon as a condominium project known as "MOANA PACIFIC" (the "Project") in accordance with plans filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as Condominium Map No. 1706 (the "Condominium Map"); and

WHEREAS, the Developer has submitted all of its interest in the Land and all improvements thereon to a Condominium Property Regime as established by Chapter 514A, Hawaii Revised Statutes, as amended (the "Act"), by Moana Pacific Declaration of Condominium Property Regime dated March 28, 2005, recorded in the Land Court concurrently

herewith (such Declaration of Condominium Property Regime, as the same may be amended from time to time, is hereinafter referred to as the “Declaration”);

NOW, THEREFORE, the Developer hereby declares that the Land and all improvements now or hereafter placed thereon are and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Declaration and to the following Bylaws of the Association of Apartment Owners of Moana Pacific, as the same may be lawfully amended from time to time (the “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 the Project. These Bylaws shall constitute covenants running with the Land and shall be binding upon and inure to the benefit of the Developer, its successors and assigns, and all present and future Apartment Owners, mortgagees, tenants, and occupants of the Apartments and any other person who may use any part of the Project.

ARTICLE I

DEFINITIONS

SECTION 1.1 **Definitions.** The terms used in these Bylaws shall have the meanings given to them in the Act, except as expressly provided otherwise below:

“**Adjacent Land**” means those certain parcels of land adjacent to or in the immediate vicinity of the Project and more particularly described in paragraph 17 of the Declaration.

“**Apartment**” refers to the Apartments identified in and created under the Declaration.

“**Apartment Deed**” refers to the deed of an Apartment from the Developer to an Apartment Owner recorded in the Land Court.

“**Apartment Owner**” or “**Owner**” means a person or entity owning an Apartment and the common interest appertaining thereto severally or as a cotenant, to the extent of such interest so owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded in the Land Court, a lessee or sublessee of an Apartment shall be deemed to be the Owner of such Apartment to the extent provided in such lease. The vendee of an Apartment pursuant to an agreement of sale recorded in the Land Court (a “recorded Agreement of Sale”) shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote on matters substantially affecting the vendor’s interest in the Apartment as provided in Section 514A-83 of the Act. Where an Owner is a corporation, trust, limited liability company or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in Section 3.7 of these Bylaws. In the event that any interest in an Apartment is transferred to a trustee under a land title-holding trust under which substantially all powers of management, operation and control of the Apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust shall be deemed to be the Owner or Owners of the Apartment to the extent of their interest therein except insofar as the trustee notifies the Association otherwise

in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an Owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purposes, and the transferor may continue to be recognized by the Association as the Owner and shall have all of the rights and obligations of ownership.

“Association” means the Association of Apartment Owners of Moana Pacific.

“Board of Directors” or **“Board”** means the Board of Directors of the Association.

“Bylaws” means these Bylaws of the Association of Apartment Owners of Moana Pacific, as the same may be amended from time to time.

“Common elements” means those parts of the Project designated in the Declaration as common elements, including the limited common elements.

“Declaration” means the Moana Pacific Declaration of Condominium Property Regime, recorded in the Land Court concurrently with these Bylaws, as the same may be amended from time to time.

“Developer” means KC RAINBOW DEVELOPMENT CO. LLC, a Hawaii limited liability company.

“Limited common elements” means those parts of the Project designated in the Declaration as limited common elements.

“Majority of Apartment Owners” has the meaning given to such term in Section 3.6 of these Bylaws.

“Mortgagee of an Apartment” or **“Apartment mortgagee”** means the holder of a mortgage encumbering the fee title to, or any recorded leasehold interest in, an Apartment.

“Person” (whether or not capitalized) means any individual, corporation, association, partnership, limited liability company, agency, trust, institution, organization, or other entity, and his, her, or its legal representative.

“Project” means and includes the Land and all improvements thereon and all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

“Record”, “recorded” or **“recordation”** means to record or to be recorded in the Land Court.

“Rules and Regulations” means the rules and regulations adopted pursuant to these Bylaws, as the same may be amended from time to time, governing the details of the operation and use of the Project, and certain details regarding the use of the Apartments.

