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SECOND RESTATEMENT OF
BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS
OF KAAHAPALI ROYAL

WHEREAS, Section 514A-82.2(a), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the by-laws of the associations to set forth all amendments thereof by resolution adopted by the Board of Directors;

WHEREAS, Section 514A-82.2(b), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the by-laws of the associations to amend the by-laws as may be required in order to conform with the provisions of Chapter 514A, Hawaii Revised Statutes, or any other statute, ordinance, rule, or regulation enacted by any governmental authority, by resolution adopted by the Board of Directors, and the restated by-laws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners. Section 514A-82.2(b), Hawaii Revised Statutes, further provides that the by-laws as restated pursuant to that Section shall: 1) identify each portion so restated; 2) contain a statement that those portions have been restated solely for the purposes of information and convenience; 3) identify the statute, ordinance, rule, or regulation implemented by the amendment; and 4) state that in the event of any conflict, the restated by-laws shall be subordinate to the cited statute, ordinance, rule, or regulation;

WHEREAS, Section 514A-82.2(c), Hawaii Revised Statutes, provides that upon the adoption of a resolution pursuant to Section 514A-82.2(a) or (b), Hawaii Revised Statutes, the restated by-laws shall set forth all of the operative provisions of the by-laws, as amended, together with a statement that the restated by-laws correctly set forth, without change, the corresponding provisions of the by-laws, as amended, and that the restated by-laws supersede the original by-laws and all prior amendments thereto;

WHEREAS, the Board of Directors of the Association of Apartment Owners of Kaanapali Royal by adoption of a resolution on April 17, 1999, voted to record a second restated version of the By-Laws which would set forth the provisions of the By-Laws which were restated by instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on January 12, 1999 as Document No. 2513170 and amended by instruments recorded as aforesaid on January 14, 1999 as Document No. 2513914 and on August 31, 1999 as Document No. 2571609 and noted on the Certificates of Title as attached hereto and which would conform to Chapter 514A, Hawaii Revised Statutes and the Fair Housing Act, as amended.

NOW, THEREFORE, the By-Laws of the Association of Apartment Owners of Kaanapali Royal are hereby restated as set forth below. Each By-Law provision that has been restated has been identified in the endnotes attached hereto. Said provisions have been restated solely for the purposes of information and convenience. To the extent that there is any conflict between the restated provisions of the By-Laws and the statute or statutes being implemented, the provisions of the restated By-Laws shall be subordinate to said statute or statutes. The restated version of the By-Laws correctly sets forth, without change, the corresponding provisions of the By-Laws, as amended. This restated version of the By-Laws shall supersede the original By-Laws and all prior amendments thereto; provided, however, that in the event of any conflict, the restated version of the By-Laws shall be subordinate to the original By-Laws and all prior amendments thereto.

BY-LAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF
KAANAPALI ROYAL

The following By-Laws shall apply to the above-named condominium project (herein sometimes called the "Project"), as described in and created by the Declaration of Horizontal Property Regime (hereinafter called the "Declaration") to be filed in the Office of the Assistant Registrar of the Land Court of Hawaii contemporaneously herewith, and to all present and future Owners, tenants and occupants of any Apartments of the Project and all other persons who shall at any time use the Project:

ARTICLE I
INTRODUCTORY PROVISION

Section 1. Definitions. The terms used herein shall have the meanings given to them in Chapter 514A, Hawaii Revised Statutes, as amended (hereinafter called the "Act")¹, except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in these By-Laws, shall be given the following meanings:

(A) "Common elements" means those elements designated in the Declaration as common elements.

(B) "Limited common elements" means those elements designated in said Declaration as limited common elements.

(C) "Apartment" as used herein means an Apartment in the Project, within the meaning of that term as used in the Act, as designated and described in the Declaration.

(D) "Land" means the Land designated and described in the Declaration.

(E) "Project" means and includes the Land, the buildings and all other improvements thereon (including the Apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property with respect to which a Horizontal Property Regime shall exist from time to time pursuant to the Declaration.

(F) "House Rules" refers to the Rules and Regulations or House Rules for the conduct of Owners, occupants and guests of Apartments in the Project adopted by the Board of Directors as hereinafter provided.

(G) "Owner" or "Apartment Owner" means a person owning all or any interest in an Apartment and the common interest appertaining thereto, to the extent of such interest owned; provided that to such extent and for such purposes, including the exercise of voting

rights, as shall be provided by agreement of sale or lease filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii and with the Board of Directors, the vendee under an agreement of sale or the lessee of an Apartment or interest therein shall be deemed to be the Owner of such Apartment or interest therein.²

(H) "Association" means the Association of Apartment Owners of the Project.

(I) "Board" means the Board of Directors of the Association.

(J) "Ground lease" means the instrument issued by Developer demising to each Owner his undivided leasehold interest in the Land, which instrument may be entitled "Condominium Conveyance Document."

(K) "Developer" means Kaanapali Royal Associates, a Hawaii partnership.

(L) "Master Declaration" means that certain Declaration of Restrictions dated December 2, 1977, filed in the Office of the Assistant Registrar of the Land Court of Hawaii as Document No. 853030 and noted on Certificates of Title Nos. 113347, 117131, 117423, 84106, 131205 and 206374, and also recorded in the Bureau of Conveyances of Hawaii in Liber 12641 at Page 179, as amended by instrument dated October 31, 1978, filed and noted as aforesaid as Document No. 906095 and recorded as aforesaid in Liber 13244 at page 299, and as further modified by Warranty Deed dated December 1, 1978, filed as Document No. 911189.

(M) "Common expenses" includes the expenses designated as common expenses in Section 1 of Article VI of these By-Laws.

Section 2. Gender. All pronouns used herein shall include the male, female and neuter genders and shall include the singular or plural numbers, as the case may be.

Section 3. Conflicts. These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the provisions of the Act, the Master Declaration, or the Declaration, the provisions of the Act, the Master Declaration or the Declaration, as the case may be, shall control.

Section 4. Application. All present and future Owners, mortgagees, vendees under agreements of sale, tenants and occupants of Apartments and their guests and employees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Master Declaration, the Declaration, and the House Rules, as each may be amended from time to time. The acceptance of an assignment of lease, conveyance, mortgage, agreement of sale, or lease of an Apartment, or the act of occupying an Apartment shall constitute an agreement that these By-Laws, the House Rules, and the provisions of the Master Declaration and the Declaration, as they may be amended from time to time, are accepted, ratified, and will be strictly complied with.

ARTICLE II
ASSOCIATION OF APARTMENT OWNERS

Section 1. Membership. All Owners of Apartments of the Project shall constitute the Association.³

Section 2. Powers of the Association. The Association shall have all of the powers with respect to the operation and regulation of the Project conferred upon the Association by, or which may be conferred upon the association of apartment owners of a condominium project pursuant to the provisions of, the Act, including without limiting the generality of the foregoing:

(A) The election of a Board of Directors.

(B) The management, maintenance, acquisition, construction and care of the Association property. As used herein, the term "Association property" includes the common elements of the Project, including the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection thereof, property held by the Association, and property commonly held by its members.⁴

(C) The collection of common expenses from the Owners.

(D) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(E) The establishment of such restrictions and requirements not inconsistent with the Declaration, the Act or these By-Laws regarding the use and maintenance of the Apartments and the use of the common elements.

(F) The amendment of these By-Laws in accordance with Section 7 of Article IX hereof and the Act.⁵

(G) Any and all powers not inconsistent with any law or the Declaration, which are reasonably incidental to the fulfillment of the purposes of the Horizontal Property Regime set forth in the Declaration, or are reasonably incidental to the exercise of the Association's powers as set forth in the Declaration or herein.

Nothing in this Section 2 shall prohibit the delegation by the Association of any of its powers in accordance with these By-Laws, as amended from time to time.

