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AMENDED BYLAWS
OF THE
ASSOCIATION OF APARTMENT OWNERS
OF
HALE O KALANI TOWERS

TABLE OF CONTENTS

ARTICLE I	1
Introductory Provisions	
Section 1. <u>Definitions</u>	1
Section 2. <u>Conflicts</u>	1
Section 3. <u>Application</u>	2
ARTICLE II	2
Association of Apartment Owners	
Section 1. <u>Membership</u>	2
Section 2. <u>Qualification</u>	2
Section 3. <u>Powers of the Association</u>	3
Section 4. <u>Other Powers</u>	3
ARTICLE III	3
Meetings of the Association	
Section 1. <u>Annual Meeting</u>	4
Section 2. <u>Special Meetings</u>	4
Section 3. <u>Notices</u>	4
Section 4. <u>Quorum</u>	5
Section 5. <u>Voting</u>	5
Section 6. <u>Cumulative Voting</u>	6
Section 7. <u>Proxies and Pledges</u>	6
Section 8. <u>Solicitation of Proxies</u>	7
Section 9. <u>Adjournment</u>	8
Section 10. <u>Order of Business</u>	8
Section 11. <u>Committees</u>	8
ARTICLE IV	8
Board of Directors	
Section 1. <u>Number and Qualifications</u>	9
Section 2. <u>Election and Term</u>	9
Section 3. <u>Vacancies</u>	9
Section 4. <u>Other Vacancies</u>	9
Section 5. <u>Removal of Directors</u>	10
Section 6. <u>Annual Meeting</u>	10
Section 7. <u>Regular Meetings</u>	11
Section 8. <u>Special Meetings</u>	11
Section 9. <u>Waiver of Notice</u>	11
Section 10. <u>Quorum of Board</u>	12
Section 11. <u>Powers and Duties of the Board</u>	12
Section 12. <u>Conflicts of Interest</u>	17
ARTICLE V	18
Officers and Agents	
Section 1. <u>Designation</u>	18
Section 2. <u>Election and term</u>	18
Section 3. <u>Removal</u>	18
Section 4. <u>President</u>	18
Section 5. <u>Vice President</u>	18
Section 6. <u>Secretary</u>	19
Section 7. <u>Treasurer</u>	19

Section 8.	<u>Auditor</u>	19
Section 9.	<u>Management Agent</u>	19
Section 10.	<u>Compensation</u>	20
ARTICLE VI		20
Execution of Instruments		
Section 1.	<u>Proper Officers</u>	20
Section 2.	<u>Facsimile Signatures</u>	21
ARTICLE VII		21
Indemnification		
ARTICLE VIII		21
Repair, Maintenance and Use		
Section 1.	<u>Repair and Maintenance</u>	21
Section 2.	<u>Use</u>	22
Section 3.	<u>Alteration of the Project</u>	24
ARTICLE IX		24
Common Expenses, Unit Expense and Taxes		
Section 1.	<u>Common Expenses</u>	24
Section 2.	<u>Allocation of Common Expenses</u>	26
Section 3.	<u>Payment as Agent</u>	27
Section 4.	<u>Taxes and Assessments</u>	27
Section 5.	<u>Default in Payment of Assessments</u>	28
Section 6.	<u>Collection from Subtenant</u>	29
Section 7.	<u>Non-Monetary Defaults</u>	30
Section 8.	<u>Waiver</u>	30
ARTICLE X		31
Insurance		
Section 1.	<u>Fire and Extended Coverage Insurance</u>	31
Section 2.	<u>Comprehensive Liability Insurance</u>	33
Section 3.	<u>Insurance Against Additional Risks</u>	34
Section 4.	<u>Miscellaneous Insurance Provisions</u>	34
Section 5.	<u>Damage and Destruction</u>	34
ARTICLE XI		38
Condemnation		
ARTICLE XII		39
Mortgages		
Section 1.	<u>Notice to Board of Directors</u>	39
Section 2.	<u>Mortgagee's Rights</u>	39
Section 3.	<u>Mortgagee Approval</u>	40
Section 4.	<u>Mortgagee Protection</u>	41
ARTICLE XIII		41
General Provisions		
Section 1.	<u>Rules and Regulations</u>	42
Section 2.	<u>Abatement and Injoinder of Violations</u>	42
Section 3.	<u>Maintenance and Repair of Units</u>	43
Section 4.	<u>Maintenance and Repair of Common Elements</u>	43
Section 5.	<u>Additions or Alterations by Unit Owners</u>	43
Section 6.	<u>Right of Access</u>	44
Section 7.	<u>Owners May Incorporate</u>	44

Section 8.	<u>Unclaimed Possessions</u>	44
Section 9.	<u>Notices</u>	45
Section 10.	<u>Captions</u>	46
Section 11.	<u>Gender and Number</u>	46
Section 12.	<u>Non-Waiver</u>	46
Section 13.	<u>Interpretation</u>	46
Section 14.	<u>Amendment of Bylaws</u>	46
Section 15.	<u>Restatement of Bylaws</u>	47
Section 16.	<u>Severability</u>	47
INDEX		50

LIST
OF CITATIONS TO
CHAPTER 514A, HAWAII REVISED STATUTES

<u>Section Number</u>	<u>Page</u>
514A-3	5
514A-11	46
514A-13(b)	35
514A-13(h)	6
514A-21	34
514A-81	46
514A-82	46
514A-82(a)(1)(A)	9
514A-82(a)(1)(B)	9
514A-82(a)(1)(C)	9
514A-82(a)(1)(D)	12
514A-82(a)(1)(E)	9
514A-82(a)(1)(F)	14, 15, 19
514A-82(a)(2)	5, 6
514A-82(a)(3)	18
514A-82(a)(4)	18
514A-82(a)(5)	18
514A-82(a)(6)	13
514A-82(a)(7)	24
514A-82(a)(8)	14
514A-82(a)(9)	12, 41
514A-82(a)(10)	22
514A-82(a)(12)	9
514A-82(a)(13)	17
514A-82(a)(14)	9
514A-82(a)(15)	10
514A-82(a)(16)	8
514A-82(a)(17)	4
514A-82(a)(18)	29, 41
514A-82(b)(1)	10
514A-82(b)(2)	3, 45
514A-82(b)(3)	11
514A-82(b)(4)	7
514A-82(b)(5)	17
514A-82(b)(6)	16
514A-82(b)(7)	18

LIST OF CITATIONS (Cont'd.)

514A-82(b)(8)	14
514A-82(b)(9)	11
514A-82(b)(10)	9
514A-82.1	14
514A-82.2(a)	46
514A-82.2(b)	46
514A-82.2(c)	46
514A-82.2(d)	46
514A-82.3	17
514A-82.4	12
514A-83	2
514A-83.1(a)	11
514A-83.1(b)	11
514A-83.2(a)	6
514A-83.2(b)	6
514A-83.2(c)	7
514A-83.3	16
514A-83.4	17
514A-83.5	17
514A-85(a)	20
514A-87(a)	2
514A-88	2
514A-89	43
514A-90	28
514A-90(a)	40
514A-92	35
514A-93.5(a)	44
514A-93.5(b)	44
514A-94	25
514A-94(a)	42
514A-94(b)	42
514A-95	15
514A-95(c)	19
514A-95.1	15
514A-96	4, 19

**AMENDED BYLAWS
OF THE
ASSOCIATION OF APARTMENT OWNERS OF
HALE O KALANI TOWERS**

The following Amended Bylaws (the "Bylaws") shall apply to the condominium project known as HALE O KALANI TOWERS (hereinafter called the "Project") situated at _____, City and County of Honolulu, State of Hawaii, as described in and created by that certain declaration of condominium property regime (hereinafter called the "Declaration") dated _____, _____ of the State of Hawaii _____, and to all present and future owners, employees of owners, tenants and occupants of any unit of the Project and all other persons who shall at any time use the Project; which Bylaws hereby supersede and cancel those bylaws recorded and/or filed as aforesaid.

ARTICLE I

Introductory Provisions

Section 1. Definitions. The terms used herein shall have the meanings given to them in the Condominium Property Act (Chapter 514A of the Hawaii Revised Statutes), as amended, hereinafter called the "Act", except as otherwise expressly provided herein. the term "unit" shall mean an apartment as described and delineated in the Declaration. The term "common elements" means those elements designated in the term "Project" which shall include the land, the building(s) and all improvements and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term "rules and regulations" refers to the rules and regulations or house rules for the Project governing the conduct of owners, occupants and users of the Project adopted by the board of directors of the Association (the "Board"), and may incorporate rules and regulations adopted by the Board as hereinafter provided. "Owner" or "unit owner" shall mean and include a person or corporate or partnership entity owning severally or as a co-tenant a unit and the common interest appertaining thereto, to the extent of such interest so owned, and an agreement of sale or other contract purchaser. Unless otherwise provided herein, the term "Mortgagee" means any holder, including an institutional holder, of any recorded mortgage, or equivalent security interest or lien on any unit in the Project.

Section 2. Conflicts. These Bylaws are set forth to comply with and to be applied in accordance with the requirements of the Act, of the Declaration, and of any applicable governmental

statute, ordinance, rule or regulation, including, without limitation, those pertaining to fair housing, as the same may be amended from time to time. In case any of these Bylaws conflict with the provisions of the Act, the Declaration, or of any such applicable governmental statute, ordinance, rule or regulation, the latter shall, as the case may be, control.

Section 3. Application. All present and future owners, employees of owners, mortgagees, tenants and occupants of units and their employees, and any other persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration and the rules and regulations. The acceptance of a unit conveyance, a rental agreement, agreement of sale or other document of conveyance or possession, or the act of occupancy or use of a unit shall constitute an agreement that these Bylaws, the rules and regulations and the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or management agent on behalf of the Association or, in a proper case, by an aggrieved unit owner.

