



L-385  
 STATE OF HAWAII  
 OFFICE OF ASSISTANT REGISTRAR  
 RECORDED  
 JUL 08, 2004 08:01 AM  
 Doc No(s) 3133823  
 on Cert(s) 704,761



56 2/2 24

/s/ CARL T. WATANABE  
 ASSISTANT REGISTRAR

Return by Mail ( ) Pickup (X) To:  
 ATTENTION: MARGUERITE DAYSOG  
 GENTRY HOMES, LTD.  
 560 N. Nimitz Highway, Suite 210  
 Honolulu, Hawaii 96817

ITC NO. 222152

TOTAL NO. OF DOCUMENT PAGES: 56 1A

Document Title: BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF LAS BRISAS, PHASE 15

Developer: GENTRY HOMES, LTD.

Property Description: LOT 14736, MAP 1148  
 LAND COURT APPLICATION NO. 1069  
 CT NO. 704,761

TMK No. (1) 9-1-010:112

**BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
OF LAS BRISAS, PHASE 15**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE I INTRODUCTORY PROVISIONS .....</b>	<b>1</b>
Section 1 Definitions .....	1
Section 2 Conflicts .....	2
Section 3 Application .....	2
<b>ARTICLE II ASSOCIATION OF APARTMENT OWNERS .....</b>	<b>3</b>
Section 1 Membership .....	3
Section 2 Meetings of the Association .....	3
Section 3 Notice of Meetings and Other Notices .....	4
Section 4 Powers of the Association.....	4
Section 5 Other Powers .....	5
Section 6 Voting .....	5
Section 7 Quorum .....	5
Section 8 Majority Vote .....	6
Section 9 Proxies and Pledges .....	6
Section 10 Conduct of Meetings and Order of Business .....	8
Section 11 List of Members .....	8
Section 12 Minutes of Meetings .....	8
Section 13 Committees .....	8
Section 14 Control of Association .....	9
Section 15 Selling or Renting Apartments .....	9
Section 16 Registration with Real Estate Commission .....	9
<b>ARTICLE III BOARD OF DIRECTORS .....</b>	<b>9</b>
Section 1 Number and Qualification.....	9
Section 2 Election and Term of Office .....	9
Section 3 Election of Directors .....	10
Section 4 Removal of Directors .....	10
Section 5 Vacancies .....	10
Section 6 Meetings of the Board of Directors .....	10
Section 7 Powers and Duties .....	11
Section 8 Budgets and Reserves .....	16
Section 9 Employment of Managing Agent .....	18
Section 10 Examination of Minutes .....	20

**TABLE OF CONTENTS (continued)**

	<u>Page</u>
Section 11 Waiver of Notice .....	20
Section 12 Rules of Order .....	20
Section 13 Quorum of Board .....	20
Section 14 Fidelity Bonds .....	20
Section 15 Compensation .....	21
Section 16 No Proxy Vote .....	21
Section 17 Liability and Indemnity of the Board of Directors .....	21
Section 18 Conflict of Interest .....	21
Section 19 Documents Provided to Board .....	21
<b>ARTICLE IV OFFICERS .....</b>	<b>22</b>
Section 1 Designation .....	22
Section 2 Election of Officers .....	22
Section 3 Removal of Officers .....	22
Section 4 President .....	22
Section 5 Vice President .....	22
Section 6 Secretary .....	22
Section 7 Treasurer .....	23
Section 8 Agreements, Contracts, Deeds, Checks and Other Instruments .....	23
Section 9 Compensation of Officers .....	23
<b>ARTICLE V USE, MAINTENANCE AND ALTERATION OF PROJECT .....</b>	<b>23</b>
Section 1 Maintenance and Repair of Apartments .....	23
Section 2 Maintenance and Repair of Common Elements .....	23
Section 3 Use of Property .....	24
Section 4 Alteration of Property .....	25
Section 5 Alterations Over \$10,000 .....	26
Section 6 Certain Work Prohibited .....	26
Section 7 State and Federal Fair Housing Act .....	26
Section 8 Insurance - Casualty and Liability .....	27
<b>ARTICLE VI COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING .....</b>	<b>30</b>
Section 1 Common Expenses .....	30
Section 2 Payment as Agent .....	31
Section 3 Taxes and Assessments .....	31
Section 4 Default in Payment of Assessments .....	32

**TABLE OF CONTENTS (continued)**

	<u>Page</u>
Section 5 Foreclosure .....	36
Section 6 Waiver.....	37
Section 7 Books of Account; Audit .....	37
Section 8 Association of Apartment Owners Funds; Handling and Disbursement ...	38
Section 9 Examination of Records .....	39
Section 10 Disposal of Records .....	39
Section 11 No Alteration of Documents .....	40
<b>ARTICLE VII MORTGAGEES .....</b>	<b>40</b>
Section 1 Notice of Unpaid Common Expenses.....	40
Section 2 Notice of Default .....	40
Section 3 Additional Notices to Mortgagees .....	40
Section 4 Mortgagee Approval .....	41
Section 5 Examination of Books .....	41
Section 6 Annual Reports and Other Financial Data .....	41
Section 7 Mortgagee Protection .....	42
Section 8 Notice to Board of Directors .....	42
<b>ARTICLE VIII LAND TRUST .....</b>	<b>42</b>
Section 1 Operation and Control .....	42
Section 2 Common Expenses .....	42
<b>ARTICLE IX LITIGATION .....</b>	<b>42</b>
<b>ARTICLE X GENERAL PROVISIONS .....</b>	<b>43</b>
Section 1 Rules and Regulations .....	43
Section 2 Restrictions on Pets .....	43
Section 3 Abatement and Enjoinment of Violations by Apartment Owners .....	44
Section 4 Penalties for Violation .....	44
Section 5 Arbitration of Grievances and Disputes .....	44
Section 6 Expenses of Enforcement .....	45
Section 7 Right of Access .....	46
Section 8 Owners May Incorporate .....	46
Section 9 Notices .....	46
Section 10 Inspection of Condominium Property Regime Documents .....	46
Section 11 Captions .....	46
Section 12 Gender.....	47