Section 3. Meetings. The annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association, on such date as the Board of Directors may designate. Each 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 these By-Laws. Special meetings of the Association may be called at any time by the President or upon the call of any two directors or upon the request of the Owners of twenty-five percent (25%) of the common interest. At any special meeting only such business shall be transacted as shall have been indicated by a specific or general description in the notice of such meeting. All meetings of the Association shall be held at the address of the Project or such other suitable place within the State of Hawaii as may be designated by the Board of Directors.⁶

Section 4. Notice of Meetings. 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 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 all Association meetings, whether annual or special, shall be given at least fourteen (14) days before the date of such meeting. If delivery is made by mail, the notice shall be deemed to have been given twenty-four (24) hours after a copy of it 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 of Directors, or to the Apartment which such person owns if no address has been given to the Board of Directors. Such address may be changed from time to time by notice in writing to the Board of Directors. Upon written request for specific notice delivered to the Board of Directors, the holder of any duly recorded mortgage against any Apartment may promptly obtain a copy of any and all notices permitted or required herein to be made to the Owner or Owners whose Apartment is subject to said mortgage. If notice is given pursuant to the provisions of this section, the failure of any Apartment Owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of all Owners, in person or by proxy, at any meeting shall render the same a valid meeting notwithstanding that notice thereof was not given or was improper, unless any Owner 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.⁷

Section 5. Quorum. The presence at any meeting in person or by proxy of a majority of the Owners shall constitute a quorum, and the acts of a majority of the 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 the Owners" herein means the Owners of Apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration. The term "majority of the Owners present at any meeting" shall mean Owners of Apartments to which are appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to Apartments owned by those present at the meeting. Any other specified percentage of the Owners means the Owners of Apartments to which are appurtenant such percentage of the common interests.

Section 6. Voting. All 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 Apartment is entitled being the same as the percentage of the common interests assigned to such Apartment in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any Apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such Apartment in such capacity. The purchaser of an Apartment under an agreement of sale filed in the Office of the Assistant Registrar of the Land Court of Hawaii shall have all the rights of an Owner, including the right to vote, unless the seller under such agreement of sale retains the right to vote pursuant to Section 514A-83 of the Act. The vote for any Apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other co-Owner or co-Owners, and in case of any protest by any co-Owner, each co-Owner shall be entitled to vote only a share of such vote proportionate to his share of ownership in such Apartment.

Section 7. Proxies and Pledges. The authority given by any Apartment Owner to another person to represent him at meetings of the Association shall be in writing; provided, however, that a proxy form which accompanies a notice of meeting shall be valid only for the meeting to which the notice pertains and any adjournment thereof, and may designate any person as proxy and may be limited as the Owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. The proxy, to be valid, must be delivered to the Secretary of the Association or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Apartment or Apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. Proxies may be given to the Board of Directors. All proxy forms, at a minimum, shall contain boxes wherein the Owner may indicate that the Owner wishes the proxy:

- (1) To be given for quorum purposes only;
- (2) To be given to a specific individual whose name is printed next to this box;
- (3) To be given to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Board; or
- (4) To be given to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage.

No officer shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising his or her right as an Apartment Owner.

No resident manager, or Managing Agent shall solicit, for use by the manager or Managing Agent, any proxies from any Owner nor shall the resident manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. 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 directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty days prior to its solicitation of proxies; provided that if the Board receives within seven days of the posting a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall:

- (1) 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
- (2) 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 statements shall not exceed one hundred words, indicating the Owners' qualifications to serve on the Board and reasons for wanting to receive proxies. The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by Apartment Owners; provided that the Board may adopt rules regulating reasonable time, place and manner of such solicitations or distributions or both. The Board of Directors may prohibit commercial solicitations. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.⁸

Section 8. 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 Owners present, whether or not a quorum is 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 9. Order of Business; Rules; Minutes. The order of business at all annual meetings of the Association shall be as follows:

- (A) Roll call.
- (B) Proof of notice of meeting.
- (C) Reading of minutes of preceding meetings.
- (D) Report of officers.
- (E) Report of committees.

- (F) Election of directors (when so required).
- (G) Unfinished business.
- (H) New business.
- (I) Adjournment.

All meetings of the Association shall be conducted in accordance with Roberts Rules of Order or other accepted rules for the conduct of meetings. The minutes of all meetings of the Association shall be available for examination by the Apartment Owners at convenient hours at a place designated by the Board as required by Chapter 514A, Hawaii Revised Statutes.⁹

Section 10. 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 III BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) but not more than nine (9) directors who shall serve without compensation except for reimbursement of certain expenses as set forth and described in Section 7B. of this Article III. Each of the directors shall be the Owner or co-Owner of record of an Apartment or the vendee thereof under an agreement of sale, or an officer of a corporate Owner of an Apartment. The partners in a general partnership, the general partners of a limited partnership, the member of a member-managed limited liability company, the manager of a manager-managed limited liability company, and the trustees of an Apartment held in trust shall be deemed to be the Owners of an Apartment for such purpose. There shall not be more than one representative of the Board from any one Apartment. No resident manager shall serve on the Board of Directors.¹⁰

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. Directors shall hold office for a period not to exceed three (3) years and until their respective successors have been elected, subject to removal as herein provided, except that terms for which the directors are elected shall be such that the terms of at least one-third (1/3) of the directors shall expire annually. Directors shall be elected at each annual meeting to fill the vacancy in the office of director occurring as of the time of such meeting. The term "cumulative voting" as used herein means that each Owner may cast for any one or more nominees to the Board a vote equivalent to the vote which such Owner is entitled to multiplied by the number of directors to be elected, and each Owner shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as he shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected, shall be deemed elected.

Section 3. Vacancies. Any vacancies in the Board of Directors other than a vacancy caused by the natural expiration of the term of a director or the removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall serve until his successor is elected at the next annual meeting of the Association. Notwithstanding any provision herein to the contrary, any director elected or appointed to fill any vacancy on the Board of Directors shall serve only for the remainder of the term of the director whose vacancy he is elected to fill. Death, incapacity or resignation of any director, or his ceasing to be the Owner or co-Owner of an Apartment or the vendee under an agreement of sale or the officer of a corporate Owner of an Apartment or otherwise qualified under Section 1, shall cause his office to become vacant. Three unexcused absences from regular or special, properly noticed, Board meetings between annual meetings shall cause a director's office to become vacant if a majority of the remaining directors so vote.¹¹

Section 4. Removal of Directors. At any annual 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 the Apartment Owners, and a successor may be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Apartment Owners shall be given an opportunity to be heard at such meeting.¹²

Section 5. Organizational Meeting and Conduct of Meetings. The first meeting of the Board of Directors shall be held at the place of and immediately following the first annual meeting of the Association, and no notice shall be necessary to any directors in order validly to 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. All meetings of the Board of Directors (whether organizational, annual or special) shall be conducted in accordance with Roberts Rules of Order or other accepted rules for the conduct of meetings. The minutes of all meetings of the Board of Directors shall be available for examination by the Apartment Owners at convenient hours at a place designated by the Board as required by Chapter 514A, Hawaii Revised Statutes.¹³

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar quarter of every year unless cancelled by a vote of a majority of the directors. Notice of regular meetings of the Board shall be given to each director in a reasonable manner at least fourteen (14) days, if practicable, prior to the date of such meeting.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least three (3) days 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 directors.

(A) Directors' Telephone Meetings. Subject to the provisions herein relating to notice, the President, or any two members of the Board of Directors, shall be entitled to call a meeting of the Board of Directors by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting. Provided, however, the language of this Section 7A shall not be deemed to supplant the normal, more desirable, procedure of participants being present in person at regular and special meetings of the Board of Directors, but only as a means to conduct such meetings when it is absolutely impossible or impractical to conduct such meetings without those participating being present in person.¹⁴

(B) Directors' Reimbursable Expenses. In order to encourage owners to participate on the Board of Directors, members of the Board of Directors shall be reimbursed by the Association for certain expenses incurred by them in attending directors' meetings in the following manner: In connection with a director's attendance at any two Board of Directors meetings held during any one (1) calendar year, a director shall be reimbursed the cost of air transportation, at economy fare, to and from a director's place of residence, utilizing the most direct air route reasonably available, together with a per diem allowance for food and lodging of \$200.00 per day. The per diem allowance paid to a director for attendance at any one meeting shall not exceed \$400.00. The directors may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses within Hawaii.¹⁵

Section 8. Notices: Waiver of Notice. Notice of all Board meetings and other notices to the directors shall be given to each director by the Secretary or the person or persons calling the meeting. Before or at any meeting of the Board of Directors, any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all of the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 9. Quorum of Board. At all meetings of the Board of Directors 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 by the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 10. Powers of the Board.