514A-87(a)
514A-88

ARTICLE II

Association of Apartment Owners

Section 1. Membership. The Association of Apartment Owners (hereinafter called the "Association") shall be comprised of all of the unit owners acting as a group in accordance with these Bylaws and the Declaration.

Section 2. Qualification. All owners of units of the Project shall constitute the Association. The owner of any unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such unit ceases for any reason, at which time such membership in the Association shall automatically cease; PROVIDED, HOWEVER, that to such extent and for such purposes, including voting, as shall be provided by any lease or agreement of sale of any unit recorded or filed in the Bureau of Conveyances of the State of Hawaii, the lessee of such unit or the purchaser thereof shall be deemed to be the owner thereof; PROVIDED, FURTHER, that the seller under an agreement of sale may retain the right to vote on matters substantially affecting the seller's security interest in the unit.

514A-83

Section 3. Powers of the Association. The following

powers shall be vested in the Association, which shall exercise said powers in accordance with the provisions hereof:

- (a) The election of a board of directors;
- (b) The operation of the property, payment of common expenses and determination and collection of common charges;
- (c) The collection from the unit owners (or their tenants, as hereinafter provided) of the unit owners' shares of the common expenses;
- (d) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements;
- (e) The adoption of rules and regulations governing the details of operation and use of the common elements;
- (f) The establishment of such restrictions and requirements not inconsistent with the Declaration, the Act or any applicable state and Federal fair housing statutes, rules and regulations regarding the use and maintenance of the units and the use of the common elements;
- (g) The amendment of these Bylaws in accordance with the Declaration, Article XIII hereof and subject to **Section 514A-82(b)(2)** of the Act, as amended; and
- (h) The approval of the annual budget prepared and submitted by the Board.

Nothing in this Section 3 shall prohibit the delegation by the Association of any of its powers in accordance with these Bylaws, as they may be amended from time to time.

Section 4. Other Powers. In addition to the powers enumerated in Section 3 above and in addition to the powers granted by any other provision herein, the Association may exercise any and all powers not inconsistent with any law or the Declaration, which are reasonably incidental to the fulfillment of the purposes of the condominium property regime set forth in the Declaration, or are reasonably incidental to the exercise of its powers as set forth in the Declaration or herein.

ARTICLE III

Meetings of the Association

Section 1. Annual Meeting. The Association shall hold an annual meeting which

514A-82(a)(17)

shall be held at the address of the Project or at such suitable place within the State of Hawaii convenient to the unit owners as may be designated by the Board within ninety (90) days following the close of the fiscal year of the Association, or at such other time as the Board shall from time to time determine. The annual meeting shall be a general meeting, and at such meeting any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration or by these Bylaws. A yearly audit of the Association books and no less

than one (1) yearly unannounced verification of the Association's cash balance shall be conducted by a public accountant; PROVIDED, the yearly audit and the yearly unannounced cash balance verification may be waived by a majority vote of all unit owners taken at an annual or special Association meeting.

514A-96

Section 2. Special Meetings. A special meeting of the Association may be held at any time upon the call of the president or upon the call of the Board or of the owners of not less than twenty-five percent (25%) of the common interests. Upon the receipt of such call, the secretary shall send out notices of the meeting in writing to all unit owners. Such special meeting shall be held at the time specified in such call (or, if unspecified, then within thirty (30) days of the receipt of the call) at the address of the Project or at any other suitable place within the State of Hawaii convenient to the unit owners as may be designated by the Board.

514A-82(a)(17)

Section 3. Notices. Any notices permitted or required to be given herein must be in writing and may be delivered either personally or by mail. The notice of every meeting of the Association shall state whether it is an annual or a special meeting, the authority for the call of the meeting, and shall contain at least the date, time and place of the meeting, the items on the agenda for such meeting and a standard proxy form authorized by the Association, if any. Notices of Association meetings, whether annual or special, shall be sent to each member of the Association at least fourteen (14) days before the date of such meeting. If delivery is made by mail, notice shall be deemed to have been delivered twenty-four (24) hours after a copy of such notice has been deposited in the United States mail, postage prepaid, addressed to the person to whom the notice is to be given at the address given by such person to the Board, or to the unit which such person owns if no address has been given to the Board. Such address may be changed from time to time by notice in writing to the Board. Upon written request for notice delivered to the Board, the holder of any duly recorded mortgage against any unit may promptly obtain a copy of any and all notices permitted or required herein to be made to the owner or owners whose unit is subject to said mortgage. Said request for notice need not be

514A-82(b)(3)

renewed and shall entitle the holder of such mortgage requesting such notice to receive all notices sent to the owner or owners whose unit is subject to said mortgage from and after the date of said request until said request is withdrawn or the mortgage is discharged of record. If notice is given pursuant to the provision of this Section 3, the failure of any unit owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of any unit owner, in person or by proxy, at any meeting shall be deemed a waiver of any required notice to such owner, unless he/she shall, at the opening of such meeting, object to the holding of such meeting because of the failure to comply with the provisions of this Section. Any meetings so held without objection, notwithstanding the fact that no notice of the meeting was given, or that the notice given was improper, shall be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken by the Association.

Section 4. Quorum. The presence at any meeting in person or by proxy of a majority of unit owners shall constitute a quorum, and the acts of a majority of 514A-82(a)(2) the unit owners present at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The terms "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration. The term "majority of owners present at any meeting" shall mean owners of units to which are 514A-3 appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to units owned by those present in person or by proxy at the meeting. Any other specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests.

Section 5. Voting. All unit owners shall be members of the Association and shall be entitled to vote at meetings thereof. Voting shall be on a percentage basis with the percentage of the total vote to which each unit is entitled being the same as the percentage or the common interests assigned to such unit in the Declaration. Votes may be cast in person or by proxy by the respective unit owners as shown in the record of ownership of the Association. An executor, administrator, legal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any unit owned or controlled by him/her in such capacity, whether or not the same shall have been transferred to his/her name in the Association's record of ownership, provided that he/she shall first present evidence satisfactory to the secretary that he/she owns or controls such unit in such capacity. The vote for any unit 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 co-owner or

co-owners. In case of such protest each co-owner shall be entitled to only the share of such vote proportionate to such co-owner's share of ownership in such unit.

Votes allocated to any area which constitutes a common elements under Section ~~514A~~ 514A-82(a)(2) 13(h) of the Act, as amended, shall not be cast at any Association meeting, whether or not it is so designated in the Declaration.

Section 6. Cumulative Voting. Cumulative voting shall not be allowed as to any issue, including the election of directors.

Section 7. Proxies and Pledges. The authority given by any unit owner to another person to represent such owner at meetings of the Association shall be evidenced by a proxy. A proxy, to be valid, must be delivered to the secretary of the Association or to the management agent, if any, not later than 4:30 o'clock, p.m., on the second business day prior to the date of the meeting to which it pertains, and must contain at least:

- 1) The name of the association of apartment owners;
- 2) The date of the meeting of the association of apartment owners;
- 3) The printed name and signature of the person or persons giving the proxy;
- 4) The unit or units for which the proxy is given;
- 5) The printed name of the person or entity to whom the proxy is given; and
- 6) The date that the proxy is given.

Subject to the provisions of Section 8 hereof to the contrary, the proxy form which accompanies the notice of meeting: (a) shall be valid only for the meeting to which such notice pertains and its adjournment(s), if any; (b) may designate any person as proxy; and (c) may be limited as the unit owner desires and indicates; PROVIDED, that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

Proxies may be given to the Board; PROVIDED, that the proxy form shall contain a box wherein the owner may indicate that the owner wishes 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.

Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any unit or interest therein, a true copy of which is filed with the Board through the secretary or management agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. Any one of two or more persons owning any unit may give or revoke a proxy for the entire vote of such unit or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. Any proxy given by a co-owner or co-owners for only a share of a unit's vote in proportion to the share of ownership of such co-owner or co-owners shall be revocable only by such co-owner or co-owners. Any proxy given by a co-owner or co-owners for only a share of a unit's vote may be exercised to cast the entire vote for such unit 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, each co-owner or holder of a proxy from a co-owner, as the case may be, shall be entitled to only a share of such unit's vote in proportion to the respective shares of ownership in such unit.

Section 8. Solicitation of Proxies. Neither the resident manager, nor the management agent shall solicit, for use by such manager or management agent, any proxies from any unit owner of the Association, nor shall the resident manager or management agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Board directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; PROVIDED, that, if the Board 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 shall:

- a) 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
- b) 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 (100) words, indicating the owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

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 unit 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 (when so required);
- g) Unfinished business; and
- h) New business.

All meetings of the Association and the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order. 514A-82(a)(16)

Section 11. Committees. The Association may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

ARTICLE IV

Board of Directors

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a 534A88Z6a1(12B)

board of directors comprised of not fewer than five (5) nor more than nine (9) persons, as may be established from time to time at any regular or special meeting; PROVIDED, that if the project consists of more than one hundred units, the Board shall consist of not fewer than nine (9) directors, unless not less than sixty-five percent (65%) of all unit owners vote by mail, ballot, or at a special or annual meeting to reduce the minimum number of directors. Each of the directors shall be the owner or co-owner of record of a unit or the vendee thereof under an agreement of sale or similar installment sales instrument, or an officer of any corporate owner of a unit. The partners in a general partnership and the general partner of a limited partnership shall be deemed to be the owners of a unit for such purpose. There shall not be more than one representative on the Board from any one unit. If an owner is a corporation, any officer thereof shall be eligible to serve as director so long as he/she remains an officer thereof. The resident manager shall not serve on the Board. The directors shall serve without compensation.