**TABLE OF CONTENTS (continued)**

	<u>Page</u>
Section 13 Waiver.....	47
Section 14 Interpretation .....	47
Section 15 Compliance with Hawaii Law .....	47
Section 16 Amendment .....	47
Section 17 Restatement of Declaration and By-Laws.....	48
Section 18 Severability .....	48

**BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF  
LAS BRISAS, PHASE 15**

1. GENTRY HOMES, LTD., a Hawaii corporation, (hereafter “Developer”), is the owner in fee simple of that certain land described in the attached Exhibit “A” and also described in the Declaration of Condominium Property Regime (“Declaration”) referred to below.

2. Developer has undertaken to improve said land by constructing residential buildings and other improvements upon it in accordance with plans recorded as Condominium Map No. \_\_\_\_\_.

3. Developer has established that certain condominium project known as LAS BRISAS, PHASE 15 by recording said Declaration.

NOW, THEREFORE, the Developer does hereby declare that the following By-Laws shall constitute covenants running with the land and the apartments constructed upon it and shall be binding upon all parties having or acquiring any right, title or interest in the land or the apartments.

**ARTICLE I  
INTRODUCTORY PROVISIONS**

**SECTION 1. Definitions.** The terms used in these By-Laws shall have the meanings given to them in Chapter 514A, Hawaii Revised Statutes, as amended, except as otherwise expressly provided. Unless clearly repugnant to the context, the following terms, whenever used in these By-Laws, shall have the following meanings:

(a) “Common elements” means those elements designated in the Declaration as common elements, including limited common elements.

(b) “Property” or “Project” shall mean LAS BRISAS, PHASE 15 condominium project, including the land, the buildings and all other improvements and structures (including the apartments and the common elements), all easements, rights and appurtenances belonging to the Project, and all other property affixed to the land and intended for use in connection with it.

(c) “Rules and Regulations” refers to the Rules and Regulations for the conduct of occupants of the apartments in LAS BRISAS, PHASE 15 condominium project adopted by the Board of Directors as hereinafter provided.

(d) “Owner” or “Apartment Owner” means a person owning severally or as a co-tenant an apartment and its appurtenant common interest or a person who has an interest in an apartment by virtue of the following:

(i) A duly recorded lease for an apartment which includes the exercise of voting rights;

(ii) A duly recorded agreement of sale which includes the right to vote, provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the apartment" as that term is used in the Condominium Property Act; and

(iii) An apartment and its appurtenant common interest is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any such trust except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an Apartment Owner when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the owner and shall have all of the rights and obligations of ownership.

(e) "Owners", "Apartment Owners", "Association of Owners", "Association" and similar terms mean and refer to (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners of LAS BRISAS, PHASE 15. "Apartment" has the same meaning and definition as contained in the Act, and includes each of the apartments of the Project. "Board" means the Board of Directors of the Association of Apartment Owners.

(f) "Majority of Apartment Owners" shall mean those Apartment Owners holding more than fifty percent (50%) of the total appurtenant common interest (as established by the Declaration) present at any meeting of the Apartment Owners; and any specified percent of the Owners means Owners holding the specified percent of the total appurtenant common interest.

(g) The term "duly recorded" shall mean recorded with the Office of the Assistant Registrar of the Land Court of the State of Hawaii or in the Bureau of Conveyances of the State of Hawaii, as the case may be.

(h) The "Act" means the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes (1978), as amended.

**SECTION 2. 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 Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

**SECTION 3. Application.** All present and future Owners, lessees, mortgagees, purchasers under agreements of sale, tenants and occupants of apartments and their guests, patrons, customers and employees and other business invitees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration and the

Rules and Regulations. The acceptance of an apartment deed or other conveyance, the rental of any of the apartments, or the mere act of occupying an apartment shall constitute an agreement that these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

## **ARTICLE II ASSOCIATION OF OWNERS**

**SECTION 1. Membership.** All Apartment Owners of the Project shall constitute the Association of Apartment Owners. The Owner, upon acquiring title to any apartment, shall automatically become a member of the Association and shall remain a member until his ownership of such apartment ceases. Notwithstanding anything to the contrary provided herein, the Developer shall be entitled to vote and/or act on all matters as the Association and the Board of Directors until the first conveyance of an apartment of the Project has taken place. Thereafter, the Developer, as the owner of any unsold apartments, shall be entitled to vote the interest of each such apartment.