(A) The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts or things set forth in the Act, the Declaration and these By-Laws to be done by a Board of Directors, except as otherwise expressly prohibited. Such powers and duties shall include, but not be limited to, the following:

(1) Enforcement of the provisions of the Declaration, these By-Laws and the House Rules, including the authority to levy fines for repeated and/or serious violations of those provisions. The Board of Directors shall have the authority to establish such fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By-Laws and the House Rules adopted pursuant to these By-Laws; provided such fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such fines against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the said lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on any mortgage of record recorded prior to the recordation of the notice of lien by the Association. The Board shall have the power to impose monetary fines upon Apartment Owners based on violations by the Apartment Owners, their tenants, and any other person using or coming upon the Project or any part thereof for any purpose whatsoever on behalf of the Owners, for violations of the Declaration, these By-Laws, the House Rules adopted by the Board or any statute, ordinance, or applicable requirement of any governmental entity, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate or resident manager, if any, to impose the aforementioned fines in accordance with such schedule. Written notice of the initial schedule of fines and each new schedule of fines, including any amendments thereto, shall be sent to all Owners. Owners who have been fined shall be allowed the opportunity to be heard at the next regular meeting of the Board of Directors if they request to appear.¹⁶

(2) Making contracts and incurring liabilities in connection with the exercise of any of the powers and duties of the Board.

(3) Providing or causing to be provided all goods and services required by the By-Laws or by law, or which the Board, in its discretion, deems necessary for the proper operation and maintenance of the Project, or which are used in common or jointly by the common elements and Apartments, in each case to the extent such goods and services shall not be otherwise provided.

(4) Payment of all common expenses which the Association is required to pay for pursuant to these By-Laws or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project or for the enforcement of

these By-Laws, provided that if any such payment is required because of the particular actions or negligence of the Owners of particular Apartments, the cost thereof shall be specially assessed to the Owners of such Apartments.

(5) Opening of bank accounts on behalf of the Association and designating the signatories thereof.

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

(7) Contracting for insurance on behalf of the Association pursuant to the provisions of Article VII hereof.

(8) Designating, employing and removing personnel necessary for the maintenance, operation, repair and replacement of the common elements.

(9) From time to time to adopt and/or amend House Rules governing the details of the operation and use of the Project; provided, however, that no such House Rules shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for such purpose; 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 House Rules adopted by the Board of Directors.

(10) Within 60 days prior to the beginning of each fiscal year, to cause to be prepared and to approve a budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Horizontal Property Regime 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 By-Laws and Chapter 514A, Hawaii Revised Statutes, and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any. In addition, the Board of Directors shall prepare and approve a schedule of monthly assessments against each Apartment Owner for his proportionate share of such estimated cost of maintaining and operating the property of the Horizontal Property Regime for such ensuing year.¹⁷

(11) To at all times employ a responsible Hawaii corporation or firm to act as Managing Agent (herein called the "Managing Agent") and/or such employees of the Association as the Board shall, in its discretion, deem appropriate¹⁸ to manage and control the Project, subject at all times to direction of the Board, provided, however, that (i) such appointment shall be subject to the terms of the Declaration and these By-Laws, (ii) the term of any such management contract shall be limited to a duration of one (1) year (except with the approval of a majority of Apartment Owners) and (iii) if a corporation or firm controlled by or affiliated with Developer acts as the first Managing Agent, such management contract shall be

subject to termination by either party thereto on not more than sixty (60) days' written notice. The Board may delegate any of its duties, powers, or functions to the Managing Agent and/or employees of the Association, except as provided by law, the Declaration, or the By-Laws. Any such delegation shall be revoked on notice to the Managing Agent and/or employees of the Association by the Board of Directors.¹⁹

(12) To enter any Apartment when necessary in connection with the maintenance or repair or construction for which the Board of Directors is responsible. Such entry shall be made with as little inconvenience to the Owner as is practicable, and except for instances where the entry is necessitated by a breach by the Owner of the Declaration, these By-Laws, the House Rules adopted by the Board or any statute ordinance or applicable requirement of any governmental entity or by the negligence of the Owner, his tenant and/or any other person using or coming upon the project on Owner's behalf, any damage caused thereby shall be repaired by the Board of Directors at the expense of the Association, and such expense is hereby designated a common expense.²⁰

(13) From time to time to lease or rent the apartment set aside for use by the Managing Agent or other employees, with or without charge, and to enforce, modify and make agreements with respect to any lease or tenancy of any portions of the common elements on behalf of the Apartment Owners.

(14) To purchase Apartments of the Project at foreclosure or other judicial sales, on behalf of all Apartment Owners, and thereafter sell, lease, mortgage, vote the common interest appurtenant to and otherwise deal with such Apartments.²¹

(15) To 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 an Apartment under an agreement of sale. The list shall be maintained at the address of the Project, or such other place designated by the Board, and shall be available for inspection by Apartment Owners at all reasonable times as required by Chapter 514A.²²

(16) To provide at each Apartment all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary, either at the expense of such Apartment or as a common expense, as determined by the Board.

(17) To repair any rupture or malfunction of the sewer line covered by the buildings, if any, located on Easement "3" described in Exhibit A of the Declaration; to relocate said sewer line; to construct, operate, use, maintain and repair said building(s) so as not to interfere with the operation and use of the sewer line by the owner thereof; and to obtain general liability insurance naming Amfac, Inc., a Hawaii corporation, and Kaanapali Royal Associates, a Hawaii general partnership, as co-insureds, insuring against any claims made by any person for damages arising out of the rupture or existence of the portion of the sewer line

under said building(s). All such expense is hereby designated a common expense of the Association.

(18) In the discretion of the Board of Directors, if the same shall be necessary for the proper administration of the affairs of the Association, the Board of Directors shall be empowered on behalf of the Association to borrow funds for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations, and improvements thereto, provided that Owners representing 50% of the common interest and Apartments give written consent to such borrowing, having first been notified of the purpose and use of the funds.²³

(19) Subject to any spending limits in the Declaration or herein, the Board may authorize the installation of meters to determine the use by the Apartments of utilities, including electricity, water, gas, fuel, oil, sewage and drainage.²⁴

(20) The violation of any of the House Rules, the breach of any of these By-Laws or the breach of any provision of the Declaration, or violation of the Act by a tenant or occupant other than an Owner, shall give the Board the right in addition to any other rights or remedies provided by law, the Declaration or these By-Laws, to initiate and prosecute to conclusion a legal action to terminate any lease, rental agreement or other occupancy right of such tenant or occupant and/or to obtain a court order directing such tenant or occupant immediately to permanently vacate such Apartment and to refrain from re-entering the Project and in such event, the Association shall have no liability to the Owner for lost rentals or any other consequence of such termination or removal.²⁵

(B) The Board of Directors shall not give away any of the property submitted to the aforesaid Horizontal Property Regime or intended for use in connection therewith except in compliance with Chapter 514A, Hawaii Revised Statutes.²⁶

(C) Further, nothing herein contained shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the Owners, or any of them, or the Association.

Section 11. Conflicts of Interest. No director shall vote or cast a proxy at any Board meeting on any matter in which he or she has a conflict of interest. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that disclosure was made. In the event of a conflict of interest, a majority of disinterested directors shall constitute a quorum. A director has a conflict of interest if he or she has a personal or pecuniary interest in the issue which is different from other Owners.²⁷

Section 12. Managing Agent. The Managing Agent and/or such employees of the Association as the Board shall, in its discretion, deem appropriate shall act under the authority of and as agent for the Association. The Managing Agent and/or employees of the Association

shall be appointed by the Board of Directors in accordance with these By-Laws. The Managing Agent or any officer of the Association is hereby designated as the person to accept service of process on behalf of the Association, the Board of Directors, or two or more Apartment Owners, as the case may be, in any action relating to the common elements or more than one Apartment.

The Managing Agent and/or employees of the Association shall perform such duties as the Board of Directors shall direct. Unless otherwise so directed, the Managing Agent and/or employees of the Association shall among other things:

(A) Collect assessments to discharge common expenses and pay said common expenses in accordance with these By-Laws.

(B) Appoint a project manager, subject to the control of the Managing Agent, if any, who shall assume responsibility of the day-to-day operation and management of the common elements.

(C) Establish and maintain such reserve funds as may be necessary for the proper operation and management of the common elements, with each Owner having an interest in such reserves equal to his common interest.