ARTICLE II

APPLICATION AND ENFORCEMENT

SECTION 2.1 **Administration and Operation.** The administration and operation of the Project shall be governed by the Declaration, these Bylaws, the Rules and Regulations, the Act and all other applicable laws.

SECTION 2.2 **Personal Application.** All present and future Owners, mortgagees, tenants and occupants of Apartments and their guests and employees, and any other person who may use the Project in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations, as each may be amended from time to time. The acceptance of an Apartment Deed, conveyance, mortgage or similar instrument, or the acquisition of any interest in the Project, or the entry into or the act of occupancy of an Apartment, shall constitute an agreement that the provisions of these Bylaws, the Declaration, and the Rules and Regulations are accepted, ratified and shall be complied with.

SECTION 2.3 **Compliance with Declaration, Bylaws, Rules and Regulations, etc.** Each Apartment Owner, such Apartment Owner's employees, tenants, guests, agents, invitees, and any other persons using the Project shall comply strictly with the covenants, conditions and restrictions set forth in the Declaration, these Bylaws and the Rules and Regulations. Each Apartment Owner is fully responsible for ensuring that all employees, tenants, guests, agents and invitees of the Apartment Owner comply strictly with such covenants, conditions and restrictions, and shall be personally liable for any such noncompliance. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent or Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Apartment Owner.

SECTION 2.4 **Attorneys' Fees and Expenses of Enforcement.** 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;
- (3) Enforcing any provision of the Declaration, these Bylaws, the Rules and Regulations, the Act or the rules and regulations of the Real Estate Commission;

against an Apartment Owner, such Apartment Owner's employees, tenants, guests, agents or invitees, shall be promptly paid on demand by such Apartment Owner to the Association; 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 such Apartment Owner as a result of the action of the Association, shall be promptly paid on demand to such Apartment Owner by the Association.

If any claim by an Owner is substantiated in any action against the Association, any of its officers or the Board of Directors to enforce any provision of the Declaration, these Bylaws, the Rules and Regulations or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless:

- (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.

SECTION 2.5 **Conflicts.** These Bylaws are set forth to comply with the requirements of the Act. In case any of these Bylaws conflict with the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

ARTICLE III

ASSOCIATION

SECTION 3.1 **Purpose of Association; Qualifications for Membership.** The Association shall be organized and operated for the purposes of managing, maintaining, acquiring, constructing and caring for the Association property which includes the common elements, funds and other property held by the Association or the nominee of the Association, property owned in common by one (1) or more Owners, but held by the Association, property within or forming part of the Project privately held by one (1) or more Owners, but which may be subject to a common maintenance assessment by the Association for such purposes as insurance, and property owned by a government agency, public utility or other third party and used for the benefit of the Association or one (1) or more Owners. All Apartment Owners of the Project shall constitute 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 or until the Association is dissolved by termination of the condominium property regime established by the Declaration, at which time his membership in the Association shall automatically cease. Notwithstanding anything to the contrary provided herein, the Developer shall be entitled to vote and act on all matters as the Association and the Board of Directors until such time as the first meeting of the Association. Thereafter, the Developer, as the owner of any unsold Apartments, shall be entitled to vote the interest of each such Apartment.

SECTION 3.2 **First Meeting; Annual Meetings.** The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first Apartment conveyance, provided forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded, at the end of one year after the first Apartment conveyance, an annual meeting shall be called, provided ten percent (10%) of the Apartment Owners so request. Thereafter, the annual meetings of the Association shall be held within three calendar months following the end of the fiscal year

selected by the Board, and if the annual meeting for any year shall not be held or called within said period, then the annual meeting for such year shall be held on the first day of the fourth calendar month following the end of the fiscal year selected by the Board. At such annual meetings, including the first annual meeting, the Board of Directors shall be elected by ballot of the Apartment Owners in accordance with Article IV, Section 4.3 of these Bylaws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

SECTION 3.3 **Place of Meetings.** All meetings of the Association shall be held at the address of the Project, or elsewhere within the State of Hawaii convenient to the Apartment Owners as determined by the Board of Directors.