### **SECTION 2. Meetings of the Association.**

**(a) First Meeting.** The Developer shall call, or instruct and authorize the Managing Agent to call, the first annual meeting of the Apartment Owners, and give Apartment Owners thirty (30) days' prior written notice of the date. The meeting shall be held not later than one hundred eighty (180) days after recording of the first apartment conveyance, provided forty percent (40%) or more of the Project has been sold and recorded. The term "sold and recorded" means the sale of an apartment and the recording of the apartment deed. If forty percent (40%) of the Project is not sold and recorded at the end of one (1) year, an annual meeting shall be called upon the written request of ten percent (10%) of the Apartment Owners. At such meeting, the Apartment Owners shall elect a Board. Prior to that time, the Association shall consist solely of the Developer, which shall have authority to act in all matters as the Association and as its Board.

**(b) Annual Meetings.** The annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association or at such other time as the Board shall from time to time determine. At such meetings, the Board shall be elected by ballot of the Apartment Owners according to the requirements of Article III, Section 1 [Number and Qualification]. The Apartment Owners may transact such other business at such meetings as may properly come before them.

**(c) Place of Meetings.** All meetings of the Association shall be held at the address of the Property or elsewhere within the State of Hawaii as determined by the Board.

**(d) Special Meetings.** Special meetings of the Association may be held at any time upon the call of the President or any three (3) Directors or upon the written request of not less than twenty-five percent (25%) of the Owners, and the business considered shall be limited to that stated in the notice of the special meeting, unless eighty percent (80%) of the Owners present, in person or by proxy, decide otherwise. Upon receipt of such call or petition, the



secretary shall send written notice of the meeting to all Apartment Owners and the meeting shall be held at the time specified in such call or petition, or if the time is unspecified then within thirty (30) days of the receipt of the call or petition at any reasonable time. The meeting shall be held at the Project, unless some other suitable place within the State of Hawaii is designated by the Board. If a merger of this Project with another phase has occurred as provided for in the Declaration, a special meeting of all the Apartment Owners in all phases shall be called within sixty (60) days of the merger for the purposes of electing a new Board of Directors to govern the entire project.

(e) **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum has not attended, a majority of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the Apartment Owners present, whether or not a quorum is still 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 3. Notice of Meetings and Other Notices.** Written notice of all meetings, annual or special, shall be given by personally delivering or by mailing such notice, postage prepaid, at least fourteen (14) days but not more than thirty (30) days before the date assigned for the meeting, to the Owners of the apartments at their addresses at the Project or at the addresses given to the Board for the purpose of service of such notices. All notices shall state the place, date and hour of the meeting; whether it is annual or special; the items on the agenda for such meeting and the business proposed to be transacted at the meeting and shall contain a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these By-Laws. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage or deed of trust from any Owner of an apartment may obtain a copy of any and all notices permitted or required to be given to the Owner whose interest is subject to such mortgage or deed of trust. Upon notice being given according to these provisions, the failure of any Owner or mortgagee of an apartment to receive actual notice of the meeting shall not in any way invalidate the meeting or proceedings at the meeting. The presence of any Apartment Owner or mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he objects at the opening of the meeting to the holding of such meeting because of the failure to give notice in accordance with these provisions. Each Owner shall keep the Board informed of any changes in address.

**SECTION 4. Powers of the Association.** The following powers shall be vested in the Association, and shall be exercised according to the provisions of these By-Laws:

- (a) The election of a Board of Directors.

- (b) The administration and operation of the Property, payment of common expenses and determination and collection of common expenses.
- (c) The establishment and collection from the Apartment Owners of their shares of the common expenses.
- (d) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (e) The adoption of rules and regulations governing the details of operation and use of the common elements.
- (f) The establishment of such restrictions and requirements consistent with the Declaration or the Act regarding the use and maintenance of the apartments and the use of the common elements.
- (g) The amendment of these By-Laws according to the Declaration and subject to Section 514A-82b(2) of the Act, as amended.
- (h) The creation and appointment of committees.
- (i) The making of arrangements for the management of the Project pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the Managing Agent.

Nothing in this Section 4 shall prohibit the delegation by the Association of any of its powers according to these By-Laws, as amended.

**SECTION 5. Other Powers.** In addition to the powers enumerated in Article II, Section 4 [Powers of the Association] above and in addition to the powers granted by any other provision in these By-Laws, the Association may exercise any and all powers consistent with any law or the Declaration, which are reasonably incident to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration, or are reasonably incident to the exercise of its powers as set forth in the Declaration or these By-Laws.

**SECTION 6. Voting.** Voting shall be on a percent basis and the percent of the vote to which each Owner is entitled is as set forth in the Declaration. Votes allocated to any area which constitutes a common element under Section 514A-13(h) of the Act shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. An administrator, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote for any apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and, in case of protest, each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

**SECTION 7. Quorum.** Except as otherwise provided in these By-Laws, the presence in person or by proxy of Apartment Owners having at least fifty percent (50%) of the total authorized votes of all apartments shall constitute a quorum at all meetings of the Association.

**SECTION 8. Majority Vote.** The vote of a majority of Apartment Owners at a meeting at which a quorum is present shall be binding upon all Apartment Owners for all purposes unless the Declaration, these By-Laws or the Act requires a higher percent.