(D) Keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred, as required by Section 514A-85 of the Act, or any other successor law. All records and vouchers authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board of Directors, and shall be available for examination by the Apartment Owners at convenient hours on weekdays as required by Chapter 514A.²⁸

(E) At the direction of the Board, to bring and prosecute an action, without prejudice to the rights of any Apartment Owner to act for himself, on behalf of two or more Apartment Owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one Apartment.

(F) Provide and maintain in full force and effect at all times a fidelity bond in the minimum amount of \$25,000.00 and as required by Chapter 514A, Hawaii Revised Statutes, naming the Association as obligee. The Board shall also register the Association annually as required by Chapter 514A, Hawaii Revised Statutes.²⁹

Section 13. Notices. 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 hours prior to the meeting or simultaneously with notice to the Board.³⁰

Section 14. Documents. Each Board member will be supplied with a current version of Chapter 514A, Hawaii Revised Statutes, the Declaration and the By-Laws for the Project at Association expense.³¹

Section 15. Open Meetings.

(A) All Board meetings other than executive sessions will be open to all Owners. Owners who are not on the Board may take part in any discussion or deliberation other than executive sessions, unless not allowed to do so by the vote of a majority of a quorum of the Board.

(B) The Board may, upon the vote of a majority of a quorum of the Board, adjourn any meeting and reconvene in a closed executive session to discuss the vote upon: (1) personnel matters; or (2) litigation in which the Association is or may become involved. Before adjourning to executive session, the Board must announce the general nature of all business that will be considered in executive session.³²

ARTICLE IV
OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President and Vice-President shall, but no other officers need be, members of the Board. An Owner shall not simultaneously act as an officer of the Association and an employee of the Managing Agent of the Association. All officers must be members of the Association.³³

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

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors, and his 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 of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

Section 5. Vice-President. The Vice-President shall perform all of the duties and exercise all of the powers and rights of the President provided by these By-Laws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all Apartments, maintain and keep the minute book wherein resolutions shall be recorded, 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 and all other duties assigned by the Board.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer shall, in general, perform all the duties incident to the office of Treasurer and all other duties assigned by the Board.

Section 8. Auditor. The Association shall appoint annually a certified public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any Apartment, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors. The Association shall require an annual audit of the Association financial accounts and no less than one annual unannounced verification of the Association's cash balances.³⁴

Section 9. Execution of Instruments. All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other documents and instruments of the Association shall be signed, executed and delivered by any two of the President, Vice-President, Secretary or Treasurer, provided, however, that the Board of Directors may from time to time by resolution authorize documents or instruments of the Association to be signed, executed and delivered by such other person or persons as may be designated pursuant to general or special resolution of the Board.

Section 10. Liability and Indemnity of the Board and Officers. The directors and officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise, except for their own individual gross negligence or willful misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for reasonable attorneys' fees and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted, or threatened in which he may be involved as a party or otherwise by reason of his being or having been such director or officer, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such director or officer, whether or not he continues to be such director or officer at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which he is liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such director or officer. As to whether or not a director or officer is liable by reason of gross negligence or willful misconduct toward the Association in the performance of his duties as such director or officer, in the

absence of such final adjudication of the existence of such liability, the Board and each director and officer may conclusively rely upon an opinion of legal counsel selected by the Board. The foregoing right to indemnification shall not be exclusive of other rights to which any such director or officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such director and officer.

ARTICLE V REPAIR AND 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 Apartment the omission of which would adversely affect any common element or any other Apartment, and shall be responsible for all loss and damage caused by his failure to do so. In the event the Owner does not perform promptly such repair, maintenance and alteration work, the Board is authorized to contract for the repairs, maintenance and alteration work and to obtain reimbursement from the Owner for all funds expended. The unpaid amount of such funds shall constitute a lien against the Owner's the Owner's interest in his Apartment which may be foreclosed in the same manner as provided in the Condominium Property Act. Every Owner and occupant shall at all times keep his Apartment and any appurtenant areas in a strictly clean and sanitary condition.³⁵

(B) All repairs of internal installations within each Apartment such as water, light, gas, power, sewage, telephone, air conditioning, sanitation, doors, windows, lamps, and all other fixtures and accessories belonging to such Apartment, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Apartment, shall be at the Owner's expense.

(C) Every Owner shall reimburse the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate for any expenditures incurred in repairing or replacing any common elements or furniture, furnishings, and equipment thereof damaged or lost through the fault of such Owner or any person using the Project under him and shall give prompt notice to the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate 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. Each Owner shall be responsible for the care and maintenance of any lanai or balcony adjacent to and for the use of his Apartment, as well as the care and maintenance of any fence or railing which adjoins such lanai or balcony. It is intended that the exterior of the buildings shall present a uniform appearance, and to effect that end the Owners of Apartments hereby agree that the Board may require the painting or repair of each lanai, patio, outside doors, windows, trim, fences, railings and other exterior portions of the buildings 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 his proportionate share of such painting and repair.

(E) All maintenance, repairs and replacements to the common elements, whether located inside or outside of the Apartments, 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 an Apartment Owner, in which case such expense shall be charged to such Apartment Owner.

Section 2. Use.

(A) All of the Apartments and the common elements shall be used only for the purposes set forth in the Declaration.

(B) Except as permitted by the Declaration, no occupant, Owner, agent of Owner, or anyone holding under any Owner of an Apartment shall post any advertisement, bill, poster, or other sign on or about the Project, except as authorized by the Board.

(C) All Owners and occupants shall exercise reasonable and due care to avoid causing or permitting noises that may disturb other Owners or occupants, including without limiting the generality of the foregoing, noises caused by any person residing or visiting in the Apartments.³⁶

(D) There shall be no loitering or recreational use of the stairways, or parking areas of the Project.³⁷

(E) No garments, rugs, or other objects shall be hung from the lanais, patios, balconies, windows, or facades of the Project, nor be dusted or shaken therefrom, nor be cleaned by beating or sweeping on the grounds of the Project.

(F) 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.

(G) No Owner or occupant, except as otherwise permitted by the Declaration, shall install any wiring or other device for electrical or telephone installations, any television or radio antennas, or any machines or other equipment or appurtenances on the exterior of the Project or protruding through the walls, windows, or roofs thereof.

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

(I) No draperies shall be installed the exterior side of which is anything but an unpatterned, off-white. plain piece of cloth.

(J) No Apartment Owner or occupant shall place, store, or maintain in the entryways, stairways, walkways, grounds or other common elements of similar nature, any furniture, packages or objects of any kind or otherwise obstruct transit through the common elements.

(K) Every Owner and occupant shall at all times observe all the provisions of the Declaration, these By-Laws, the House Rules, and all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association.

(L) No livestock, poultry, rabbits, dogs, cats, fish, birds or household pets or animals of any kind shall be kept on any part of the project; provided, however, that notwithstanding any other provision herein, visually impaired persons may keep guide dogs as defined in Chapter 515, Hawaii Revised Statutes, hearing impaired persons may keep signal dogs as defined in Chapter 515, Hawaii Revised Statutes, and physically impaired persons may keep service animals as defined in Chapter 515, Hawaii Revised Statutes, in their Apartments and may use such dogs as reasonably necessary to enjoyment of the Project. No animal shall be kept, bred or used therein for any commercial purposes nor allowed on any common elements except in transit when carried or on a leash. Any animal 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 of Directors or Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate.³⁸

ARTICLE VI COMMON EXPENSES, APARTMENT EXPENSES AND TAXES

Section 1. Common Expenses.

(A) The Owner of each Apartment shall be liable for and pay a share of the common expenses in proportion to his undivided interest in the common elements appurtenant to his Apartment as expressed in the Declaration. Common expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including without limitation all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owners), assessments, insurance, including fire and other casualty and liability insurance, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any fire, accident or nuisance thereon, cost of repair, reinstatement, rebuilding and replacement of the common elements, yard, janitorial, and other similar services, wages, accounting and legal fees, management fees, start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, including limited common elements, and the cost of all utility services, including water, sewer, electricity, gas, garbage disposal, telephone, and any other similar services, unless separately metered or otherwise separately attributable to an Apartment or group of Apartments, in which case the

amounts charged or attributable to each Apartment or group of Apartments, as determined by the Board with the advice of a certified public accountant, shall be payable by the Owner of such Apartment or Owners of Apartments as the case may be. 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. Payments of common expenses shall be made to the Board (through the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate), as agent of the Owners of the Apartments. If there should be any excess assessments on hand at the end of any year, the same shall be used or applied by the Board, in its sole discretion, (i) to pay common expenses in the following year; (ii) as a capital contribution to the Association to be used for future capital improvements and replacements; or (iii) as a capital contribution to be placed in one or more Capital Improvements Reserve Funds established pursuant to paragraph (B) below.