SECTION 3.4 **Method of Calling Special Meetings.** Except as otherwise provided herein, special meetings of the Association shall be held at any time upon the call of the President or upon written request signed by at least twenty-five percent (25%) of the Apartment Owners and presented to the Secretary. Upon the receipt of such call or written request, the Secretary shall send written notice of the meeting to all Apartment Owners and the meeting shall be held no earlier than fourteen (14) and no later than sixty (60) days from the receipt of such call or written request, at such time, date, and place as shall be determined by the Board.

SECTION 3.5 **Notice of Meetings.** Written notice of all Association meetings, whether annual or special, shall be given to each Apartment Owner at least fourteen (14) days but not more than sixty (60) days prior to the meeting, in any of the following ways: (a) by delivering it personally to the Apartment Owner, or (b) if, the Apartment Owner resides in the Project, by leaving it at such Apartment Owner's Apartment in the Project, or (c) by mailing it, postage prepaid, addressed to the Apartment Owner at the address of such Owner as it appears on the Association's record of ownership, or (d) by sending it by email to an email address designated by the Apartment Owner. The written notice of meeting shall contain at least: the date, time and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the Association, if any. Upon notice being given in accordance with the provisions of this Section, the failure of any member of the Association to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of an Apartment Owner or Apartment mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner or Apartment mortgagee unless such Owner or Apartment mortgagee shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

SECTION 3.6 **Quorum.** At all meetings of the Association, the presence 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 in person or by proxy at any meeting of the Association at which a quorum is present shall be binding upon all Apartment Owners for all purposes, except as otherwise provided in the Declaration or in these Bylaws. The term "majority of Apartment Owners" herein means the Owners of Apartments to which are appurtenant more than fifty percent (50%) of the common interests of the Project, and any other specified percentage of Apartment Owners means the Owners of Apartments to which are appurtenant such specified percentage of the common interests.

SECTION 3.7 **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 pursuant to the Declaration. Votes allocated to any area which constitutes a common element under Section 514A-13(h) of the Act shall not be cast at any Association meeting, whether or not such area is designated as a common element in the Declaration. Votes may be cast in person or by proxy by the Apartment Owners. A personal representative, executor, administrator, guardian, beneficiary or trustee may vote in person or by proxy at any meeting of the Association the vote for any Apartment owned or controlled by him in such capacity, provided that prior to such meeting he shall first present to the Secretary written evidence, satisfactory to the Board of Directors, that he owns or controls such Apartment in such capacity. The vote for any Apartment owned by two or more persons may be exercised by any one of them present 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 that co-tenant's share of ownership in such Apartment. In the case of joint tenants, each Owner's share of ownership for voting purposes shall be deemed to be a fraction of the total vote allocated to the Apartment, the numerator of which shall be one (1) and the denominator of which shall be the total number of joint owners of the Apartment. In the case of tenants by the entirety, each co-tenant shall have one-half (1/2) of the total vote allocated to the Apartment. Corporations, general partnerships, limited partnerships and limited liability companies which are Owners shall designate an officer, general partner, manager or member for the purpose of exercising the vote, and prior to any meeting at which such representative intends to vote, the representative shall present to the Secretary written evidence satisfactory to the Board of his or her designation and authority as representative of such corporation, general partnership, limited partnership or limited liability company.

SECTION 3.8 **Proxies and Pledges.**

(a) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any Apartment Owner, nor shall the resident manager or managing agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Before the Board uses Association funds to distribute proxies, the Board shall first 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 of Directors receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board of Directors shall:

- (i) Mail to all Owners a proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or
- (ii) Mail to all Owners 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 one hundred words, indicating the Owner's qualifications to serve on the Board of Directors and reasons for wanting to receive proxies.

(b) The authority given by any Apartment Owner to another person to represent him at meetings of the Association shall be by written proxy satisfying the requirements of Section 514A-83.2 of the Act, signed by such Owner and filed with the Secretary no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Apartment or Apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

(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 Owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the applicable Apartment.

(d) A proxy must contain boxes wherein the Owner has indicated that the proxy is given (i) for quorum purposes only; (ii) to the individual whose name is printed on a line next to this box; (iii) to the Board as a whole and that the vote be made on the basis of the preference of the majority of the board; or (iv) to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the Owner that the vote be made on the basis of the preference of the majority of the Board.