**SECTION 9. Proxies and Pledges.**

(a) The authority given by any Apartment Owner to another person to represent him at meetings of the Association shall be in writing and shall state the name of the Association, the date of the meeting, the printed name of the person giving the proxy, the number of the apartment or apartments for which the proxy is given, the name of the person or entity to whom the proxy is given and the date the proxy is given. The proxy shall also contain check boxes where the Apartment Owner shall indicate whether the proxy is given:

- (i) for quorum purposes only;
- (ii) to the individual whose name is printed on a line next to the check box;
- (iii) to the Board of Directors as a whole and that the vote may be made on the basis of the consensus of the majority of the Board of Directors;
- (iv) to the members of the Board of Directors present at the meeting and that the vote shall be distributed equally amongst such members.

A proxy form which does not have a check box marked, shall be considered a proxy for quorum purposes only. Proxies may also be limited as the Apartment Owner desires and indicates. The proxy shall be signed by such Owner and recorded with the Secretary or Managing Agent no later than 4:30 p.m. on the second business day prior to any such meeting and shall be valid unless revoked by a written instrument recorded with the Secretary or by the death or incapacity of such Owner or by the attendance of such Owner at the meeting. Any proxy given on a proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only. No proxy shall be irrevocable unless coupled with a financial interest in the unit.

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

- (i) The Board may require the Apartment Owner to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and

- (ii) The Apartment Owner pay for administrative costs attributable to the Apartment Owner's request if such request requires in excess of eight (8) hours of the Association's or Managing Agent's time to fulfill the request.

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

(c) Voting rights transferred or pledged by mortgage, deed of trust, or agreement of sale of any interest in an apartment, a true copy of which is recorded 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 recorded with the Board. Any one of two or more persons owning any apartment may give or revoke a proxy for the entire vote of such apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. Any proxy given by a co-tenant or co-tenants for only a share of an apartment's vote in proportion to the share of ownership of such co-tenant or co-tenants shall be revocable only by such co-tenant or co-tenants. Any proxy given by a co-tenant or co-tenants for only a share of an apartment's vote may be exercised to cast the entire vote for such apartment in the absence of protest by another co-tenant or the holder of a proxy from another co-tenant. In case of such protest, each co-tenant or holder of a proxy from a co-tenant, as the case may be, shall be entitled to only a share of such apartment's vote in proportion to the respective shares of ownership in such apartment.

(d) Notwithstanding anything in this Section or these By-Laws, no officer of the Board shall use Association funds to solicit proxies, nor shall any Managing Agent solicit, for use by such Managing Agent, any proxies from any Apartment Owner, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of a Board of Directors who uses Association funds to solicit proxies, shall cast any proxy votes for the election or reelection of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Board directors and the Board shall have first posted notice of its intent to solicit such proxies in prominent locations within the Project at least fourteen (14) days prior to its solicitation. If within seven (7) days of posting notice the Board receives a request from any Apartment Owner to use Association funds to solicit proxies, accompanied by a statement not in excess of 100 words indicating qualifications to serve on the Board and/or reasons for soliciting proxies, the Board shall mail to all Apartment Owners a proxy form which either (A) contains the names of Apartment Owners who have requested the use of Association funds for soliciting proxies and their statements; or (B) contains no names, but is accompanied by a list of all Apartment Owners who have requested the use of Association funds for soliciting proxies and their statements. If the Board fails to mail a proper proxy form to all Apartment Owners after having received a timely request to use Association funds to solicit proxies, no proxy received by a Board member shall be valid to authorize such Board member to vote for the election or reelection of Directors notwithstanding the fact that the proxy contains specific authorization to do so.

**SECTION 10. Conduct of Meetings and Order of Business.** All meetings of the Association shall be conducted according to the most current edition of Robert's Rules of Order. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Report of Board;
- (f) Reports of committees;
- (g) Election of inspectors of election (when required);
- (h) Election of members of the Board (when required);
- (i) Unfinished business; and
- (j) New business.

**SECTION 11. List of Members.** The Managing Agent, as referred to in Article II, Section 4 [Powers of the Association], or the Board, shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements of sale, if any, covering any apartment, and lessees, if any, under a lease providing that the lessee shall be deemed to be the Owner of the apartment. The list shall be maintained at a place designated by the Board and a copy shall be made available, at cost, to any Owner who furnishes to the Managing Agent, or the Board a duly executed and acknowledged affidavit stating that the list (a) will be used by such Owner personally and only for the purpose of soliciting proxies or providing information to other Owners with respect to Association matters, and (b) will not be used by such Owner or furnished to anyone else for any other purpose. Every Apartment Owner shall pay to the Association or the Managing Agent on demand a service charge, in a reasonable amount fixed from time to time by the Board of Directors, for the registration on the records of the Association of any change of ownership of an apartment. Initially, the service charge shall be \$15.00.

**SECTION 12. Minutes of Meetings.** The minutes of the meetings of the Association of Apartment Owners for the current and prior year shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board. Copies of Association meeting minutes shall be provided to any Apartment Owner upon the Owner's request, provided that the Apartment Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

**SECTION 13. Committees.** The Association may create and appoint such general or special committees as the affairs of the Association may require and may define the authority and duties of such committees.