(B) The Board shall establish and maintain one or more Capital Improvements Reserve Funds in accordance with Chapter 514A, Hawaii Revised Statutes, by monthly assessment against and payment by all the Owners in proportion to their respective common interests. The assessments for said Funds shall be deemed conclusively to be savings of the Owners held for their benefit for common expenses of a capital nature. All Capital Improvements Reserve Funds shall be deposited in accounts with safe and responsible depositories and may be in the form of a cash deposit or may be invested or placed in any other depository or investment as authorized by Chapter 514A, Hawaii Revised Statutes. Disbursements from said Fund shall be made only upon authorization of the Board. The proportionate interests of each Owner in said Fund and all interest earned thereon shall not be withdrawn or assigned separately but shall be deemed to be transferred with each Apartment even though not mentioned or described expressly in the instrument of transfer. If the Horizontal Property Regime established hereby is terminated or waived, said Fund remaining shall be distributed to all Owners in proportion to their respective common interests, except for the shares in said Fund attributable to the Owners of Apartments reconstituted as a new Horizontal Property Regime, which shares shall be retained for the reconstituted Horizontal Property Regime.³⁹

(C) The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any Apartment by the Board or its designee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these By-Laws.⁴⁰

Section 2. Allocation and Payment of Common Expenses. For the purpose of fixing and determining the payments to be made as hereinabove provided in this Article VI, the Board shall, on behalf of all Owners and as soon as practicable, determine for each fiscal year, the estimated aggregate amount of the common expenses for such year. 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. As soon as practicable after the end of each fiscal year, the actual aggregate amount of common expenses for said year shall be determined by the Board. Said estimated and actual aggregate amounts

of common expenses for each fiscal year, as determined by the Board, shall be allocated and paid as follows:

(A) The aggregate amount so estimated by the Board, and the actual aggregate amount so determined by the Board, shall be allocated by the Board among the Owners in the proportions among them of the common interests appurtenant to their Apartments.

(B) The amount of the estimated common expenses for each fiscal year, so determined and allocated to each Owner from time to time, shall be payable by the Owner in equal monthly installments in advance on or before the tenth (10th) day of each month. Each Owner shall pay any unpaid balance of the actual amount of such Owner's proportionate share of the common expenses as so determined and allocated by the Board from time to time. Any omission or delay in determining and allocating said expenses for any year shall not relieve the Owners therefrom. In such event, the Owners, pending the determination and allocation thereof, shall pay monthly installments of common expenses in accordance with the last determination and allocation of such expenses for the preceding fiscal year, and shall pay the deficiency, if any, upon the proper determination and allocation of the estimated common expenses within ten (10) days after notice thereof. Each such payment transmitted to the Board, as agent of all Owners, shall then be transmitted by the Board to the third persons entitled to payment of the same from each Owner.

(C) Anything herein to the contrary notwithstanding, the Board shall have the right to require each Owner to pay at such time as the Board shall deem proper as a common expense in a lump sum his proportionate share of such amount as shall be determined by the Board to be necessary for working capital and to pay initial expenses. If an assessment proves inadequate for any reason, the Board may at any time levy a special assessment against all Owners. The Board shall notify the Owners in writing of any such assessment or maintenance fee increase at least thirty days prior to such assessment or increase.⁴¹

(D) The Board will pay or cause to be paid, as agent for and on behalf of the Owners, all common expenses. The Board will keep and maintain or cause to be kept and maintained detailed accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere in the State of Hawaii as determined by the Board, and shall be available for inspection by the Owners at convenient hours of weekdays. Each Owner, as principal, shall be liable for and pay his 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 Managing 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 said payments must be made by the Owner.

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

Section 4. Ground Rent. Unless the Developer shall otherwise direct the Owners in writing, all rental payable under the terms of the Ground Leases shall be paid by the respective Owners to the Board or Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate for transmittal to the Developer. The Board of Directors or the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate shall bill each Apartment Owner on a regular monthly basis (or any other basis permitting prompt payment when due of rental and other charges under their respective Ground Leases) for the amount of rental and other charges due under the Ground Leases, shall collect the amounts billed, and shall pay the same over to the Developer without offset, deduction or other charge at the time, place and in the manner required by such Ground Leases. The Board of Directors or the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate shall keep accurate records of all payments due under the Ground Leases, the amount collected and paid over, and the amounts of any delinquency.

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 any Owner shall fail to pay his assessment when due, then he shall pay an additional assessment in an amount to be determined from time to time by the Board of Directors for each such failure and all delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments, the Board, in addition to any other remedies provided herein or by law, may enforce each such obligation as follows:

(A) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof. Each such action shall be brought in the name of the Association. Any judgment

rendered in any such action shall include a sum for attorneys' 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 members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof after payment by the judgment debtor of all costs incurred by the Association, including attorneys' fees.

All late fees, interest, expenses, costs, and attorneys' fees assessed against an Owner shall be promptly paid on demand to the Association by the Owner. The Board of Directors shall be authorized to adopt a policy whereby payments received from the Owners may be applied toward the indebtedness of such Owners to the Association in such order as the Board of Directors may specify, subject to any notice requirements of the Condominium Property Act, as amended. For example, the Board of Directors may adopt a policy whereby payments from owners shall be applied in the following order: 1) toward the payment of expenses, costs, and attorneys' fees assessed against the delinquent Owner; 2) toward the payment of late fees and interest assessed against the delinquent Owner; and 3) the balance remaining, if any, toward the payment of common expense assessments. Such acceptance and application of payments shall not be construed as a waiver of any rights the Association shall have against such Owner for any and all outstanding amounts due and owing to the Association and the Board of Directors, at its sole discretion, may refuse acceptance of any payment which may be insufficient to satisfy all amounts due and owing to the Association.

Notwithstanding any provision to the contrary contained in these By-Laws, if an Owner shall fail to pay an assessment when due, the Board of Directors may, in its discretion, upon ten (10) days' written notice to the Owner, declare due and owing the entire unpaid balance of such Owner's projected common expense assessments for the fiscal year in which the default occurs. If the Board of Directors subsequently makes adjustments in the projected common expense assessments for the relevant fiscal year causing either an increase or decrease in the monthly installments owed by such owner, then the Owner shall pay the deficiency or receive a credit for the adjusted amount of the installments within thirty (30) days after the date of the transmittal of notice by the Association to such Owner of such increase or decrease.⁴²

(B) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner, with a copy to the mortgagee of such Owner, if such mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may file a notice of lien against the Apartment of such delinquent Owner. Such notice of lien shall state (1) the name of the delinquent Owner or Owners, (2) a description of the Apartment against which the notice of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the notice of lien is made by the Board pursuant to the terms of these By-Laws and the Act, and (5) that a lien is claimed against said described Apartment in an amount equal to the amount of the stated delinquency. Any such notices of lien shall be signed and acknowledged by any two or more members of the Board or the attorney for the Association

and shall be dated as of the date of the execution by the last such Board member to execute such notice of lien. Each default shall constitute a separate basis for a notice of lien.⁴³

(C) For the purposes of this Section 5, a certificate executed and acknowledged or made under penalty of perjury by any two 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 his Apartment (or the fact that all assessments due are paid if such is the case) upon payment of a reasonable fee to be determined by the Board of Directors from time to time. In the event any notices of liens have been recorded, and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment of a reasonable fee to be determined from time to time by the Board of Directors, the Board, acting by any two members, shall execute and acknowledge (in the manner provided above) a release of lien, stating the date of the original notice of lien, the amount claimed, the date, the Land Court document number of the notice of lien, and the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to Owner or his successor upon payment of the fee.⁴⁴

(D) In addition to the Board's right to foreclose on the lien described in Paragraph B above, the Board or its Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate may enforce collection of delinquent assessments by giving the delinquent owner sixty (60) days prior written notice of intent to sever utilities for delinquent assessments. Should the owner fail to cure the delinquency or make arrangements satisfactory to the Board prior to the expiration of the sixty (60) day period, then the utilities to the Apartment on which the assessment remains delinquent may be severed and disconnected in whole or part until the assessments are paid or otherwise provided for to the satisfaction of the Board.⁴⁵

(E) If an apartment owner shall at any time rent or lease his apartment and shall be delinquent 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 (hereinafter in this paragraph referred to as "lessee") of the owner occupying the apartment or from any such owner's rental agent who collects rentals from lessees on behalf of the owner, the rent due or becoming due from such lessee to the owner or the net amounts due the owner under any contract between the owner and a rental agent, up to an amount sufficient to pay all sums due from the owner, including, but not limited to, interest, late charges, penalties, and attorney's fees, if any, and any such payment of such rent to the Board by the agent as between such lessee or the rental agent and the owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee or rental agent 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 lessee or rental agent as aforesaid, the lessee or rental agent shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as

demanding by the Board with the effect as aforesaid; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.⁴⁶

Section 6. Liens.