Section 2. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and each special meeting called for that purpose. The directors, except as otherwise provided in these Bylaws, shall hold office for a period not to exceed three (3) years and until their respective successors have been elected or appointed, subject to removal as herein provided. The terms for which the directors are elected shall be such that not less than one-third (1/3) of the terms shall expire annually. A director shall not serve for more than two (2) consecutive terms.

Section 3. Vacancies. Except as provided in the following Sections 4 and 5, any vacancies in the Board (other than a vacancy caused by the natural expiration of the term of a director) 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 serve until his/her successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his/her continuous absence from the State of Hawaii for more than six (6) months, or his/her ceasing to be the sole owner or co-owner of a unit, shall cause his/her office to become vacant.

Section 4. Other Vacancies. In case of a vacancy for more than sixty (60) days due to the absence of any director from the state, or the sickness or disability of any director, the remaining directors, whether constituting a majority or a minority of the whole Board, may appoint a person as a substitute director, which person shall be a unit owner. Such substitute director shall act as a director during the absence or disability of the director

for whom he/she substitutes.

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 unit owners present at any meeting, and the successor or successors shall then and there be elected to fill the vacancy or vacancies thus created if the proposed removal is stated on the agenda for the meeting. Such removal and replacement, and the owners' meeting in connection therewith, shall be scheduled, noticed and conducted in accordance with all applicable requirements and procedures in these Bylaws, including, but not limited to, any provisions relating to cumulative voting.

514A-82(b)(1)

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 management agent signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership; PROVIDED, that if the secretary or management 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 requirement of these Bylaws.

If said vacancy is not so filled, the Board shall fill said vacancy as provided hereinabove in Section 3. Any director whose removal has been proposed by the unit owners shall be given an opportunity to be heard at such meeting.

Section 6. Annual Meeting. An organizational meeting of the Board shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order to validly constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year. The Board shall meet at least one a year.

514A-82(a)(15)

Notice of the annual Board meeting shall be given to the Association members in a reasonable manner at least fourteen (14) days prior to such meeting, and 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, if any, authorized by the Association.

514A-82(b)(3)

Section 7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of

514A-82(b)(15)

the directors, but at least one 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 one day prior to the date of such meeting. For purposes of this and the following sections, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail, or twelve (12) hours after having been communicated to a telegraph agent; PROVIDED, that, 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 (2) hours prior to the meeting or simultaneously with notice to the directors. All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless expressly prohibited by the vote of a majority of a quorum of the Board. The Board, 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 8. Special Meetings. Special meetings of the Board 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. The requirement of posting within the Project of a notice of such meeting, as provided in Section 7 above, shall be complied with.

Section 9. Waiver of Notice. Before or at any meeting of the Board, any director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him/her of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required (except the posting of such notice within the Project as provided in Sections 7 and 8 above), and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board a majority of the total number of directors established by the Association from time to time shall constitute a quorum for the transaction of business, and action by a majority of the directors present at any meeting at which a quorum is present shall constitute action 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 (notice of which shall be posted within the Project as required in Sections 7 and 8 above) 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. Powers and Duties of the Board.

514A-82(a)(1)(D)

(a) The Board shall have the power to do all things set forth in Chapter 514A of the Act, as amended, and in the Declaration and in these Bylaws, except as otherwise expressly prohibited; PROVIDED, HOWEVER, that each director shall owe the Association a fiduciary duty in the performance of his/her responsibilities thereunder.

514A-82.4

(b) The Board shall be the exclusive agent for the Association in the exercise of the management and control of the common elements.

(c) The Board shall have the exclusive power to contract for all goods and services, payment for which shall constitute common expenses; PROVIDED, HOWEVER, that the Association may, by resolution adopted at a meeting duly called for the purpose, prohibit any proposed action by the Board or the Association.

(d) The Board shall not give away or sell any of the property submitted to the aforesaid Declaration.

(e) The Board shall enforce the provisions of the Declaration and these Bylaws and may, from time to time, adopt, amend, repeal and enforce administrative rules and regulations governing the details of the operation and use of the common elements; PROVIDED, HOWEVER, that no such administrative rules or regulations shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for the purpose; and PROVIDED, FURTHER, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving administrative rules and regulations adopted by the Board.

514A-82(a)(9)

(f) Within thirty (30) days prior to the beginning of each fiscal year, the Board shall cause to be prepared a budget covering the itemized estimated income of the project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintenance and operating expenses, and all other charges and outgoings of any description to which the Association, or its property, may be assessed or become liable, plus the reserves established by these Bylaws and other reasonable reserves for such

purposes, less any surpluses from the operation of prior years, if any. In addition to the budget, the Board shall prepare a schedule of monthly assessments against each unit owner for his/her proportionate share of such estimated cost of maintaining and operating the property of the Project for such ensuing year, in accordance with the provisions of Section 2 of Article IX of these Bylaws.

(g) The Board shall determine and collect all common charges, shall acquire for the benefit of the unit owners, and shall pay for, out of funds collected pursuant to paragraph (f) of this Section, all things necessary or proper for the operation of the Project and, in addition, shall pay for all expenses incurred which are designated common expenses by the Act, the Declaration or these Bylaws, including the following:

514A-82(a)(6)

(1) Water, sewer, garbage, electricity, telephone and gas and other necessary utility services for the common elements (if not separately metered or charged to the units), and maintenance and gardening services for the common elements.

(2) Unless otherwise expressly provided, painting, maintenance and repair of the common elements (but not including the interior surfaces of the units, which the owner shall paint, maintain and repair) and such furnishings and equipment for the common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive rights and duty to acquire the same for the common elements.

(3) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alteration, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these Bylaws or which, in its opinion, shall be necessary or proper for the proper operation of the Project, or common elements, or for the enforcement of these Bylaws: PROVIDED, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for a single unit. The costs thereof shall be separately assessed to the owner of such unit.

(4) Maintenance and repair of any unit if such maintenance and repair is necessary, in the discretion of the Board, to protect the common elements or any other portion of the Project, and if the owner or owners of said unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to said owner or owners; PROVIDED, that the Board shall levy a special assessment against such unit for the cost of said maintenance or repair and attorney's

fees and other expenses incurred in levying or collecting such special assessment.

(5) Policies of insurance for the Project as required by Article X of these Bylaws.

(6) Workmen's compensation insurance to the extent necessary to comply with any applicable law.

(7) The services of a person or firm to manage the Project (herein called the "management agent"), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine to be necessary or proper for the operation of the Project whether such personnel are employed directly by the Board or are furnished by the management agent. The Board shall have the power and authority to designate and remove all personnel necessary for the maintenance, repair and replacement of the common elements of the Project. No employee of the Association shall engage in selling or renting units in the Project except Association-owned units, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the owners.

(8) Upon the written authorization of an applicant for employment (or of a current employee employed) as a security guard or manager or for a position which would or does allow the employee access to the keys of or entry into the units in the Project or access to Association funds, the costs incurred in conducting, or causing to be conducted, a background check of such applicant or current employee. Before initiating or requesting a check, the Board or the management agent shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment or is currently so employed by the Association. The background check, at a minimum, shall require the applicant or employee to disclose whether the he/she has been convicted in any jurisdiction of a crime which would tend to indicate that he/she may be unsuited for employment as a condominium employee with access to Association funds or the keys of or entry into the units in the Project, and the judgment of conviction has not been vacated. For the purpose of this paragraph, the criminal history disclosure made by the applicant or employee may be verified by the Board, management agent or other responsible party, if so directed by the Board or management agent, by means of information obtained through the Hawaii criminal justice data center; PROVIDED, HOWEVER, that the failure of the Association or the management agent 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 the Association or management agent for acts and omissions of the applicant hired or the employee.

(9) Legal and accounting services necessary or proper in the operation of the Project or the common elements or the enforcement of these Bylaws.

(10) In addition to the fidelity bond required of management agents pursuant to **Section 514A-95** of the Act, as amended, and unless granted an exemption or bond alternative by the Hawaii Real Estate Commission, the Board shall secure annually at the Association's cost a 514A-95.1 fidelity bond in such amount required by law covering all directors, officers, employees and the management agent of the Association handling or responsible for funds belonging to or administered by the Association, which bond shall protect the Association against fraudulent or dishonest acts by such persons or management agent registered under the aforesaid Section 514A-95. Such bond shall also:

(i) Provide that the bond may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board, all first mortgagees and any other person in interest who shall have requested such notice; and

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

(11) Any amount necessary to discharge any lien or encumbrance 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 a particular owner or owners. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging the same.

(h) The Board shall annually employ a responsible bonded and licensed Hawaii management agent to manage and control the Project, subject at all times to 514A-82(a)(1)(F) direction by the Board and to the terms of the Declaration and these Bylaws, and with such other powers and duties and such compensation as the Board may establish from time to time. The Board may delegate any of its duties, powers or functions to the management agent, except as provided by law, the Declaration or these Bylaws. Any such delegation shall be revoked on notice to the management agent by the Board. Every such employment contract with a management agent shall provide that: (a) it may be terminated by the Board with or without cause upon no more than ninety (90) days' prior written notice; (b) in no event shall a

termination fee be due and owing to the management agent in the event of such termination; and (c) in no event shall any such employment contract be for a fixed term exceeding one (1) year.

(i) The Board shall have the irrevocable right, to be exercised by the Board, to have access to each unit from time to time during reasonable hours as may be necessary for the health or safety of the owners, or for the operation of the property, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units. 514A-82(b)(6)

(j) The Board is authorized from time to time to lease or rent appropriate living quarters for use by a resident manager or other employees, with or without charges, and to enforce, modify and make agreements with respect to any lease or tenancy or any portions of the common elements on behalf of the unit owners.