**SECTION 14. Control of Association.** Notwithstanding anything herein provided to the contrary, the Developer shall relinquish all special rights, expressed or implied, through which the Developer may directly or indirectly control, direct, modify or veto any action of the Association, the Board or a majority of Apartment Owners. Control of the Association shall pass to the owners of apartments within the Project other than Developer not later than the earlier of the following:

(a) One hundred twenty (120) days after the date by which seventy-five percent (75%) of the apartments have been conveyed to apartment purchasers; or

(b) Four (4) years after the first conveyance of an apartment to an apartment purchaser.

**SECTION 15. Selling or Renting Apartments.** The Association employees shall not be in the business of selling or renting apartments in the Project except Association-owned units or personally owned units, if any, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the Apartment Owners.

**SECTION 16. Registration with Real Estate Commission.** The Association shall be registered annually with the Real Estate Commission. Registration shall include proof of fidelity bond coverage for all persons handling Association funds; names and titles of persons handling such funds; name of Managing Agent; post office address of the Project; and name, address and phone number of the designated contact person for the Association.

### **ARTICLE III BOARD OF DIRECTORS**

**SECTION 1. Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of at least five (5) persons. Upon merger of this Project pursuant to Section 15 of the Declaration, the number of directors will increase to nine (9). However, the number of directors may be reduced if at least sixty-five percent (65%) of the Apartment Owners vote by mail or at a special or annual meeting to amend these By-Laws to reduce the minimum number of directors. All directors shall be Owners, Co-Owners or vendees under an agreement of sale or an officer or agent of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the Owners of an apartment owned by their partnership for the purposes of this Section. No Managing Agent of the Property shall serve on the Board, and there shall not be more than one representative on the Board from any one apartment.

**SECTION 2. Election and Term of Office.** At the first annual meeting of the Association, two (2) Directors shall be elected for a term of one (1) year, two (2) Directors shall be elected for a term of two (2) years, and one (1) Director shall be elected for a term of three (3) years. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three (3) years, subject to removal as provided below. In case of delay in the election of a successor, each member of the Board shall continue to exercise the powers and duties of the office until his successor is elected by the Apartment Owners and shall qualify to

serve as a Director. In the event of a merger of this Project with another phase of the development as provided in the Declaration, there shall be a special election of Directors for the Association for the project as then constituted upon such merger.

**SECTION 3. Election of Directors.** Election of Directors shall be by cumulative voting, and each apartment may cast for any one or more nominees to the Board a vote equivalent to the common interest for the apartment multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his vote and give all to one nominee or to distribute his vote in such manner as he shall determine among any or all of the nominees. The nominees receiving the highest number of votes as calculated in the manner described above, up to the total number of Directors to be elected, shall be elected.

**SECTION 4. Removal of Directors.** At any regular or special meeting of Apartment Owners, any one or more of the members of the Board may be removed with or without cause by a majority of the Apartment Owners and a successor shall then be elected for the remainder of the term to fill the vacancy. The call for a special meeting to remove a Director and elect a successor shall be by the President or by a petition to the Secretary or the Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners. If the Secretary or Managing Agent does not send out the notices for such special meeting within fourteen (14) days after the receipt of a petition, the petitioners shall send out the notices for the special meeting. Any member of the Board whose removal is proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting. In addition, if any Director fails to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a vote of a majority of the other members may remove him and select a replacement to serve the remainder of his term.

**SECTION 5. Vacancies.** Vacancies in the Board caused by any reason other than by the natural expiration of the term of any director, or the removal of a director by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining Board members at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a Board member until a successor is elected at the next annual meeting of the Apartment Owners. Any successor so elected shall be a member only for the unexpired remainder of the term of the member replaced. Death, incapacity or resignation of any Director, or his ceasing to be or be deemed an Owner of an apartment, shall cause his office to become vacant.

**SECTION 6. Meetings of the Board of Directors.**

(a) **Annual Meetings.** The first meeting of the new Board following the annual meeting of the Association shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to the newly elected members of the Board in order to legally constitute such meeting, provided a majority of the whole Board shall be present at the meeting. At each meeting, the Board shall elect the officers of the Association for the ensuing year. Notice of the annual Board meeting shall be given in a

reasonable manner at least fourteen (14) days, if practicable, prior to such meeting and may be included with any notice of the annual meeting of the Association.

**(b) 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 members of the Board, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, e-mail or facsimile at least three (3) business days prior to the day named for such meeting.

**(c) Special Meetings.** Special meetings of the Board may be called by the President on three (3) business days' notice to each member of the Board given personally or by mail, telephone or telegraph, which shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in a like manner and on like notice by the written request of at least two (2) members of the Board. Notwithstanding anything in these By-Laws to the contrary, the Developer, when acting as the Board as provided in Article II, Section 2 [Meetings of the Association], may act without a formal meeting and without call or notice.

**(d) Meetings Generally.** Whenever practicable, notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting, or simultaneously with notice to the Board. All meetings of the Board other than executive sessions, shall be open to all Owners, and Owners who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. With the approval of a majority of a quorum of its members, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

**(e) Telephone Meetings.** Subject to the notice requirements contained in these By-Laws, members of the Board of Directors or any committee designated thereby may participate in a meeting of such Board or committee 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 a meeting.