(A) All unpaid sums assessed by the Association as common expenses chargeable to any Apartment shall constitute a lien on such Apartment prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against the Apartment, and (2) all sums unpaid on any mortgage of record which was recorded prior to the recordation of a notice of lien by the Association, and costs and expenses including attorney's fees provided in such mortgages. Such lien may be foreclosed by action by the Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate or the Board of Directors, acting on behalf of the Association, in like manner as a mortgage of real property. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.⁴⁷

(B) Where the mortgagee of a mortgage of record or other purchaser of an Apartment obtains title to the Apartment as a result of foreclosure of the mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to the Apartment which became due prior to the acquisition of title to such apartment by the acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Apartment Owners, including the acquirer, his successors and assigns.

Section 7. Attorney's Fees and Expenses of Enforcement. All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the Association by the Board in collecting any delinquent assessments against any Owner's Apartment, in foreclosing any lien thereon, or in enforcing any provision of the Declaration, these By-Laws, the House Rules or the Act against any Owner or any occupant of an Apartment shall be promptly paid on demand to the Board by the Apartment Owner; provided that if the claims upon which the Board takes any action are not substantiated, all costs and expenses, including reasonable attorney's fees, incurred by the Apartment Owners as a result of the action of the Board, shall be promptly paid on demand to the Apartment Owner by the Board on behalf of the Association, provided that the Apartment Owner has complied with the provisions of Section 514A-94, Hawaii Revised Statutes.⁴⁸

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 Owners 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, option or right, but such covenant, 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 by the Board of any provision hereof

shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board.

ARTICLE VII INSURANCE AND RESTORATION

Section 1. Fire and Extended Coverage Insurance. The Association shall procure, purchase, and at all times maintain from a reputable and substantial company or companies qualified to do business in Hawaii a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsements and war risk coverage (if reasonably obtainable), such Policy to be in an amount as nearly as practicable to one hundred percent (100%) of the insurance replacement cost, without deduction for depreciation and with an inflation guard endorsement, covering all the Apartments, the common elements, and the buildings and their fixtures and building service equipment (including all exterior and interior walls, floors, and ceilings), in the name of the Association, as insured, as trustee for each of the Owners of the Apartments in proportion to their respective common interests in the common elements. Exterior glass may be insured at the option of the Association. Notwithstanding anything contained herein to the contrary, (i) the Association shall not be required to insure fixtures, improvements, alterations and/or appliances within the respective Apartments; (ii) the Association shall be permitted to secure a policy which includes a deductible in an amount as determined appropriate by the Board of Directors in its sole discretion; and (iii) in the event of a claim, any deductible amount shall be paid by the Association if the damage originates from the common elements and by the Owner if the damage originates from an apartment, regardless of fault. The Policy (unless unobtainable):

(A) shall contain no provision limiting or prohibiting other insurance by the Owner of any Apartment, such right being provided by statute but, if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of 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 Board or, if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the Owner or tenant of any Apartment, or by reason of any act or neglect of the Board or the Owner or tenant of any Apartment;

(C) shall provide that the Policy may not be cancelled or substantially modified (whether or not requested by the Board) except by giving to the Board and to the Owner and/or mortgagee of each Apartment who shall have requested such notice of the insurer in writing addressed to him at the premises, thirty (30) days' written notice of such cancellation or substantial modification;

(D) shall contain a provision waiving any right of subrogation by the insurer to any right of the Association against the Owner or lessee of any Apartment;

(E) shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to Section 5 of this Article VII not to repair, reinstate, rebuild or restore the damage or destruction;

(F) shall provide that any loss shall be adjusted with the Board and the mortgagee of any Apartment directly affected by the loss;

(G) shall contain a standard mortgagee clause which:

(1) shall name the holder of any mortgage affecting any Apartment 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 Board or the Owner or tenant of any Apartment;

(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 Board shall fail to pay any premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the right of any mortgagee against the Owner or lessee of any Apartment or the Board 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 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 may be payable to a corporate trustee selected by the Board who shall be a substantial bank or trust company doing business in Hawaii, herein referred to as the "Insurance Trustee" or "Trustee";

(5) shall provide that any reference to a mortgagee in the Policy shall include all mortgagees on any Apartment, in order of preference;

(H) shall provide for payment of the proceeds to the Insurance Trustee if the Board chooses to utilize a Trustee;

(I) shall contain a provision requiring the insurance carrier, at the inception of the Policy and on each anniversary date thereof, to provide the Board with a written

summary, in layman's terms, of the Policy. The summary shall include the type of Policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The Board shall provide this information to each Apartment Owner; and

(J) shall be accompanied by the certificate of a licensed insurance broker or agent certifying that the Policy complies with and satisfies all of the requirements contained in this Section 1.

(K) In the event that the insurance described herein or the reasonable equivalent thereof cannot be obtained despite the best efforts of the Association to obtain such insurance or if the insurance so described or the reasonable equivalent thereof is not available on a commercially reasonable basis, the Association shall effect and maintain in force such insurance as then is available on a commercially reasonable basis and is consistent with then-prevailing practice among well-advised and prudently administered condominium associations with respect to similar condominium properties in the State of Hawaii.⁴⁹

Section 2. Comprehensive Liability Insurance. The Association shall procure and maintain from a reputable company or companies a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Board, each Apartment Owner, the Developer, and the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition of the Project or activities thereon or on sidewalks under a Comprehensive General Liability form to include, but not be limited to, Water Damage Legal Liability and Fire Damage Legal Liability. Said Policy shall also insure Amfac, Inc., a Hawaii corporation, and the Developer against damage or injury arising out of the rupture or existence of the sewer line under any building(s) on Easement "3" described in Exhibit A of the Declaration. The Policy (a) shall have minimum limits of not less than \$500,000.00 for injury to one person and \$1,000,000.00 for injury to more than one person in any one accident or occurrence and \$300,000.00 for property damage; (b) 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 Board, or by any breach of warranty or condition caused by the Owner of any Apartment, or by any act or neglect of the Owner or tenant of any Apartment; and (c) shall provide that the Policy may not be cancelled (whether or not requested by the Board) except by giving to the Board, to the Owner of each Apartment, to the Developer, to Amfac, Inc., and to any mortgagee who shall have requested such notice of the insurer in writing, thirty (30) days' written notice of such cancellation. In the event that the insurance described herein or the reasonable equivalent thereof cannot be obtained despite the best efforts of the Association to obtain such insurance or if the insurance so described or the reasonable equivalent thereof is not available on a commercially reasonable basis, the Association shall effect and maintain in force such insurance as then is available on a commercially reasonable basis and is consistent with then-prevailing practice among well-advised and prudently administered condominium associations with respect to similar condominium properties in the State of Hawaii.⁵⁰

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

and Urban Development, the Association shall procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973 with the same coverage and terms as required for fire insurance under Section 1 of this Article VII, but only to the extent required by law or otherwise deemed advisable by the Board. The Board may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Apartment Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

Section 4. Miscellaneous Insurance Provisions. All insurance required hereunder will be obtained and maintained by the Association acting through the Board. The Board shall review not less frequently than annually the adequacy of its insurance program. At the request of any mortgagee of any Apartment, the Board shall furnish to such mortgagee a copy of the Policy described in Section 1 of this Article and of any other Policy to which a mortgagee endorsement shall have been attached, and proof satisfactory to such mortgagee that payment of premiums on such policy has been made for the period for which the mortgagee may request such proof. Copies of every policy of insurance procured by the Board shall be available for inspection by any Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Owners of Apartments to insure such Apartments and the contents thereof for their own benefit at their own expense.⁵¹

Section 5. Damage and Destruction.