(k) The Board may purchase units of the Project at private sale or foreclosure or other judicial sale, on behalf of all unit owners, and thereafter sell, lease, borrow against, mortgage, vote the common interest appurtenant to (other than for election of Board members) and otherwise deal with such units.

(l) The resident manager, management agent or the Board shall keep an accurate and current list of the names and addresses of the members of the Association and the names and addresses of any vendees of a unit under an agreement of sale or other form of installment sales contract. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association as provided in the Declaration or these Bylaws or rules and regulations or, in any case, to any owner who furnishes to the resident manager, management or the Board, a duly executed and acknowledged affidavit stating that the list: (i) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to the other owners with respect to Association matters, and (ii) shall not be used by such owner for any other purpose, or furnished to anyone else for any other purpose. 514A-83.3

(m) The Board shall designate the place at which minutes of meetings and other Association documents may be inspected, duplicated or borrowed in accordance with the provisions of Chapter 514A of the Act, as amended. Minutes of meetings of the Board and of the Association shall include the recorded vote of each Board member on all motions except motions voted on in executive sessions of the Board. 514A-83.5 514A-83.4

(n) The Board shall have the right to make such elections

under the tax laws of the United States or the State of Hawaii as shall be deemed in the best interest of the Association, specifically including, without limitation, any election available under Section 528 of the Internal Revenue Code of 1954, as amended, or any successor or State tax provision of similar import.

(o) Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of the owner, or any of them, or the Association.

(p) The Board shall have the right from time to time to grant easements across the common elements for any reasonable purpose, which shall include, without limitation, those purposes which are necessary to the operation, care, upkeep, maintenance and repair of any unit, the common elements or any limited common elements. The grant of the easement by the Board shall not be unreasonably withheld.

(q) 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 purchase of a resident manager's unit, or the making or any additions, alterations, and improvements to the Project. The costs of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project; PROVIDED, that owners representing fifty percent (50%) of the common interest and owners give written consent to such borrowing after having been first notified of the purpose and use of the funds.

Section 12. Conflicts of Interest. A director shall not cast any proxy vote at any Board meeting, nor shall a director vote at any Board meeting on any issue in which the director has a conflict of interest. The director shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. A majority of the directors (excluding the director or directors alleged to be involved in a conflict of interest) shall determine the existence or nonexistence of such a conflict.

ARTICLE V

Officers and Agents

Section 1. Designation. The principal officer of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall be

elected by, and in the case of the president, from, the Board. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. Any person may concurrently hold not more than two (2) offices of the Association; PROVIDED, that the offices of the president and secretary shall not be occupied by the same person, nor shall an owner who is an employee of the management agent employed by the Association act as an officer or member of the Board of the Association.

514A-82(a)(3)

514A-82(a)(4)

514A-82(a)(5)

Section 2. Election and term. The officers of the Association shall be elected annually by the Board 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 and such officer's successor shall be 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. Subject to the control of the Board, the president shall exercise 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. Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president shall be absent or unable to act. If neither the president nor the vice president is able to act, the Board shall appoint some other member of the Board to act in the place of the president, on an interim basis. The vice president shall also perform such other duties as shall from time to time be imposed upon the vice president by the Board or by the president.

Section 6. Secretary. The secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these Bylaws, maintain and keep the minute book wherein resolutions of the Association and the Board shall be recorded, maintain and keep a continuous and accurate record of ownership of all units, 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. The secretary shall make the minutes of such meetings and the Association's financial statements and other documents available to owners at such times, places and under such conditions as required by the Act.

Section 7. Treasurer. The treasurer shall maintain or cause to be maintained the financial records and books of account of the Association and shall prepare or cause to be prepared regular reports thereof. The treasurer shall also maintain or cause to be maintained the proper deposit and custody in the name of the Association of all the Association's funds and securities. All duties and activities performed under this Section by other than the treasurer shall be subject to the reasonable review of the treasurer.

Section 8. Auditor. The Association shall require a yearly audit of the Association's financial accounts and no less than one (1) yearly 514A-96 unannounced verification of the Association's cash balance by a public accountant; PROVIDED, that the yearly audit and the yearly unannounced cash balance verification may be waived by a majority vote of all unit owners taken at an Association meeting; and PROVIDED, FURTHER, that any auditor appointed hereunder shall not be an officer or director of the Association, nor own any interest in any unit of the Project.

Section 9. Management Agent. The management agent, who shall be licensed in accordance with **Section 514A-95** of the Act, as amended, shall act under the authority of and as agent for the Board. The management agent shall be appointed by the Board in accordance with these Bylaws, and is hereby designated the person (or entity, as the case may be) to accept service of process on behalf of the Association, the Board, or two or more unit owners, as the case may be, in any action relating to the common elements or more than one unit. The management agent shall 514A-95(c) be considered a fiduciary with respect to the Project and the Association.

The management agent shall perform such duties as the Board shall direct. Unless otherwise so directed, the management agent shall: 514A-82(a)(1)(F)

(a) Collect assessments to discharge common expenses and pay said common expenses in accordance with these Bylaws;

(b) Establish and maintain such reserve funds as may be necessary for the proper operation and management of the common elements. Each unit owner shall have an interest in such reserves equal to such unit owner's common interest;

(c) 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 514A-85(a) other expenses incurred. The management agent or the Board shall

also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All reports 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; and

(d) Bring, prosecute, defend, intervene in and settle any action, without prejudice to the rights of any unit owner to act for himself, on behalf of two or more unit owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one unit.

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

ARTICLE VI

Execution of Instruments

Section 1. Proper Officers. All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments shall be signed, executed and delivered by any two (2) officers of the Association, as may be designated by the Board; PROVIDED, HOWEVER, that the Board may from time to time by resolution authorize checks, drafts, bills of exchange, notes, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, agreements or documents, instruments or writings of any nature to be signed, executed and delivered by such officers, agents, or employees of the Association, as shall be provided by general or special resolution.

Section 2. Facsimile Signatures. The Board may from time to time by resolution provide for the execution of any instrument or document of the Association or the Board by a mechanical device or machine, or by the use of facsimile signatures, under such terms as shall be set forth in the resolution of the Board.

ARTICLE VII

Indemnification

No director or officer of the Association shall be liable for acts, defaults or neglects of any other director or officer or member, or for any loss sustained by the Association or any owner, unless the same shall have resulted from his/her own gross negligence or willful misconduct. Every director, officer and agent of the Association shall be indemnified by the Association

against all reasonable costs, expenses and liabilities (including attorney's fees) actually and necessarily incurred by or imposed upon him/her in connection with or resulting from any claim, action, suit, proceeding, investigation or inquiry as to whatever nature in which he/she may be involved as a party or otherwise by reason of his/her being or having been a director, officer or agent of the Association, whether or not he/she continues to be such director, officer or agent at the time of incurring or the imposition of such costs, expenses or liabilities, except in relation to matters as to which he/she shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for gross negligence or willful misconduct toward the Association in the performance of his/her duties. In the absence of such final adjudication of the existence of such liability, the Association and each owner, director, officer and agent thereunder may conclusively rely on an opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representative of such person.

ARTICLE VIII

Repair, Maintenance and Use

Section 1. Repair and Maintenance. (a) Every owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his/her unit, the omission of which would adversely affect any common element, or any other unit, and shall be responsible for all loss and damage caused by such owner's failure to do so.

(b) All repairs of internal installations within each unit such as water, light, gas, power, sewage, telephone, air conditioning, sanitation, doors, windows, lanai awnings, lamps and all other fixtures and accessories belonging to such unit, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter or party walls, floors, and ceilings of such unit, shall be at the owner's expenses; except that any repairs of common elements located within any unit shall be a common expense.

(c) Every owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common elements, furniture, furnishings and equipment thereof damaged or lost through the fault of such owner or any person using the Project under such owner, and shall give prompt notice to the management agent of any such damage, loss, or other defect when discovered.

(d) No owner shall use or keep anything on the grounds or any other common elements which would in any way hinder the full use and enjoyment thereof by any other owner or occupant. It is intended that the building shall present a uniform appearance, and to effect that end the Board may require the painting or repair of outside doors, windows, trim, fences, railings, and other exposed portions of the building and regulate the type and color of paint to be used. The Board is authorized to contract for said painting and repair and to assess each owner for such owner's proportionate share of such painting and repair.

Section 2. Use.

514A-82(a)(10)

(a) No owner or occupant of a unit shall post any advertisement, bill, poster, or other sign on or about the Project without the prior written approval of the Board.

(b) All owners and occupants shall exercise extreme care about causing or permitting noises that may disturb other occupants.

(c) No owner, occupant, tenant or user of the Project shall use the common elements of the Project, or any part thereof, for any purpose or in any manner other than the intended respective uses.

(d) No garbage, refuse, or trash of any kind shall be thrown, placed or kept on any common element other than the disposal facilities provided for such purposes.

(e) Nothing shall be allowed, done, or kept in any unit or common element which will cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

(f) No owner or occupant shall place, store or maintain on walkways, roadways, grounds or other common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(g) No owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of such owner's or occupant's unit or the Project, nor alter or remove any furniture of the common elements.

(h) Except in those cases where construction or alterations are permitted by the Declaration, no owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any additions or alterations

to any exterior common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect if so required by the Board, and approved by the Board and a majority of the unit owners (or such larger percentage as may be required by law or the Declaration) including all owners of units thereby directly affected.

(i) No owner or occupant, without the prior written approval of the Board, shall erect, place or maintain any television or other antennas on the Project visible from any point outside of the Project.