**SECTION 7. Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except such as by law, the Declaration or these By-Laws may not be delegated to the Board by the Apartment Owners. Each Director shall owe the Association a fiduciary duty in the performance of his responsibilities. Each Board member shall familiarize himself with the condominium documentation for the Project. The powers and duties of the Board shall include, but shall not be limited to, the following:



**(a)** Enforcement of the provisions of the Declaration, these By-Laws, the Rules and Regulations, the Act and regulations promulgated by the Real Estate Commission, including establishing rules, penalties and fines to be used in enforcement of the Declaration, By-Laws and the Rules and Regulations;

**(b)** Operation, care, upkeep, maintenance and repair of the common elements and any additions or alterations thereto;

**(c)** Preparation of an annual budget of the common expenses required for the affairs of the Association (including without limitation, the operation and maintenance of the Property) and determination of the amounts of monthly and special assessments;

**(d)** Maintenance of custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

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

**(f)** Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;

**(g)** Conducting (or directing another responsible party to conduct) background checks on applicants applying for employment as security guards or managers or for a position which would allow such employees access to the keys of or entry into the Apartments or access to Association funds, provided that applicants sign an authorization to conduct such background checks;

**(h)** Adoption and amendment of the Rules and Regulations covering the details of the operation and use of the Property;

**(i)** Opening bank accounts on behalf of the Association of Apartment Owners and designating the signatories required for the accounts;

**(j)** Subject to any approval requirements and spending limits contained herein or in the Declaration, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project. A majority of the Owners must give written consent to such borrowing, having been first notified of the purpose and use of the funds;

**(k)** Obtaining insurance for the Property, including the apartments;

**(l)** Making additions and improvements to or alterations of the Property and repairs to and restoration of the Property according to the other provisions of these By-Laws after

damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

**(m)** Procuring legal and accounting services necessary or proper for the operation of the Property or the interpretation, enforcement or implementation of these By-Laws, the Act and any other material documents affecting the Property;

**(n)** Purchasing any other materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other common expenses which the Board is required to secure, make or pay pursuant to these By-Laws or the Act or which in its opinion shall be necessary or proper for the operation of the buildings as apartment buildings or the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are 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;

**(o)** Reviewing all requests made by homeowners for alterations or additions to apartments for aesthetic and structural impact and approving or disapproving such requests.

**(p)** Enter into contracts for goods or services provided that any contract having a term of more than one (1) year shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than sixty (60) days written notice without cause or payment of a termination fee, except that the contract providing for management services, should such contract be for a period in excess of one (1) year, shall provide that either party thereto may terminate the contract at any time without cause or payment of a termination fee by giving the other party at least thirty (30) days prior written notice of its intention to so terminate the contract;

**(q)** Purchase, maintain and replace any equipment and provision of all water and utility services required for the common elements;

**(r)** Conduct regular, periodic inspections of all common areas and limited common elements to determine if any owner is affecting the structural (as determined by an independent consultant retained by the Board) or aesthetic integrity of the Project. The Board has the authority to require owners who are affecting the Project in such a manner to cease such action or to take any remedial action or enforcement measures as authorized by these By-Laws;

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

**(t)** Enter into any apartment and any limited common element from time to time during reasonable hours as may be necessary for making emergency repairs to prevent damage to the common elements or to another apartment or apartments. Access to each apartment for normal maintenance must be at reasonable times and upon prior consent of the Apartment Owner;

**(u)** Maintenance and repair of any apartment if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements and limited common elements or any other portion of the buildings, and the Owner or Owners of said apartment fail or refuse to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said Owner or Owners. The Board shall levy a special assessment against such apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

**(v)** Purchasing or leasing or otherwise acquiring any apartment in the name of the Board of Directors or its nominee, corporate or otherwise, on behalf of all Apartment Owners. The Board may not purchase an apartment and hold the same, or lease an apartment for a period in excess of one (1) year, without obtaining the approval of at least fifty percent (50%) of the Apartment Owners;

**(w)** Purchasing apartments at foreclosure or other judicial sales in the name of the Board or its nominee, corporate or otherwise, on behalf of all Apartment Owners;

**(x)** Delegation of its powers to committees, agents, officers, representatives and employees;

**(y)** Giving to all persons having any interest in any apartment according to the Association's record of ownership or book of mortgages on apartments, notice of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;

**(z)** Giving to all institutional holders of first mortgages on apartments, as identified in the Association's record of ownership or book of mortgages on apartments, written notice of any loss to or taking of the common elements of the Property if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00) in value. In the event of a merger of phases pursuant to Section 16 [Merger of Phases] of the Declaration, the TEN THOUSAND DOLLARS (\$10,000.00) amount shall be per merged phase;

**(aa)** Giving to the institutional holder of any first mortgage on any apartment, as identified in the Association's record of ownership or book of mortgages on apartments, written notice of the failure of the Apartment Owner and/or lessee of the apartment to comply fully (within thirty (30) days after written demand by the Association) with any provision of the Declaration, these By-Laws, the Rules and Regulations or any other agreements, decisions and determinations of the Association lawfully made from time to time; and giving to such mortgagee written notice of any loss to such apartment which exceeds ONE THOUSAND DOLLARS (\$1,000.00);

**(bb)** Appointing a Managing Agent and delegating to them such of its powers as it deems necessary or appropriate pursuant to the Declaration or these By-Laws;

**(cc)** Appointing committees consisting of members and directors and delegating to them such of its powers as is necessary and appropriate to effectively manage the Association, subject, however, to the oversight by the Board.