(A) If the buildings are damaged by fire or other casualty which is insured against and said damage is limited to a single Apartment, the insurance proceeds shall be used by the Board or the Trustee, if any, for payment of the contractor employed by the Board to rebuild or repair such Apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor.

(B) If such damage extends to two or more Apartments or extends to any part of the limited common elements or to the common elements the Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Apartments so damaged, as well as the common elements, in accordance with plans and specifications therefor which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in an Apartment directly affected thereby; provided that in the event said modified plan eliminates any Apartment and such Apartment is not reconstructed the Board or the Insurance Trustee, if any, shall pay the Owner of said Apartment and any mortgagee of record of any interest in said Apartment, as their interests may appear, the portion of said insurance proceeds allocable to said Apartment (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of the insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

(C) The insurance proceeds shall be paid by the Board or the Trustee, if any, 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 cost of repairing and/or rebuilding such common elements, the Board shall levy a special assessment on the Owners of Apartments in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Apartment shall be specially assessed against such Apartment and said special assessment shall be secured by the lien created under Section 5 of Article VI hereof.

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

(1) An architect or engineer (who may be an employee of the Board) shall be in charge of the work.

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

(3) Each request shall be accompanied by waivers of liens satisfactory to the Board or the Trustee, if any, 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 Board or the Trustee, if any, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record.

(4) 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.

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

(6) Such other conditions not inconsistent with the foregoing as the Trustee, if any, may reasonably request.

(E) Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners of the Apartments (or to the holder of any mortgage on an Apartment if there be a mortgage) in proportion to their respective common interests.

(F) To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any Apartment Owner or lessee. To the extent that any loss, damage or destruction to the property of any Apartment Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Apartment Owner, or the Association. All policies of insurance referred to in this paragraph (F) shall contain appropriate waivers of subrogation.⁵²

Section 6. Uninsured Casualty. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such improvements shall be rebuilt, repaired or restored unless seventy-five percent (75%) of the Apartment Owners execute an instrument expressing their decision not to rebuild, repair or restore. Any such restoration of the common elements shall be completed diligently by the Association at its common expense and the Apartment Owners shall be solely responsible for any restoration of their respective Apartments so damaged or destroyed, according to the original plans and elevation thereof or such other plan first approved by the Board and the mortgagees or record of any interest in an Apartment directly affected thereby.

ARTICLE VIII CONDEMNATION

Section 1. Condemnation. In the event of a taking in condemnation or by eminent domain of part or all of the Project, all compensation and damages for or on account of the Land shall be payable to and be the sole property of Developer. All compensation payable for or on account of the taking of any building or improvements on the Land shall be payable to the Board or to a condemnation trustee, who shall be designated by the Board and who shall be a substantial bank or trust company doing business in Hawaii. The Board shall arrange for the repair and restoration of the buildings or improvements so taken in accordance with the design thereof immediately prior to such condemnation, or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagee of record of any interest in an Apartment directly affected thereby. In the event of a partial taking in which any Apartment is eliminated or not restored, the condemnation trustee shall disburse the portion of the proceeds of such award allocable to said Apartment, less the proportionate share of said Apartment in the cost of debris removal, to the Owner of said Apartment and his mortgagee, if any, as their interests may appear. The Board or the condemnation trustee shall disburse the remainder of the proceeds of such award 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

VII above, and in the event such proceeds are insufficient to pay the costs thereof the Board shall levy a special assessment on the Owners of the Apartments in proportion to their common interest. In the event sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, or in the event all the buildings and improvements are so taken or condemned, such excess proceeds or said proceeds, as the case may be, shall be divided among the mortgagees and Owners of the Apartments in accordance with their interests in the common elements.⁵³

ARTICLE IX GENERAL PROVISIONS

Section 1. Abatement and Enjoinment of Violations by Apartment Owners.
The violation of any of the rule or regulation adopted by the Board, or the breach of any of By-Law contained herein or of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these By-Laws, (a) to enter the Apartment in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be borne by the defaulting Apartment Owner.

Section 2. Additions or Alterations by Board. Whenever in the judgment of the Board the common elements shall require additions or alterations costing 6% of the total adopted annual operating budget, the Board may proceed with such additions or alterations and shall assess all Owners for the cost thereof as a common expense. Any additions or alterations costing in excess of 6% of the total adopted annual operating budget may be made by the Board only after obtaining approval of the Owners of holding sixty-five percent (65%) of the interests in the common elements. If such approval shall be obtained, the cost thereof shall constitute part of the common expense.⁵⁴

Section 3. Additions or Alterations by Apartment Owners. No Owner shall make any addition or alteration in or to his Apartment which may affect the common elements or change the exterior appearance of the buildings, without the prior written consent thereto of the Board.⁵⁵

Section 4. Right of Access. An Apartment Owner shall grant a right of access to his Apartment to the Managing Agent and/or any other person authorized by the Board or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Apartment and threatening another Apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his Apartment or elsewhere in the buildings, 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 granted and effective immediately, whether the Owner is present at the time or not.

Section 5. Notices. All notices to the Association or the Board shall be sent by first class mail, postage prepaid, to the Board, c/o the Managing Agent or, if there be no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate from time to time. All notices to any Owner shall be sent by first class mail, postage prepaid, to the building or to such other address as may have been designated by him from time to time, in writing, to the Board. Except as otherwise expressly provided in these By-Laws, all notices to mortgagees of Apartments shall be sent by first class mail, postage prepaid, to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 6. 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 By-Laws, or the intent of any provisions thereof.

Section 7. Amendment. The provisions of these By-Laws, other than this paragraph, may be amended by the vote or written consent of Owners of Apartments to which are appurtenant not less than sixty-five percent (65%) of the common interests, which amendment shall be effective upon filing in the Office of the Assistant Registrar of the Land Court of Hawaii an instrument in writing, signed and acknowledged by such Owners or by the proper officers of the Association; provided, however, that each one of the particulars set forth in Section 514A-82 of the Act shall always be embodied in these By-Laws.⁵⁶

Section 8. Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a non-profit membership corporation formed under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the approval of the Board of Directors. The formation of such corporation shall in no way alter the terms, covenants and conditions herein set forth, and the Articles and By-Laws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.⁵⁷

Section 9. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

Section 10. Waiver. Failure of the Board of Directors to insist upon strict performance or compliance with any of the provisions of the Condominium Property Act, the Declaration, By-Laws, and/or House Rules by an Owner shall not be construed as a waiver or relinquishment of such provisions or a waiver or relinquishment of the right of the Board of Directors to insist upon such performance or compliance at any future date.⁵⁸

IN WITNESS WHEREOF, the parties hereto have executed these presents this 13TH
day of July, 1999.

ASSOCIATION OF APARTMENT OWNERS OF
KAANAPALI ROYAL

By: Barbara J. Petersen

Type Name: Barbara J. Petersen

Type Title: President

By: Pamela Barnes Harris

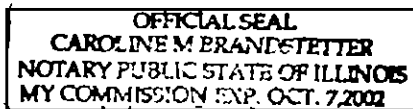
Type Name: Pamela Barnes Harris

Type Title: Secretary Secretary

STATE OF Illinois
COUNTY OF Cook

)
) SS:
)

On this 13th day of July, 1999, before me personally appeared Barbara J. Petersen, to me personally known, who being by me duly sworn, did say that she is the President of the Board of Directors of the Association of Apartment Owners of Kaanapali Royal and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association.



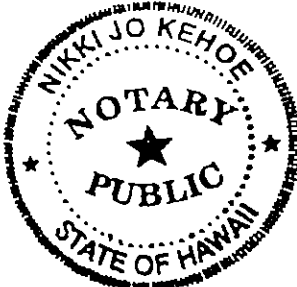
Caroline M. Brandstetter
Notary Public, State of Illinois

My commission expires: Oct. 7, 2002

STATE OF Hawaii
COUNTY OF Maul

)
) SS:
)

On this 26th day of June, 1999, before me personally appeared Pamela Barnes Harris, to me personally known, who being by me duly sworn, did say that she is the Secretary of the Board of Directors of the Association of Apartment Owners of Kaanapali Royal and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association.