(j) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project; PROVIDED, HOWEVER, non-vocal caged birds and aquarium fish may be kept in reasonable number by the unit owners and occupants in their respective units, but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements except in transit when carried; PROVIDED, FURTHER, that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the Project shall be permanently removed therefrom promptly upon notice given by the Board or management agent. This paragraph (j) shall not be construed or applied in such a manner to prohibit or restrict in any manner the keeping of a guide or signal dog by a handicapped person requiring such services.

Section 3. Alteration of the Project. (a) Additions, alterations, repairs or improvements to the common or limited common elements of the Project may be made only by or at the direction of the Board, except as otherwise provided for in the Declaration. No owner of a unit may, except with the prior written permission of the Board, make any alteration, addition, repair or improvement to any of the common elements, including, without limitation, common or limited common elements within, encompassing or adjacent to such owner's unit; PROVIDED, that such approval shall not be required for additions, alterations, repairs or improvements required by law.

(b) Notwithstanding any other provision of these Bylaws to the contrary, a handicapped owner or tenant shall have the right, pursuant to reasonable design and procedural requirements made by the Board, to make, at his/her expense, such reasonable modifications to a unit and to the common elements which may be necessary to allow such person full enjoyment of the Project.

(c) (1) Whenever in the judgment of the Board the common or limited common elements shall require additions, alterations,

repairs or improvements with a total cost of less than TEN THOUSAND DOLLARS (\$10,000.00) which are to be paid as a common expense from normal annual operating funds and not from any capital improvements reserve funds, the Board may proceed with such additions, alterations, repairs or improvements and shall assess the cost thereof as a common expense..

(2) Any additions, alterations, repairs or improvements to the common or limited common areas costing in excess of TEN THOUSAND DOLLARS (\$10,000.00) which are to be paid as a common expense from normal annual operating funds and not from any capital improvements reserve funds, may be made by the Board only after obtaining the approval of a majority of the owners.

(3) Any additions, alterations, repairs or improvements to the common or limited common areas costing in excess of TEN THOUSAND DOLLARS (\$10,000.00) which are to be paid from a capital improvements reserve fund, may be made by the Board without the approval of the owners.

ARTICLE IX

Common Expenses, Unit Expense and Taxes

Section 1. Common Expenses. The owner of each unit shall be liable for and pay a share of the common expenses in proportion to the percentage interest in the common elements appurtenant to such owner's unit, and the same shall be deemed to be common expenses, as the term is herein used. Common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including, without limitation, all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each unit, the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner), lease rent (if the responsibility for the collection thereof is assumed by the Association by way of written agreement with the lessor, the sublessor, or pursuant to any such requirement contained in the Declaration, as the case may be), assessments, insurance, including fire and other casualty and liability insurance, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any fire, accident or nuisance thereon, cost or repair, reinstatement, rebuilding and replacement of the premises, yard, janitorial, and other similar services, wages, accounting and legal fees, management fees, and other necessary expenses for upkeep, maintenance, management and operation actually incurred on or for the common elements and the cost of all utility services (including water, electricity and gas, garbage disposal and any other similar services, unless separately

514A-82(a)(7)

metered). The cost of insurance premiums shall be allocated as set forth in Section 2 of this Article IX. All costs of every kind pertaining to each limited common element, including, but not limited to, costs of maintenance, repair, replacements, additions and improvements, shall be charged to and borne entirely by the owner of the unit to which it is appurtenant. The common expenses may also include such amounts as the Board may deem proper to make up any deficit in the common expenses for any prior year, and shall include a reserve fund for the operation, maintenance of and capital improvements to the Project, including, without limitation, anticipated needs for working capital of the Project, and for replacements, repairs and contingencies. Except as may otherwise be permitted in the Declaration or these Bylaws, payments of common expenses, expenses, costs and fees recoverable by the Association under **Section 514A-94** of the Act, as amended, and any penalties and late charges shall be made to the Board, as agent of the owners of the units, and the Board shall transmit said payments on behalf of each such owner to the third person entitled to said payments from each owner. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association, for common expenses of the Project, the Association by a majority vote of the owners, may determine that such excess shall be:

(a) Applied in whole or in part to reduce the assessments for the immediately subsequent year;

(b) Designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements; or

(c) Segregated and held in whole or in part as a custodial fund to be expended solely for specifically designated capital improvements and replacements.

The proportionate interest of each owner in said capital contributions or custodial or maintenance fund cannot be withdrawn or separately assigned, but shall be deemed to be transferred with such unit even though not expressly mentioned or described in the conveyance thereof. In case the condominium property regime shall be terminated or waived, said capital contributions or custodial or maintenance fund remaining after full payment of all common expenses of the Association shall be distributed to all owners in their respective proportionate shares, except for the new owners of any units then reconstituted as a new condominium property regime.

Section 2. Allocation of Common Expenses. For the purposes of fixing and determining the payments of the common expenses to be made as hereinabove provided in Section 1, the Board shall, with the advice of a public accountant, on behalf of all

owners, determine in advance for each calendar year the estimated aggregate amount of the common expenses for such year. The Board shall, with the advice of a public accountant, allocate the common expenses amongst the owners in accordance with the terms and conditions of Section 1 above. The Board, on behalf of the owners, may from time to time during each year make reasonable adjustments in said estimated aggregate amount of common expenses on the basis of actual costs incurred in prior months or periods. Each owner's share of said allocated amounts of the estimated common expenses, as determined from time to time by the Board, shall be payable by the owner in monthly installments in advance on or before the fifteenth (15th) day of each month. Any omission or delay in determining and allocating the common expenses for any period shall not relieve the owner therefrom. In such event, the owner, pending the determination and allocation thereof, shall continue to pay the same common expenses that the owner had been paying during the last preceding period and shall pay the deficiency, if any, upon the determination and allocation of the proper common expenses within ten (10) days after notice thereof. Said installments transmitted to the Board, as agent of all owners, shall then be transmitted by the Board to the third person entitled to payment of same from each owner.

The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate; PROVIDED, that the Board shall send to all unit owners thereby affected written notice of any such increase or special assessment not less than fifteen (15) days before the effective date of such increase or assessment. Any portion of an owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association, but shall be treated as a capital contribution by the owners to the Association and shall be credited by the Association upon its books as paid-in surplus.

Section 3. Payment as Agent. The Board will pay or cause to be paid, on behalf of the owners, all common expenses, and will maintain or cause to be maintained separate books or account of common expenses in accordance with recognized accounting practices, and will have such books of account available for inspection by each owner or such owner's authorized representative at reasonable business hours. The Board will annually render or cause to be rendered a statement to each owner of all receipts and disbursements during the preceding year, which statement shall be certified by an independent public accountant. Each owner, as principal, shall be liable for an pay such owner's share, determined as aforesaid, of all common expenses and the Board shall be responsible, as agent for each owner, only to transmit the payments made by the owner to third persons to whom such payments must be made by the owner. The Board or management agent

collecting the common expenses shall not be liable for payment of said common expenses as a principal, but only as the agent of all owners to transmit said payments to third persons to whom such payments must be made by the owner.

Section 4. Taxes and Assessments. Each unit owner shall be obligated to have the real property taxes for such owner's own unit and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the owner. Each owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes, other taxes and assessments. Each owner shall be obligated to pay to the Board such owner's proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 5 of this Article IX.

Section 5. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the owner against whom the same are assessed. If an owner shall fail to pay such owner's assessment when due, such owner shall pay an additional assessment in such amount as the Board shall determine for each such failure. All delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments, then, in addition to any other remedies herein or by law provided, the Board may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board members present at any meeting at which a quorum is present and any such suit may be instituted by any one member of the Board or by the management agent if the latter is so authorized in writing. Each such action shall be brought in the name of the Association, by and through the Board, and the Board shall be deemed to be acting on behalf of all the owners. Any judgment rendered in any such action shall include, where

permissible under any law, a sum for reasonable attorney's fees in such amount as the court may adjudge against such defaulting owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two (2) members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor, at the judgment debtor's expense, an appropriate satisfaction thereof, including, as appropriate, a release of lien.

(b) The Board (acting upon the authorization of the majority thereof) may, by special or continuing general resolution, give a notice to a defaulting owner within sixty (60) days after the occurrence of any such default, with a copy to the mortgagee of such owner, if such mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file and record a notice of lien against the unit of such delinquent owner. Such notice of lien shall state: (i) the name of the delinquent owner or reputed owner; (ii) a description of the unit against which the notice of lien is made; (iii) the amount claimed to be due and owing (with any proper offset allowed); (iv) that the notice of lien is made by the Board pursuant to the terms of these Bylaws, or the Declaration or Chapter 514A of the Act, as amended; and (v) that a lien is claimed against said described unit in an amount equal to the amount of the stated delinquency, including attorney's fees and costs incurred in connection therewith. Any such notices of lien shall be signed and acknowledged by any two (2) or more members of the Board, by the management agent or by the Association's attorney. Each default shall constitute a separate basis for a notice of lien. Such lien shall have priority and may be enforced as set forth in **Section 514A-90** of the Act, as amended.

(c) For the purposes of this Section 5, a certificate executed and acknowledged or made under penalty of perjury by any two (2) members of the Board shall be conclusive upon the Board and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to such owner's unit (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee established by the Board. In the event any notices of lien 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 owner or such owner's successor, and payment of a reasonable fee established by the Board, the Board, acting by any two (2) members, or by the management agent or the Association's attorney, shall execute and acknowledge (in the manner provided above) a release of lien in appropriate form, such release of lien to be recorded by the Board or, at the owner's option, delivered

to the owner or such owner's successor upon payment of the fee, together with any attorney's fees and costs incurred by the Association for the preparation of such release and any recordation costs in connection therewith.