**(dd)** Enforcement of such penalties and fines as established hereunder for violations of the provisions of the Declaration, these By-Laws, the Rules and Regulations, the Act or the rules of the Real Estate Commission including penalties and fines for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder, provided such penalties and fines are not inconsistent with the law or these By-Laws. The unpaid amount of such penalties and fines against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed upon by the Board of Directors or Managing Agent according to these By-Laws and the Act. The 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 mortgages of record;

**(ee)** Upon the request of any Apartment Owner, institutional lender or holder or insurer of a first mortgage on an apartment or any prospective purchaser of an apartment, making available for inspection during normal business hours or other reasonable circumstances current copies of the Declaration, By-Laws and other rules governing the Property and the books, records and financial statements of the Association, including the most recent annual audited financial statement;

**(ff)** Leasing out any apartments acquired by the Association (as provided in subsection (u) above), provided the prior approval of a majority of the members of the Association is obtained;

**(gg)** Granting an easement across the common elements for any "reasonable purpose", as the term is herein used, which term shall include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance and repair of any apartment, the common elements or any limited common elements. The grant of the easement by the Board shall not be withheld unreasonably;

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

**(ii)** Disposing of personal property abandoned on the common elements of the Project in any one of the following ways:

- (i)** By selling the personal property in a commercially reasonable manner;
- (ii)** Storing such personal property at the expense of its owner;
- (iii)** Donating such personal property to a charitable organization; or

(iv) Otherwise disposing of such personal property; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(a) The Board notifies the Owner in writing of:

- (1) The identity and location of the personal property; and
- (2) The Board's intent to sell, store, donate, or dispose of it. Notification shall be by certified mail, return receipt requested, to the Owner's address as shown by the records of the Association, or to an address designated by the Owner for the purpose of notification; or, if neither of these is available, to the Owner's last known address, if any; or

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

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

#### **SECTION 8. Budgets and Reserves.**

(a) The Board shall prepare and adopt an annual operating budget and distribute it to the Apartment Owners. At a minimum, the budget shall include the following:

- (i) The estimated revenues and operating expenses of the Association;
- (ii) Information as to whether the budget has been prepared on a cash or accrual basis;
- (iii) The total replacement reserves of the Association as of the date of the budget;
- (iv) The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association;
- (v) A general explanation of how the estimated replacement reserves are computed; and
- (vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

**(b)** Effective as of the fiscal year which begins after the Association's first annual meeting, the Association shall collect a minimum of fifty percent (50%) of the full amount required to fund the estimated replacement reserves for that fiscal year. However, the Association may fund in phases, over three years, estimated replacement reserves which have been substantially depleted by an emergency.

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

- (i)** Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (ii)** Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

**(d)** No Association or Apartment Owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

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

**(f)** This Section shall override any other requirements contained in these By-Laws, the Declaration and any other Association documents relating to preparation of budgets, calculations of reserve requirements, assessments or funding of reserves, with the exception of:

- (i)** provisions relating to the repair and maintenance of property;
- (ii)** any requirements in the Declaration, these By-Laws or any other Association documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

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

(g) Pursuant to the Act and all regulations relating to it, an Owner may enforce compliance by the Board if the Association fails to comply with the above.

**(h) Definitions.**

(i) “Capital expenditures” means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

(ii) “Emergency situation” means any of the following:

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

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

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

(iii) “Major maintenance” means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

(iv) “Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain.

**SECTION 9. Employment of Managing Agent.** Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible Hawaii corporation as Managing Agent duly registered with the Real Estate Commission of the State of Hawaii as required by Section 514A-95 of the Act to manage and control the Property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated by the Board. The Managing Agent shall comply with all requirements of Section 514A-95 of the Act.

**(a) Contract to Employ Managing Agent; Termination.** The compensation of the Managing Agent shall be specified by the Board. Notwithstanding Section 7(p), Any contract to employ a managing agent shall provide that it may be terminated by either party thereto with or without cause or payment of a termination fee on thirty (30) days' written notice, and in no event may such employment contract be for a term exceeding one (1) year. No decision by the Association to terminate professional corporate management of the Property may be made without the prior written consent of at least seventy-five percent (75%) of the institutional holders of first mortgages on apartments (based upon one vote for each such first mortgage).

**(b) Board's Delegation of Duties to Managing Agent.** The Board shall have the right to delegate to the Managing Agent such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Property, (b) maintenance, repair, replacement and restoration of the common elements and any addition or alteration thereto, (c) the purchase, maintenance and replacement of any equipment, (d) provision for service of all utilities to the buildings and the various apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Property, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Property, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, (i) purchase of such insurance as is contemplated by these By-Laws, (j) custody and control of all funds, (k) maintenance of books and records on a cash basis and (l) preparation of financial reports.

The Board may in its discretion limit any of the powers granted to the Managing Agent in this Deed or may grant additional powers to the Managing Agent.