Nikki Jo Kehoe
Notary Public, State of Hawaii
Nikki Jo Kehoe

My commission expires: 11-30-2002

SECOND RESTATEMENT OF
BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS
OF KAA NAPALI ROYAL

ENDNOTES

The following By-Law provisions have been restated for the reasons set forth below:

1. All references in the By-Laws to the Horizontal Property Act have been replaced with appropriate references to the successor statute the Condominium Property Act pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
2. Article I, Section 1(G) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
3. Article II, Section 1 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
4. Article II, Section 2(B) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
5. Article II, Section 2(F) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
6. Article II, Section 3 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
7. Article II, Section 4 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
8. Article II, Section 7 of the By-Laws has been restated to conform with Sections 514A-82(b)(4), 83.2 and 83.3, Hawaii Revised Statutes.

9. Article II, Section 9 of the By-Laws has been restated to conform with Sections 514A-83.3, 83.4 and 83.5, Hawaii Revised Statutes, and pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
10. Article III, Section 1 of the By-Laws has been restated pursuant to the instruments filed and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1612711 and Document No. 2571609.
11. Article III, Section 3 of the By-Laws has been restated pursuant to the instruments recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2513914 and Document No. 2571609.
12. Article III, Section 4 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
13. Article III, Section 5 of the By-Laws has been restated to conform with Sections 514A-83.3, 83.4 and 83.5, Hawaii Revised Statutes.
14. A new Section 7(A) has been added to Article III of the By-Laws pursuant to the instrument filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1378941.
15. A new Section 7(B) has been added to Article III of the By-Laws pursuant to the instrument filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1612711 and has been restated to conform with Sections 514A-82(b)(12), Hawaii Revised Statutes.
16. Article III, Section 10(A)(1) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
17. Article III, Section 10(A)10 of the By-Laws has been restated to conform with Section 514A-83.6, Hawaii Revised Statutes.
18. All references in the By-Laws to "Managing Agent" have been replaced with "Managing Agent and/or such employees of the Association as the Board shall in its discretion deem appropriate" pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.

19. Article III, Section 10(A)(11) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
20. Article III, Section 10(A)(12) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
21. Article III, Section 10(A)(14) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
22. Article III, Section 10(A)(15) of the By-Laws has been restated to conform with Section 514A-83.3, 83.4 and 83.5, Hawaii Revised Statutes.
23. A new subsection (18) has been added to Article III, Section 10(A) of the By-Laws pursuant to the instrument filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1378941 and has been restated to conform with Section 514A-82.3, Hawaii Revised Statutes, and pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
24. A new subsection (19) has been added to Article III, Section 10(A) of the By-Laws to conform with Section 514A-15.5(b), Hawaii Revised Statutes, and pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
25. A new subsection (20) has been added to Article III, Section 10(A) of the By-Laws pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
26. Article III, Section 10(B) of the By-Laws has been restated to conform with Sections 514A-13(b), Hawaii Revised Statutes.
27. Article III, Section 11 of the By-Laws has been restated to conform with Section 514A-82(b)(5), Hawaii Revised Statutes, and pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
28. Article III, Section 12(D) of the By-Laws has been restated to conform with Sections 514A-83.3, 83.4 and 83.5, Hawaii Revised Statutes.

29. Article III, Section 12(F) of the By-Laws has been restated to conform with Section 514A-95.1, Hawaii Revised Statutes. Article III, Section 12 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
30. A new Section 13 has been added to Article III of the By-Laws to conform with Section 514A-82(b)(9), Hawaii Revised Statutes.
31. A new Section 14 has been added to Article III of the By-Laws to conform with Section 514A-82(b)(11), Hawaii Revised Statutes.
32. A new Section 15 has been added to Article III of the By-Laws to conform with Section 514A-83.1, Hawaii Revised Statutes.
33. Article IV, Section 1 of the By-Laws has been restated to conform with Sections 514A-82(b)(7), Hawaii Revised Statutes, and pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
34. Article IV, Section 8 of the By-Laws has been restated to conform with Sections 514A-96, Hawaii Revised Statutes.
35. Article V, Section 1(A) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
36. Article V, Section 2(C) of the By-Laws has been restated to conform with the federal and state Fair Housing Acts.
37. Article V, Section 2(D) of the By-Laws has been restated to conform with the federal and state Fair Housing Acts.
38. A new subsection (L) has been added to Article V, Section 2 of the By-Laws pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
39. Article VI, Section 1(B) of the By-Laws has been restated to conform with Sections 514A-83.6, Hawaii Revised Statutes, and pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
40. Article VI, Section 1(C) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.

41. Article VI, Section 2(C) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
42. Article VI, Section 5(A) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
43. Article VI, Section 5(B) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
44. Article VI, Section 5(C) of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
45. A new subsection (D) has been added to Article VI, Section 5 of the By-Laws pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1378941.
46. A new subsection (E) has been added to Article VI, Section 5 of the By-Laws pursuant to the instruments recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document Nos. 2177129 and 2177130.
47. Article VI, Section 6(A) of the By-Laws has been restated to conform with Sections 514A-90, Hawaii Revised Statutes.
48. Article VI, Section 7 of the By-Laws has been restated to conform with Section 514A-94(b), Hawaii Revised Statutes.
49. Article VII, Section 1 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
50. Article VII, Section 2 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
51. Article VII, Section 4 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
52. Article VII, Section 5 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.

53. Article VIII, Section 1 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
54. Article IX, Section 2 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
55. Article IX, Section 3 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
56. Article IX, Section 7 of the By-Laws has been restated to conform with Sections 514A-82(b)(2), Hawaii Revised Statutes.
57. Article IX, Section 8 of the By-Laws has been restated pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.
58. A new Section 10 has been added to Article IX of the By-Laws pursuant to the instrument recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2571609.

TRANSFER CERTIFICATE OF TITLE NOS.

ASSOCIATION OF APARTMENT OWNERS
OF KAA NAPALI ROYAL

Condominium Map No. 364

105 Apts. (89 TCT's)

APT. #	CTC #	APT. #	CTC #	APT. #	CTC #
A-101	504,973	F-101	329,107	L-101	418,695
A-102	385,624	F-102	355,078	L-102	329,111
A-201	465,506	F-201	329,109	L-201	488,284
A-202	343,581	F-202	329,115	L-202	335,306
A-301	329,096	F-301	329,096	L-301	342,565
A-302	329,118	F-302	387,183	L-302	468,766
A-303	329,096	F-303	426,653	L-303	378,859
B-101	502,408	G-101	362,159	M-101	329,145
B-102	499,125	G-102	390,930	M-102	329,130
B-201	329,096	G-201	329,131	M-201	380,264
B-202	385,747	G-202	329,143	M-202	329,099
B-301	396,430	G-301	396,500	M-301	329,149
B-302	530,180	G-302	430,114	M-302	329,140
B-303	484,059	G-303	329,096	M-303	461,972
C-101	518,449	H-101	329,096	N-101	537,018
C-102	344,342	H-102	329,096	N-102	535,075
C-201	329,133	H-201	521,598	N-201	351,787
C-202	329,105	H-202	330,782	N-202	528,307
C-301	329,125	H-301	335,729	N-301	346,755
C-302	335,004	H-302	443,664	N-302	437,372
C-303	469,193	H-303	329,102	N-303	504,230
D-101	329,106	J-101	329,096	P-101	343,219
D-102	530,250	J-102	329,103	P-102	331,218
D-201	436,548	J-201	329,096	P-201	329,139
D-202	436,547	J-202	387,167	P-202	338,442
D-301	329,096	J-301	470,902	P-301	452,932
D-302	329,116	J-302	329,096	P-302	477,139
D-303	431,146	J-303	499,610	P-303	329,096
E-101	522,433	K-101	354,808	Q-101	329,096
E-102	440,269	K-102	329,096	Q-102	378,921
E-201	329,144	K-201	520,988	Q-201	495,805
E-202	436,549	K-202	329,148	Q-202	329,122
E-301	359,899	K-301	329,096	Q-301	329,120
E-302	490,103	K-302	329,112	Q-302	329,096
E-303	385,739	K-303	490,143	Q-303	493,837