Section 6. Collection from Subtenant. If the owner shall at any time rent or lease such owner's unit and shall default for a period of thirty (30) days or more in the payment of the owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (referred to in this paragraph as "tenant") of the unit owner, the rent due or becoming due from such tenant to the unit owner up to an amount sufficient to pay all sums due from the unit owner, including interest and attorney's fees and costs, if any, and any such payment of such rent to the Board by the tenant shall be sufficient discharge of such tenant, as between such tenant and the unit owner to the extent of the amount so paid; but any such demand or acceptance or rent from any tenant shall not be deemed to be a consent to or approval of any lease by the owner or a release or discharge of any of the obligations of the owner hereunder or an acknowledgment or surrender of any rights or duties hereunder. In the event that the Board makes demand upon the tenant as aforesaid, the tenant shall not have the right to question the right or authority of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid; PROVIDED, HOWEVER, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pursuant to a court order in a mortgage foreclosure.

Section 7. Non-Monetary Defaults. If any owner, tenant or occupant of a unit shall fail to observe and perform any term, covenant or provision of the 514A-82(a)(18) Declaration, these Bylaws or any rules and regulations adopted pursuant thereto, and such failure shall not be cured within thirty (30) days after written demand for compliance thereof, such owner, tenant or occupant shall be deemed to be in default, and in such event, the Board may elect to bring an action against the defaulting owner, tenant or occupant for damages for breach of the Declaration, these Bylaws, rules or regulations and/or enforcement of the same, as the case might be, in which event the defaulting owner, tenant or occupant shall be required to pay attorney's fees and costs incurred by the Board in bringing such action.

The Board may also enforce compliance with the terms of the Declaration, these Bylaws or rules or regulations in any other manner provided for by law or equity. A defaulting owner, tenant or occupant shall pay all costs and expenses of the Board, including reasonable attorney's fees, incurred by the Board in such enforcement action.

All fees and costs incurred under this Section 7. shall be considered and treated as a lien against the owner and the unit involved, which lien may be foreclosed on the same as for monetary defaults.

Section 8. 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 owner, tenant or occupant hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the president pursuant to authority contained in a specific resolution of the Board.

ARTICLE X

Insurance

Section 1. Fire and Extended Coverage Insurance. The Association at its common expense shall at all times keep all buildings in the Project, including the common elements and whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with as-built condominium plans and specifications, insured against loss or damage by fire with special extended coverage and inflation guard endorsement with an insurance company authorized to do business in Hawaii having a financial rating by Best's Insurance Reports of Class VI or better in an amount sufficient to provide for the full repair or full replacement thereof without deduction for depreciation with inflation guard and water damage endorsements, in the name of the Association and all unit owners and mortgagees according to the loss or damage to their respective unit and appurtenant common interests, and shall be payable in case of loss to such bank or trust company authorized to do business in the State of Hawaii as the Board shall designate for disposition as herein provided of all proceeds of such insurance, and from time to time cause to be deposited promptly with the secretary of the Association a true copy of such insurance policies or current certificates thereof, without prejudice to the right of the unit owners to insure their units for their own benefit. Flood insurance shall also be provided under the provisions of the Federal Flood Disaster Protection Act of 1973 if the property is

located in identified flood hazard areas designated by the U.S. Department of Housing and Urban Development, with minimum limits equal to the aggregate of the outstanding principal balance of all mortgages on units in the Project or the maximum limit of coverage payable under the National Flood Insurance Act of 1968, as amended, whichever is less. The members of the Association may, by majority vote at any meeting of the Association, require that the exterior glass of the Project also be insured under such policy. Every such policy of insurance:

(a) Shall contain no provision limiting or prohibiting other insurance by the owner of a unit, such right being provided by statute, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any such other insurance.

(b) Shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Association, if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Project developer, the Association or the owner or tenant of any unit, or any other person, by reason of any act or neglect of the Project developer, the Association or the owner or tenant of any unit, or any other person under any of them.

(c) Shall provide that the policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association), except by the insurer giving at least sixty (60) days' prior written notice thereof to the Board, every first mortgagee of a unit and every other person in interest who shall have requested such notice of the insurer.

(d) Shall contain a provision waiving any right of subrogation by the insurer to any right of the Association or the owner or lessee of any unit.

(e) Shall contain a provision waiving any right of the insurer to repair, rebuild or replace, if a decision is made pursuant to Section 5 of this Article X, not to repair, reinstate, rebuild or restore the damage or destruction.

(f) Shall provide that any loss shall be adjusted with the Association and the mortgagee or any unit directly affected by the loss.

(g) Shall contain a standard mortgagee provision which:

(1) Shall name as an additional assured the holder of any mortgage affecting any unit whose name shall have been

furnished to the Board.

(2) Shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Association or the owner or tenant of any unit, or any other person under any of them.

(3) Shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (PROVIDED, HOWEVER, in case the Association shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the rights of any mortgagee against the owner or lessee of any unit or the Association, or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or owner, but without impairing the mortgagee's right to sue.

(4) Shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate trustee selected by the Association which shall be a bank or trust company doing business in Honolulu, Hawaii, referred to as the "Insurance Trustee" or "Trustee."

(5) Shall provide that any reference to a mortgagee in the policy shall include all mortgagees on any unit, in order of preference.

(h) Shall name all unit owners as insureds.

(i) Shall provide for payment of the proceeds to the Insurance Trustee, except in the case of damage to a single unit, in which case the proceeds shall be paid to the owner and mortgagee, if any, of such unit, as their respective interests may appear.

(j) Shall contain a provision requiring the insurance carrier at the inception of the policy and on each anniversary date thereof to provide the Board with a written summary in layman's terms describing said policy, which summary shall include the type of policy, a description of the coverage and limits thereof, amount of annual premium, renewal date, and such other information as may be required by law. The Board shall provide said summary to each unit owner.

Section 2. Comprehensive Liability Insurance. The Association shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, procure the required coverage from other companies) a policy or policies of public liability insurance to insure the Board, the Association, each unit owner, the management agent, and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the property or activities thereon under a comprehensive general liability form to include: (i) water damage legal liability and (ii) fire damage legal liability. Said insurance shall provide combined, single-limit coverage of not less than One Million Dollars (\$1,000,000.00) or such higher limits as the Board may from time to time establish with due regard to the then prevailing prudent business practice in the State of Hawaii as reasonably adequate for the Association's protection, and which:

(a) Shall, if obtainable, contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building(s), whether or not within the control or knowledge of the management agent or Association, or by any breach of warranty or condition caused by the management agent, Association or owner of any unit, or by any act or neglect of the management agent, Association or owner or tenant of any unit, or any person under any of them.

(b) Shall, if obtainable, provide that the policy and the coverage thereunder may not be cancelled or substantially modified (whether or not requested by the Association), except by the insurer giving at least sixty (60) days' prior written notice thereof to the Board, every first mortgagee or a unit and every other person in interest who shall have requested such notice to the insurer.

(c) Shall, if obtainable at reasonable cost, contain a waiver by the insurer of any right of subrogation to any right of the Board, management agent or the unit owners against any of them or any other person under them.

(d) Shall, if obtainable at reasonable cost, contain a "severability of interest" endorsement precluding the insurer from denying a claim of a unit owner because of negligent acts of the Association or other unit owners.

Section 3. Insurance Against Additional Risks. The Association may also procure insurance against such additional risks as the Association may deem advisable for the protection of the owners of a character normally carried with respect to properties of comparable character and use.

Section 4. Miscellaneous Insurance Provisions. The

Association shall review not less frequently than annually the adequacy of the Association's insurance program and shall report in writing the Association's conclusions and action taken on such review to the owner of each unit, and to the holder of any mortgage on any unit who shall have requested a copy of such report. At the request of any mortgagee of any unit, the Association shall furnish to such mortgagee a copy of the policy described in Section 1 and of any other policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Association shall be available for inspection by any owner (or purchaser holding a bona fide contract to purchase an interest in a unit) at the office of the management agent. Any coverage procured by the Association shall be without prejudice to the right of the owners of units to insure such units and the contents thereof for their own benefit at their own expense.

Section 5. Damage and Destruction. (a) If any building is damaged by fire or other casualty which is insured against and said damage is limited to a single unit, the insurance proceeds shall be used by the owner and mortgagee, if any, of such unit to pay the contractor employed by the Association to rebuild or repair such unit, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor.

(b) If such damage extends to two or more units or extends to any part of limited common elements or to the common elements, the Association shall thereupon contract to repair or rebuild the damaged portions of the building(s), including all unit so damaged, as well as the common elements, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to the destruction or damage, or, if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved the Trustee, the Association and the mortgagee of record of any interest in a unit directly affected thereby; PROVIDED, that:

(i) In the event said modified plan eliminates a unit that may have been damaged or destroyed and such unit is not reconstructed, the Insurance Trustee shall pay to the owner of said unit and the mortgagee of record of any interest in said unit, as their interests may appear, the portion of said insurance proceeds allocable to the owner's common interest (less the proportionate share of said unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

(ii) In the event the restoration of any building(s) in accordance with the original plans and specifications or with such modified plan as shall have been previously approved by the Association and mortgagee of record of

any interest in a unit directly affected thereby shall not be permissible under the laws and regulations then existing, the proceeds of the insurance, after paying the cost of the removal of the debris, shall be disbursed to owners of units so damaged and their mortgagees of record, as their interests may appear, in proportion to the respective common interests of said owners.

(iii) In the event the insurance proceeds are insufficient to restore the building(s), then the Project shall be rebuilt, repaired or restored as prescribed in these Bylaws or in accordance with such modified plans as shall have been previously approved by the Association, a majority of the owners of units directly affected thereby and the mortgagees of record of any interest in a unit directly affected thereby, unless the owners of at least seventy-five percent (75%) of the interests in the common elements execute an instrument within ninety (90) days of the loss expressing their decision not to rebuild, repair or restore. In such event the proceeds of the insurance shall be first used to remove any remaining improvements and the balance, if any, shall be paid to the owners and said mortgagees, as their interests shall appear, in proportion to the percentage interest of each owner in the common elements appurtenant to his/her unit, and the owners shall be released and relieved of all obligations to rebuild.