(e) Neither the Board nor any member of the Board shall use Association funds to solicit proxies except for the distribution of proxies as set forth in section 514A-82(b)(4) of the Act; provided that this shall not prevent an individual member of the Board from exercising his right as an Apartment Owner under section 514A-82(b)(4) of the Act.

(f) Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Apartment or interest therein, a copy of which is filed with the Board of Directors, shall be exercised only until the written release or other termination thereof is filed with the Board of Directors.

(g) 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.

(h) Nothing in subsections (b), (c), (d), (e) (f) or (g) of this Section 3.8 shall affect the holder of any proxy under a first mortgage of record or under an agreement of sale of any Apartment or interest therein.

(i) Any one of two or more persons owning any Apartment may give or revoke a proxy for the entire vote of such Apartment. No proxy may be given by a co-Owner or co-

Owners for only a share of an Apartment's vote. Any proxy given by a co-Owner or co-Owners of an Apartment may be exercised to cast the entire vote for such Apartment in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner, and, in case of such protest, the entire vote allocated to such Apartment shall not be counted except for purposes of establishing a quorum.

SECTION 3.9 Adjournment of Meetings. Any meeting of the Association may from time to time be adjourned to a time not less than thirty (30) days from the time the original meeting was called as may be determined by a majority of the Apartment Owners present, without any further notice other than the announcement at such meeting. If a quorum is present upon reconvening such adjourned meeting, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

SECTION 3.10 Order of Business. The order of business at all meetings of the Association shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting (unless waived by vote of a majority of the Association members present at such meeting);
- (d) Reports of officers;
- (e) Report of Board of Directors;
- (f) Reports of committees;
- (g) Election of members of the Board of Directors (when so required);
- (h) Unfinished business; and
- (i) New business.

SECTION 3.11 Conduct of Association Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order.

SECTION 3.12 Registration of Association. Within thirty (30) days of the first meeting of the Association, the Association shall register with the Real Estate Commission of the State of Hawaii Department of Commerce and Consumer Affairs (the "Commission"), as required by Section 514A-95.1 of the Act. Prior to June 30 of each odd-numbered year, the Association, through the managing agent, shall pay to the Commission a registration fee as prescribed by rules adopted by the Director of Commerce and Consumer Affairs, and as required by Section 514A-95.1 of the Act.

ARTICLE IV

BOARD OF DIRECTORS

SECTION 4.1 **Powers and Duties.** The affairs of the Association, except as otherwise provided by the Act, the Declaration, or these Bylaws, shall be conducted and managed by a Board of Directors. Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities. Pursuant to Section 6.2 of these Bylaws, the Board shall employ a responsible corporate managing agent with such powers and duties of the Board as shall be delegated by the Board.

SECTION 4.2 **Number; Qualification; and Compensation.**

(a) The Board of Directors shall initially be constituted of nine (9) persons, each of whom shall be an Owner, co-Owner, vendee under an agreement of sale, or an officer of any corporate Owner of an Apartment or, in the case of fiduciary owners, the fiduciary or officers of corporate fiduciaries. The partners in a general partnership, the general partners of a limited partnership, the managing member of a manager-managed limited liability company and any member of a member-managed limited liability company shall be deemed to be the Owners of an Apartment for this purpose.

(b) There shall be no more than one (1) representative on the Board of Directors from any one Apartment.

(c) No more than one (1) Director shall be elected from among the Owners of the Parking Apartments who do not also own a Residential Apartment.

(d) No more than one (1) Director shall be elected from among the Owners of the Storage Apartments who do not also own a Residential Apartment.

(e) No resident manager or employee of the managing agent of the Project shall serve on the Board of Directors.

(f) No member of the Board of Directors shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such Director, provided that a majority of a quorum of the Board has first approved such expenses.

SECTION 4.3 **Method of Electing the Board.** Election of Directors shall be by cumulative voting by secret ballot at each annual meeting of the Apartment Owners and any special meeting called for that purpose; provided, however, that at any meeting at which Directors are to be elected, the requirement that voting for Directors be by secret ballot may be waived by the vote of a majority of those persons present and entitled to vote at such meeting.

SECTION 4.4 **Term of Office.** At the first annual meeting of the Apartment Owners, the term of office of the three (3) members of the Board receiving the greatest number of votes shall be fixed at three (3) years, the term of office of the three (3) members of the Board receiving the next greatest numbers of votes shall be fixed at two (2) years, and the term of office of the three (3) members of the Board receiving the next greatest numbers of votes shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board shall be elected to serve for a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners.

SECTION 4.5 **Removal of Directors.** At any regular or special meeting of Apartment Owners, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Apartment Owners and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that an individual Director shall not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one Director by cumulative voting present at such meeting shall vote against his removal. A member of the Board of Directors whose removal is proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting. If such removal and replacement is to occur at a special 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; provided that if the Secretary or managing agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date and place for the special meeting and to send out notices for the special meeting in accordance with the requirements for notice contained herein. Except as otherwise provided in the Act, such meeting for the removal from office and replacement of Directors shall be scheduled, noticed and conducted in accordance with these Bylaws. In addition, if any Director shall fail to attend four (4) consecutive meetings of the Board for any reason, the Board, by a vote of a majority of the other members, may remove him and select a replacement to serve his unexpired term.

SECTION 4.6 **Annual Meetings.** The Board of Directors shall meet at least once a year. Each annual meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting the Board shall elect the officers of the Association for the ensuing year. The first meeting of the first elected Board shall be held at the place of and immediately following the first annual meeting of the Association as provided in Section 3.2 of these Bylaws.

SECTION 4.7 **Proxy Vote.** Unless permitted by law, a Director shall not cast any proxy vote at any Board meeting.

SECTION 4.8 **Conflict of Interest.** Unless permitted by law, a Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest. If there is any disagreement as to whether or not there exists a conflict of interest, the determination of whether a conflict of interest exists as to a particular Director or Directors shall be made by a

majority of the non-interested Directors, which determination shall be conclusive and binding on all parties.

SECTION 4.9 **Disclosure of Conflict.** 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 4.10 **Board Meetings.** All meetings of the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order. 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 of the Board of Directors unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

SECTION 4.11 **Regular Meetings.** Regular meetings of the Board of Directors may be held at the address of the Project, or elsewhere within the State of Hawaii and at such time as shall be determined from time to time by the Board of Directors. Unless the Board of Directors determines otherwise, meetings shall be held quarterly; provided, however, that at least one (1) regular meeting, in addition to the annual meeting of the Board, shall be held during each fiscal year. Whenever practicable, notice of the time and place for each regular meeting of the Board of Directors shall be given to each member of the Board of Directors in writing at least three (3) days prior to the day named for such meeting.

SECTION 4.12 **Notice of Board Meetings.** 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. If posting is not practicable, notice of Board meetings shall be given to the Owners by the resident manager or the Board at least seventy-two (72) hours prior to the meeting in such manner as the Board deems appropriate under the circumstances.

SECTION 4.13 **Waiver of Notice.** Any member of the Board of Directors may at any time waive notice of any meeting of the Board and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board of Directors at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

SECTION 4.14 **Minutes of Meetings.** The minutes of meetings of the Board of Directors shall include the recorded vote of each member of the Board of Directors on all motions except motions voted on in executive session.

SECTION 4.15 **Travel Expenses.** (a) Directors shall not expend Association funds for their travel, directors' fees, and per diem, unless the Owners are informed and a majority of the Apartment Owners approve of these expenses.

(b) Members of the Board 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 include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii, all other travel expenses incurred under this subsection 4.15(b) shall be subject to the requirements of the foregoing subsection 4.15(a) of these Bylaws.

SECTION 4.16 **Decisions of Board of Directors.** At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business. The vote of a majority of Directors present at a meeting at which a quorum of Directors is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. Following such adjournment, at any reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 4.17 **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Apartment Owners shall be filled by a vote of a majority of the remaining members at any meeting of the Board at which a majority of the remaining members are present called for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall hold office until the next annual meeting of the Association, at which time a successor Director shall be elected by the Apartment Owners. Any successor Director elected by the Apartment Owners in the foregoing manner shall serve for the remaining unexpired term in respect of which the vacancy occurred.