(iv) If a decision is made to eliminate a unit, the common interests and other rights of the remaining unit owners in the Project shall be adjusted by amendment of the Declaration pursuant to **Section 514A-13(b)** of the Act, as amended, and the pertinent section of the Declaration pertaining to amendments thereto; PROVIDED, that the common interest of any owner shall not be altered without his/her consent and the consent of any mortgagee of record of any interest in a unit directly affected thereby. The owner of any eliminated unit shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, if the Declaration is not amended so as to discharge the owners of eliminated units of all obligations to the Project and so as to adjust equitably the common interest appurtenant to those unit not eliminated, the owner of any eliminated unit may convey his/her interest to the Board on behalf of all other unit owners and 514A-92 thereby be discharged of all obligations to the Project. The owner of any eliminated unit may, in addition to his/her allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate.

(c) The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such common elements, the Association is expressly

authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Association shall levy a special assessment on all owners in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any unit shall be specially assessed against such unit.

(d) The cost of work (as estimated by the Association shall be paid out from time to time or at the direction of the Association as the work progresses, but subject to the following conditions:

(i) The work shall be in the charge of an architect or engineer (who may be an employee of the Association).

(ii) Each request for payment shall be made by not less than seven (7) days' prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required for payments by the Association to, or is justly due to, the contractor, sub-contractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Insurance Trustee the sum requested does not exceed the value of the work done to the date of such certificate.

(iii) Each request shall be accompanied by waivers of liens satisfactory to the Insurance Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record.

(iv) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.

(v) The fees and expenses of the Insurance Trustee as determined by the Association and the Insurance Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Insurance Trustee.

(vi) Such other conditions not inconsistent with

the foregoing as the Insurance Trustee may reasonably request.

Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Association or the Insurance Trustee shall be paid or credited to the unit owners directly affected thereby and their mortgagees of record in proportion to their respective common interests.

(e) To the extent that any loss, damage or destruction to the building or other property is covered by insurance procured by the Association, the Association shall have no claim or cause of action for such loss, damage or destruction against any unit owner or lessee. To the extent that any loss, damage or destruction to the property of any owner or lessee is covered by the insurance procured by such owner or lessee, such owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the management agent, any other owner, or the Association. All policies of insurance referred to in this paragraph shall contain appropriate waivers of subrogation.

ARTICLE XI

Condemnation

In the event of a taking by eminent domain of part of all of the common elements (excluding the land, in the case of a leasehold condominium), all compensation payable for or on account of the taking of any building or improvements on the land shall be payable to a condemnation trustee, which shall be a substantial bank or trust company designated by the Board doing business in the State of Hawaii. The Board shall arrange for the repair and restoration of such unit or units and improvements as nearly as possible in accordance with the design thereof immediately prior to such condemnation, or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plans as shall be previously approved by the Board and the mortgagee of record of any interest in any unit directly affected thereby. The condemnation trustee shall disburse the proceeds of such award received by such trustee to the contractor engaged in such repair and restoration in the same way funds are disbursed for repair and restoration work under Section 5 of Article X hereinabove, and in the event such proceeds are not sufficient to pay the costs thereof, the Board shall pay any deficiency, and if the Board's maintenance fund is not sufficient for this purpose, the Board shall levy a special assessment on each remaining unit owner in proportion to his/her common interest.

In the event of a partial taking of the Project in which

(i) any unit is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the owner of the unit and to the Board, then such unit shall be removed from the Project and the condemnation trustee shall disburse to the owner and any mortgagee of such unit, as their interests may appear, in full satisfaction of their interests in the unit, the portion of the proceeds of such award allocable to such eliminated or removed unit after deducting the proportionate share of such unit in the cost of debris removal.

If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the owner and any mortgagee of a removed unit and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the unit owners including the owners of any eliminated units in accordance with their interest in the common elements prior to the condemnation.

ARTICLE XII

Mortgages

Section 1. Notice to Board of Directors. A unit owner who mortgages such owner's interest in a unit shall notify the Board of the name and address of such owner's mortgagee and, within ten (10) days after the execution of the same, shall file a conformed copy of the note and the mortgage with the Board; the Board shall maintain such information in a record or file entitled "Mortgages of Units."

Section 2. Mortgagee's Rights. Notwithstanding anything in these Bylaws to the contrary, each mortgagee shall have the following rights:

(a) Upon written request of the mortgagee to the Board, the mortgagee shall be entitled to all of the following:

(1) An annual financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project, the annual budget and schedule of assessments and such other statements or reports prepared for the Association, the Board or the owners by the management agent or other party hereunder.

(2) The right to inspect the books and records of the Project during normal business hours; and

(3) Written notice of all meetings of the Association and the Board and right to designate a representative to attend all such meetings.

(b) The Association, through the management agent, or the Board, shall timely furnish a mortgagee with the following: (i) notice of any default in obligations under the Declaration, these Bylaws or rules and regulations, by any mortgagor of such mortgagee which is not cured within thirty (30) days after the giving of notice by the Board to the mortgagor of the existence of the default; (ii) a copy of all pleadings filed in any lawsuit, administrative proceeding or other action affecting the Project or any portion thereof; (iii) a copy of any bond required to be posted before commencing or permitting construction of any improvements to the unit subject to such mortgage; and (iv) prior written notice of any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall be deemed a transfer within the meaning of this clause.)

✓ (c) The Association shall not terminate professional management and assume self-management of the Project without the prior written consent of all mortgagees.

(d) No unit shall be partitioned or subdivided without the prior written consent of the mortgagee of such unit.

(e) Except as provided in **Section 514A-21** of the Act, as amended, the Project shall not by act or omission be abandoned, terminated or removed from the condominium property regime created by the Declaration and the Act without the prior written approval of all mortgagees.

(f) In the event of (i) substantial damage to or destruction of any part of the Project, or (ii) any portion of the Project being made the subject matter of any condemnation or eminent domain proceeding or otherwise being sought for acquisition by a condemning authority, the Board shall give timely written notice to all units of any such damage or destruction or proceeding or proposed acquisition, as the case may be.

(g) In the event of (i) any distribution of insurance proceeds hereunder as a result of substantial damage to or destruction of, any part of the Project, or (ii) as a result of condemnation or eminent domain proceedings with respect to any part of the Project, any such distribution shall be made to the unit owners and their respective mortgagees, as their interests may appear, and no owner or other party shall be entitled to priority over the mortgagee of a unit with respect to any such distribution to, or with respect to, such unit; PROVIDED, that nothing in this paragraph (g) shall be construed to deny to the Association the right to apply any such proceeds to the repair or replacement of damaged portions of the Project or to restore what remains of the

Project after condemnation or taking by eminent domain of a part of the Project.

(h) The Secretary of the Association shall notify in writing all holders of first mortgages on units as shown in the Association's record of ownership or of which the secretary has been given written notice, of any loss to, or taking of, the common elements of the Project if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00).

(i) The secretary of the Association shall notify in writing the holders of the first mortgage on any unit as shown in the Association's record of ownership or of which the secretary has been given written notice, of any loss of such unit which exceeds ONE THOUSAND DOLLARS (\$1,000.00).

Section 3. Mortgagee Approval. Unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each first mortgage held), or owners of the individual units have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this clause.)

(b) Use hazard insurance proceeds for losses to the Project or any part thereof (whether to units or to common elements) for other than the repair, replacement or reconstruction of the same, except as otherwise provided by the Declaration, these Bylaws or the Act.

Section 4. Mortgagee Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any unit and its appurtenant interests in the common elements shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage of such interests made for value; PROVIDED, that any such lien evidenced by a notice of lien recorded in the Bureau of Conveyances, and/or filed in the Office of the Assistant Registrar of the Land Court, of the State of Hawaii prior to the recordation of a mortgage or mortgages on the unit shall take priority over such mortgage or mortgages; and PROVIDED, FURTHER, that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed

514A-90(a)

hereunder to such unit if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Section 5 of Article IX hereof.

(b) No amendment to this Section 4 shall affect the rights of the holder of any such mortgage recorded or filed as aforesaid prior to the filing of such amendment who does not join in the execution thereof.

ARTICLE XIII

General Provisions

Section 1. Rules and Regulations. Each owner recognizes the right of the Board, from time to time (after giving notice to all unit owners in the manner provided herein for the giving of notice for meetings and an opportunity to be heard thereon) to establish and amend such uniform rules and regulations as the Board may deem necessary for the management and control of the units and the common elements and limited common elements, which rules and regulations may include provisions allowing the imposition of fines or other penalties or sanctions deemed appropriate by the Board after reasonable notice and an opportunity to be heard, and each owner agrees that the owner's rights under this instrument shall be in all respects subject to the appropriate rules and regulations which shall be taken to be a part of these Bylaws; and each owner agrees to obey all such rules and regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees and tenants of the owner, and the rules and regulations shall uniformly apply to and be binding on all occupants of the units. Each unit owner, tenants and employees of the owner, and other persons using the property shall comply strictly with these Bylaws, such rules and regulations, and the covenants, conditions and restrictions set forth in the Declaration.

514A-82(a)(9)
514A-82(a)(18)

Section 2. Abatement and Injoinment of Violations. The violation of any rules or regulation adopted by the Board, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall, without prejudice to any other remedies available to the Board at law or in equity, give rise to a cause of action in the Association, the Board, or any aggrieved unit owner for recovery of sums due, for damages, and/or injunctive relief, to abate the continuance of any such breach, or both.