SECTION 4.18 **Liability and Indemnity of the Board of Directors and Officers.** The members of the Board of Directors and the officers of the Association shall not be liable to the Association or any of the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association may, upon request of any Director or officer, obtain and maintain, as a common expense, a policy of directors' and officers' liability insurance covering the Directors and officers of the Association and shall indemnify each Director and officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for 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 he may be involved as a party or otherwise by reason of his being or having been such Director or officer, or by reason of any past or future action taken, authorized or approved by him or any omission to act as such Director or officer, whether or not he continues to be such Director or officer at the time of the incurring or imposition of such costs, expenses or

liabilities, but not including such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such Director or officer. The foregoing right of indemnification shall not be exclusive of other rights which any Director or officer may have and shall inure to the benefit of the heirs and personal representatives of each Director and officer.

SECTION 4.19 **Fidelity Bonds.** A managing agent employed or retained by the Board of Directors shall provide evidence of a fidelity bond in an amount not less than the minimum amount required by law. In addition, the Board of Directors shall obtain annually, as a common expense, a fidelity bond or bonds, in an amount not less than the minimum amount required by law, to cover all officers, directors, employees and managing agents of the Association who handle the Association's funds. To the extent reasonably obtainable, the bonds shall: (a) provide that the bonds may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least 30 days prior written notice to the Board and all Apartment mortgagees and every other person in interest who shall have in writing requested such notice, and (b) contain a waiver of defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Notwithstanding the foregoing, should such managing agent be an active real estate broker in compliance with and licensed under chapter 467, Hawaii Revised Statutes, as amended, such managing agent shall not be required to comply with the foregoing fidelity bond requirements; provided, however, that such managing agent annually provide the Board with evidence of such licensing.

SECTION 4.20 **Inspection by Directors; Copies of Documents.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. This right of inspection by a Director includes the right to make extracts and copies of documents.

SECTION 4.21 **Committee Meetings.** Every Director shall have the right to attend any meeting of any committee established by the Board.

SECTION 4.22 **Telephone Meetings.** Any other provision of these Bylaws notwithstanding, and if permitted by applicable law, at any regular or special meeting of the Board at which at least one (1) Board member is physically present, whether held in open or executive session, any member of the Board not physically present may participate in such meeting by telephone for purposes of constituting a quorum and for all other purposes, and the Board may carry on all business within the Board's authority as if all members participating by telephone were physically present at such meeting; provided, however, that all persons authorized to participate in and actually participating in such meeting (including members of the Association who are not on the Board and who may participate pursuant to Section 514A-83.1(a) of the Act) are at all times during such meeting able to hear and, when appropriate, be heard by all other participants.

ARTICLE V

OFFICERS

SECTION 5.1 **Election and Term of Office.** The officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by (and in the case of the President from among) the Board of Directors. The Board of Directors may designate and elect such other officers as in its judgment may be necessary. The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

SECTION 5.2 **Restriction on Qualification.** An Owner shall not act both as an officer of the Association and as an employee of the managing agent employed by the Association.

SECTION 5.3 **President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association.

SECTION 5.4 **Vice President.** The Vice President shall have all of the general powers and duties which are incident to the office of Vice President of a corporation organized under the laws of the State of Hawaii. In particular, he shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

SECTION 5.5 **Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors. He shall see that all notices are given in accordance with these Bylaws. He shall have charge of such books and papers of the Association as the Board of Directors may direct. He shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. Duties of the Secretary may be delegated to and performed by the managing agent.

SECTION 5.6 **Treasurer.** The Treasurer shall keep the financial records and books of account of the Association showing all receipts and disbursements, and shall be responsible for the preparation of all required financial data. He shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as shall be designated by the Board of Directors. He shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to and performed by the managing agent or any outside accounting organization.

SECTION 5.7 **Audits.** (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 at any time

consists of less than twenty (20) 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 and each eligible mortgage holder (as defined in the Declaration) at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year, but in any event not later than one hundred twenty (120) days following the Association's fiscal year-end. The Board shall provide upon all official proxy forms a box wherein the Owner may indicate that the Owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The Board shall not be required to submit a summary of the annual audit report or 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 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.

SECTION 5.8 **Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

SECTION 5.9 **Compensation of Officers.** No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer, provided that a majority of a quorum of the Board has first approved such expenses.

SECTION 5.10 **Agreements, Contracts, Deeds, Checks and Other Instruments.** All agreements, contracts, certificates, deeds, leases, checks and other instruments of the Association, including any amendments to these Bylaws, shall be signed by the President or the Secretary *and* the Vice President or the Treasurer, or such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE VI

MANAGEMENT

SECTION 6.1 Management and Operation of the Project. The Board of Directors shall at all times manage and operate the Project, including the common elements of the Project, and shall have the powers and duties necessary or proper therefor, and may do all acts and things except such as by law, the Declaration or these Bylaws may not be delegated to the Board of Directors by the Apartment Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep, replacement, repair and maintenance of the common elements;

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

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

(d) Purchasing and maintaining of insurance pursuant to the Declaration and these Bylaws;

(e) Adoption and amendment of the Rules and Regulations, and enforcement of the Rules and Regulations, applicable provisions of the Declaration, these Bylaws and the Act;

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(g) Rebuilding, repairing and restoring the Project in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty or as a result of eminent domain proceedings;

(h) Procuring legal and accounting services necessary or proper for the administration and operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws, the Rules and Regulations and any other material documents or decisions affecting the Project;

(i) Purchasing, leasing or otherwise procuring any other materials, equipment, supplies, furniture, labor and services, making repairs and structural alterations, and paying all taxes and assessments and other common expenses which the Board is required to procure, make or pay pursuant to the Declaration, these Bylaws or by law or which in its opinion shall be necessary or proper for the operation of the Project or the enforcement of the Declaration or these Bylaws, provided that if any such materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the particular actions or negligence of the Owners of a particular Apartment, the cost thereof shall be specially assessed to the Owners of such Apartment;

(j) Maintenance and repair of any Apartment or limited common element(s) appurtenant thereto if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements or any other Apartment and the Owner or Owners of the Apartment shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to the Owner or Owners; provided that the Board shall levy a special assessment against such Apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(k) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof which may in the opinion of the Board constitute a lien against the Project or against the common elements rather than merely against the interest therein of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the Board by reason of such lien;

(l) Access to each Apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for emergency repair of any Apartment or the limited common elements appurtenant thereto necessary to prevent damage to the common elements or to another Apartment, provided that the cost of such repair shall be chargeable to the Owners of such Apartment and the Board shall assess a special assessment on the Owners of such Apartment for the cost of such repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(m) Access to each Apartment from time to time during reasonable hours to perform periodic inspections, maintenance and repair of those common elements which are most readily accessible only from within or through the Apartment, including, but not limited to, inspection, maintenance and repair of utility pipes, plumbing, conduits, wiring, roofs and the exterior surface of the buildings;

(n) Appointing a manager or managing agent or both and delegating to them or either of them such of its powers as it deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

(o) Employment, designation, supervision and dismissal of personnel necessary for the maintenance, repair, replacement and restoration of the common elements;

(p) Establishment of such penalties and fines and any interest thereon as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the Rules and Regulations, including penalties and fines and any interest thereon for failure or refusal to pay to the Association on demand all costs, expenses, common expenses and assessments (special or otherwise) required to be paid hereunder; provided such penalties and fines are not inconsistent with applicable laws or the provisions of these Bylaws;

(q) Subject to the affirmative vote or written consent of at least sixty-five percent (65%) of the Apartment Owners, the Board may purchase or otherwise acquire any Apartment in

the name of the Association on behalf of all Apartment Owners and may borrow money and give a mortgage on the Apartment to secure repayment of such money and do all other things reasonably required by any institutional lender to facilitate purchase money financing for the purchase of such Apartment;

(r) Subject to any approval requirements and spending limitations contained herein or in the Declaration, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project; provided that Apartment 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;

(s) If the Board so chooses, conducting (or directing another responsible party to conduct) a background check on applicants applying for employment as a security guard or manager or for a position which would allow such employees access to the keys of or entry into the Apartments or access to Association funds, provided such employee applicant signs an authorization to conduct such background check;