514A-82(a)(18)

All costs and expenses, including reasonable attorney's fees, incurred by or on

514A-94(a)

behalf of the Association for:

- (1) Collecting any delinquent assessments against any owner's unit;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the Declaration, these Bylaws, rules and regulations and the Act; or
- (4) Enforcing the rules and regulation 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 attorney's 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. The unpaid amount of such costs and expenses shall constitute a lien against the unit owner's interest in the unit in question which may be foreclosed by the Board or management agent as herein provided and in the same manner as provided in the Act for common expenses; PROVIDED, that the said lien for such costs and expenses shall be subordinate to liens for taxes and assessments lawfully imposed by any governmental authority against such unit and to all sums due under any mortgage of record on such unit or on a unit lease demising the same.

If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or the Board to enforce any provision of the Declaration, these Bylaws, rules or regulations or the Act, as amended, then all reasonable and necessary expenses, costs and attorney's fees incurred by an owner shall be awarded to such owner; 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 to pursue such enforcement; or, (ii) the owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

514A-94(b)

Section 3. Maintenance and Repair of Units. All alterations, maintenance, repairs and improvements to any unit (other than maintenance of and repairs to any common elements contained therein, and not necessitated by the negligence, misuse or neglect of the owner of such unit) shall be performed by the owner of such unit at such owner's sole expense.

Section 4. Maintenance and Repair of Common Elements.

All maintenance, repairs and replacements to the common elements, whether located inside or outside of the units, shall be made by the Board and be charged to all the owners as a common expense, unless necessitated by the negligence, misuse or neglect of a unit owner, in which case such expense shall be charged to such unit owner.

Section 5. Additions or Alterations by Unit Owners. No unit owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor, except as otherwise provided in these Bylaws, the Declaration or the Act, may any unit owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of seventy-five percent (75%) of the unit owners, together with the consent of all unit owners whose units or limited common elements appurtenant thereto are directly affected, being first obtained. Except as may be otherwise provided in these Bylaws, the Declaration or the Act, no owner shall install any solar energy devices or make any addition or alteration in or to such owner's unit which may affect the common elements or change the exterior appearance of the Project, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by a unit owner for approval of a proposed addition or alteration in such owner's unit within thirty (30) days of such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition or alteration.

514A-89

Section 6. Right of Access. A unit owner shall grant a right of access of such owner's unit to the management agent and/or any other person authorized by the Board, or the management agent, for the purpose of making inspections or for the purpose of correcting any conditions originating in such owner's unit and threatening another unit or a common element, or for the purpose of performing installation, alterations or repairs to the mechanical or electrical services or other common elements in such owner's unit or elsewhere in the Project; PROVIDED, that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether or not the owner is present at the time.

Section 7. Owners May Incorporate. All of the rights, powers, obligations and duties of the owners imposed hereunder may be exercised and enforced by a non-profit membership corporation formed under applicable laws for the purposes herein set forth by the Association. Said corporation shall be formed on the written approval of owners of units to which are appurtenant more than fifty percent (50%) of the common interest of the Project. The formation of said corporation shall be subordinated hereto and

controlled hereby. Any action taken by said corporation which said action is in violation of any or all of the terms, covenants or conditions contained in these Bylaws, the Declaration or the Act shall be void and of no force and effect.

Section 8. Unclaimed Possessions. (a) When personalty in or on the common elements of the Project has been abandoned, the Board may sell the personalty 514A-93.5(a) 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:

(1) Notifies the owner in writing of:

(A) The identity and location of the personalty; and

(B) 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 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

(2) If the identity or address of the owner is unknown, the Board first advertises the sale, donation or disposition at least once in a daily newspaper of general circulation within the State judicial circuit in which the personalty is located.

(b) The proceeds of any sale or 514A-93.5(b) disposition of personalty under this Section 8 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 9. Notices. All notices hereunder shall be sent by registered or certified mail to the Board, c/o the management agent or, if there be no management agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time, or by notice in writing to all owners and to all mortgagees of units. All notices to any owner shall be hand delivered or sent by registered or certified mail to the unit owner's last known address appearing on the books of the Association, to the unit owner's address at the Project or to such other address as may have been designated by him/her from time to time, in writing, to the Board. All notices to mortgagees shall be sent by registered or certified mail to their respective

addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been effectively given when mailed or delivered, except notices of change of address which shall be deemed to have been given when received. A copy of all notices sent to unit owners shall be sent to each unit owner's mortgagee who has requested in writing to the Board that copies of all such notices be sent to it.

Section 10. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions thereof.

Section 11. Gender and Number. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 12. Non-Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 13. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the owners of units shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

Section 14. Amendment of Bylaws. These Bylaws, other than the provisions of this Section 14, may be amended at any time by the vote or written consent of 514A-82(b)(2) sixty-five percent (65%) of all unit owners; PROVIDED, that any proposed bylaws with the rationale for the proposal may be submitted by the Board or by a volunteer unit owners' committee. If submitted by that committee, the proposal and rationale shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the 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 unit 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 Office of the Assistant Registrar of the Land Court of the State of Hawaii, as

the case may be. The volunteer unit owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board. This Section 14 shall not preclude any unit owner or voluntary unit owners' committee from proposing any bylaw amendment at any annual Association meeting.

The duly adopted bylaw shall be effective upon recordation or filing as aforesaid.

514A-81

Section 15. Restatement of Bylaws. (a) Notwithstanding any other provision of these Bylaws, the Association may at any time restate the Declaration or these Bylaws to set forth all amendments thereof by a resolution adopted by the Board.

514A-82.2(a)

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

514A-82.2(b)

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

514A-82.2(c)

(d) The restated Declaration or Bylaws shall be recorded in the manner provided in Section 514A-11 or 514A-82, or both, of the Act, as amended, and upon recordation shall supersede the original Declaration or Bylaws and all prior amendments thereto; PROVIDED, that in the event of any conflict, the restated Declaration or Bylaws shall be subordinate to the original Declaration or Bylaws and all prior amendments

514A-82.2(d)

thereto.

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

The undersigned directors, _____ and _____, who are also the _____ and the _____, respectively, of the Association of Apartment Owners of HALE O KALANI TOWERS, hereby certify that the foregoing Amendment was duly adopted by the vote of more than sixty-five percent (65%) of the unit owners of the Project at a meeting of the Association duly held on _____.

IN WITNESS WHEREOF, the undersigned have executed these presents at Honolulu, Hawaii, this _____ day of _____, 19____.

ASSOCIATION OF APARTMENT OWNERS
OF HALE O KALANI TOWERS

By _____
Its

By _____
Its

STATE OF HAWAII

)

)

SS:

CITY AND COUNTY OF HONOLULU

)

On this _____ day of _____, 19____, before me appeared _____ and _____ to me known to be the persons who signed the foregoing instrument and who, being by me first duly sworn on oath, did say that they are the _____ and the _____, respectively, of the ASSOCIATION OF APARTMENT OWNERS OF HALE O KALANI TOWERS, an unincorporated association of condominium owners; that the Association has no seal; that said instrument was signed in behalf of said Association by authority of its board of directors; and that they executed the same as the free act and deed of said Association.

Notary Public - State of Hawaii

My commission expires: _____

INDEX

Agents

- auditor (19)
- management agent (19)

Alterations

- handicapped, by the (23)
- of the project (23)

Animals

- for the handicapped (23)
- pets (23)

Association

- committees (8)
- incorporation of (43)
- meeting, annual (3)
- meeting, special (4)
- meetings, adjournment (8)
- meetings, order of business (8)
- membership (2)
- notices (4)
- powers of (2)
- powers, other (3)
- proxies and pledges (6)
- qualification (2)
- quorum (5)
- voting (5)
- voting, cumulative (6)

Auditor (19)

Board of Directors

- conflicts of interest (17)
- election (9)
- meeting, annual (10)
- meeting, quorum (11)
- meeting, regular (10)
- meeting, special (11)
- meeting, waiver of notice (11)
- number (8)
- powers and duties (12)
- qualifications (8)
- removal of (10)
- term (9)
- vacancies (9)
- vacancies, other (9)

Bylaws

- amendment of (45)
- application of (2)
- compliance, waiver of (30)
- enforcement of (29), (41)
- interpretation of (45)

- non-waiver of (45)
- restatement of (46)
- Captions (45)
- Common Elements
 - additions/alterations by owner (43)
 - damage and destruction, insurance (34)
 - maintenance and repair of (42)
- Common Expenses (24)
 - allocation of (25)
 - payment by Board (26)
- Condemnation (37)
- Conflicts (1)
- Declaration
 - enforcement of (29), (41)
- Definitions (1)
- Gender and Number (45)
- General Provisions (41)
- Handicapped
 - alteration of Project, by (23)
 - guide and signal dogs (23)
- Incorporation of Association (43)
- Indemnification (20)
- Instruments, Execution of
 - facsimile signature (20)
 - proper officers (20)
- Insurance
 - additional risks (33)
 - Best's rating (30)
 - comprehensive liability (33)
 - fire and extended coverage (30)
 - flood hazard areas (31)
 - miscellaneous provisions (33)
 - trustee (32)
- Maintenance Fees
 - allocation of (25)
 - collection from subtenant (29)
 - default in payment of (27)
 - default, notice of (28)
 - delinquency (28)
 - delinquency, certificate of (28)
 - foreclosure (514A-90) (28)
 - interest on delinquent (27)
 - lien, notice of (28)
 - lien, release of (28)
- Mortgages
 - mortgagee approval (40)
 - mortgagee protection (40)
 - mortgagee's rights (38)
 - notice to Board (38)
- Notices (44)
- Officers