(t) Dispose of personalty abandoned in or on the common elements of the Project in any one of the following ways:

- (i) Sell the personalty in a commercially reasonable manner;
- (ii) Store such personalty at the expense of its owner;
- (iii) Donate such personalty to a charitable organization; or
- (iv) Otherwise dispose of such personalty, provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(A) The Board notifies the owner in writing of:

- (1) The identity and location of the personalty; and
- (2) The Board's intent to so sell, store, donate, or dispose of the personalty. Notification shall be by 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; or

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

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

- (u) Expending Association funds for necessary travel and per diem on behalf of the Board members, provided that all Apartment Owners are informed in advance and the expenses are approved by a majority of the Apartment Owners;

- (v) 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; and

- (w) Delegation of its powers to committees, agents, officers, representatives and employees.

SECTION 6.2 Employment of Managing Agent. The Board of Directors shall employ a responsible managing agent duly registered with the Real Estate Commission of the State of Hawaii, subject at all times to direction by the Board with such powers and duties of the Board as shall be delegated by the Board. The compensation of the manager or managing agent shall be specified by the Board. Notwithstanding the foregoing, the Developer shall have the right to select the initial managing agent for the Project, subject, however, to the provisions of Section 514A-84 of the Act. The managing agent shall at all times comply with all of the requirements of the Act.

The managing agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration of the common elements and any additions or alteration thereto, (c) the purchase (or leasing), maintenance and replacement of any equipment, (d) provision for service of all utilities to the buildings and the various Apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, (i) purchase of such insurance and fidelity bonds as is contemplated by these Bylaws, (j) custody and control of all Association funds, (k) maintenance of books and records using generally accepted accounting principles, (l) preparation of financial reports and registration of the Association with the Hawaii Real Estate Commission, and (m) invest Association funds in financial instruments as permitted by law. The Board of Directors may in its discretion limit any of the powers herein granted to the managing agent or grant additional powers to the managing agent.

SECTION 6.3 Renting or Selling of Apartments by Association Employees.

An employee of the Association shall not engage in renting or selling Apartments in the Project except for Apartments owned by the Association, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the Apartment Owners.

SECTION 6.4 Rules and Regulations. The Developer shall initially adopt, and the Board of Directors shall thereafter adopt and amend, such Rules and Regulations as the Developer or the Board of Directors, as the case may be, may deem necessary or desirable governing the details of the operation and use of the common elements and certain details of the use of the Apartments, including, without limitation, such operation and use of the Apartments and the limited common elements as may affect the operation and use of the common elements. Such rules shall be binding upon the Apartment Owners, and all invitees, guests, employees and tenants of the Apartment Owners and all occupants of the Apartments, and shall be enforceable by the resident manager and the managing agent on behalf of the Board.

SECTION 6.5 Abatement and Enjoinment of Violations by Apartment Owners. The violation of any of the Rules and Regulations, the breach of any of these Bylaws or the breach of any provision of the Declaration shall give the Board the rights in addition to any other rights set forth in these Bylaws:

(a) To enter (by force, if necessary) the Apartment in which, or as to which, such violation or breach exists and summarily to abate any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these Bylaws or the Declaration, and the Board shall not thereby be guilty of any trespass or be or become liable for any damage to the Apartment or any common elements caused by such entry, all costs of repairing any such damage being the sole responsibility of the defaulting Owner; provided, however, that notwithstanding the foregoing, the Board shall have such right of entry (forcible or otherwise) only in the instance where such violation or breach threatens an immediate, substantial and undeniable threat to life, limb or property of any Apartment Owner, member of his family, tenant, guest or invitee; or

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

ARTICLE VII

COMMON EXPENSES

SECTION 7.1 Common Expenses Defined. Common expenses means and includes all sums designated in the Declaration or in these Bylaws as common expenses, all sums incurred by or on behalf of the Board of Directors in the conduct and management of the affairs of the Association pursuant to the Declaration and these Bylaws, such amounts as the Board of Directors deems proper to maintain an adequate reserve fund for the operation and maintenance of the Project, including, without limitation, anticipated needs for working capital, capital improvements, and for replacements, repairs and contingencies, and such amounts as the Board