**(c) Fidelity Bond.** If the Managing Agent is delegated the responsibility for custody, control and administration of Association funds, the Managing Agent shall be required to maintain fidelity bond coverage for its officers, employees and agents having such responsibility. Any such fidelity bond shall: (a) name the Association as an obligee; (b) be in compliance with Chapter 514A-84 of the Act; (c) contain a waiver by the issuer of all defenses based upon an exclusion from the definition of "employee" or similar term or expression of any person who serves without compensation; and (d) provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association. Such fidelity bonds shall be maintainable at the Managing Agent's expense and shall be in addition to any bonds maintained by the Association for the same or similar purpose covering the directors, officers, trustees, employees and volunteers of the Association.

Upon written request of any Apartment Owner or his mortgagee, the Managing Agent shall deliver a written statement of the status of the account of such Apartment Owner.

**(d) Class Actions.** The President of the Association or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more Apartment Owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and



on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any Apartment Owner individually to appear, sue or be sued.

**SECTION 10. Examination of Minutes.** Minutes of meetings of the Board for the current and prior year shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board. Minutes of Board meetings shall include the recorded vote of each Board member on all motions except motions voted on in executive session. Copies of Board meeting minutes shall be provided to any Owner upon the Owner's request, provided that the Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

**SECTION 11. Waiver of Notice.** Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him of the meeting's time and place. If all the members of the Board are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

**SECTION 12. Rules of Order.** All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order.

**SECTION 13. Quorum of Board.** At all meetings of the Board, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**SECTION 14. Fidelity Bonds.** The Board shall obtain adequate fidelity bonds covering all directors, officers, trustees, employees and volunteers responsible for handling funds belonging to or administered by the Association, naming the Association as the obligee and providing coverage in an amount not less than one and one half times the estimated annual operating expenses and reserves of the Association, or the minimum amount required under the Act, whichever is greater. The premiums on such bonds shall constitute a common expense and every such bond shall:

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

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

**SECTION 15. Compensation.** No member of the Board shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses reasonably incurred in the course of acting as a Director.

**SECTION 16. No Proxy Vote.** Directors shall not cast any proxy vote at any Board meeting.

**SECTION 17. Liability and Indemnity of the Board of Directors.** The members of the Board and officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall indemnify each Director and officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for reasonable attorney's 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, 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 such costs, expenses or liabilities are incurred or imposed. This shall not include costs, expenses or liabilities related to matters which he is finally adjudged to be liable by reason of his gross negligence or willful misconduct toward the Association in performing his duties as such Director or officer. In determining whether a Director or officer is liable by reason of gross negligence or willful misconduct toward the Association in performing his duties in the absence of a final adjudication of the existence or nonexistence of such liability, the Board and each Director or officer may conclusively rely upon an opinion of legal counsel selected by the Board. The foregoing right of indemnification shall not be exclusive of other rights which any Director or officer may have and shall inure to the benefit of the heirs, personal representatives, successors, successors in trust and assigns of each Director or officer.

**SECTION 18. Conflict of Interest.** A member of the Board of Directors shall not vote at any meeting of the Board of Directors on any issue in which he 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 and the minutes of the meeting shall record the fact that a disclosure was made. If there is any disagreement as to whether or not a conflict of interest exists as to a particular Director or Directors, the determination shall be made by a majority of the non-interested Directors, whose decision shall be conclusive and binding on all parties.

**SECTION 19. Documents Provided to Board.** The Association shall provide, at its expense, all Board members with current copies of the Declaration, these By-Laws, House Rules, and, annually, a copy of the Act with amendments.

## **ARTICLE IV OFFICERS**

**SECTION 1. Designation.** The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be Owners, co-owners, or vendees under an agreement of sale or an officer or agent of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be owners of an apartment owned by their partnership for the purposes of this Section, all of whom shall be appointed by the Board. The Board may appoint 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. No officer of the Association shall also be employed by the managing agent of the Association.

**SECTION 2. Election of Officers.** The officers of the Association shall be elected annually by the Board at the annual meeting of each new Board and shall hold office at the pleasure of the Board.

**SECTION 3. Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

**SECTION 4. President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and the Board. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association. 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 take the place of the President and perform his duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as shall be assigned to him from time to time by the Board or by the President.

**SECTION 6. Secretary.** The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct; keep the minute book where resolutions shall be recorded; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to the Managing Agent; provided,

however, that the responsibility for the performance of the duties delegated shall remain with the Secretary.

**SECTION 7. Treasurer.** The Treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for preparing all required financial data and reports. He shall be responsible for depositing all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board; and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent; provided, however, that the responsibility for the performance of the duties delegated shall remain with the Treasurer.

**SECTION 8. Agreements, Contracts, Deeds, Checks and Other Instruments.** All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the By-Laws, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated by the Board.

**SECTION 9. Compensation of Officers.** Except as specifically authorized by the Association at a regular or special meeting, no officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as an officer.

## **ARTICLE V USE, MAINTENANCE AND ALTERATION OF PROJECT**

**SECTION 1. Maintenance and Repair of Apartments.** Except as otherwise provided by law or the Declaration, each Apartment Owner shall, at his own expense, keep the apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his apartment. Each Owner shall be responsible for the maintenance, repair and replacement of the inner decorated or finished surfaces of the perimeter walls, floors and ceilings of his apartment, and any plumbing fixtures, water heater, heating or cooling equipment, lighting fixtures, telephone, appliances, doors, windows, interior walls and partitions and similar installations in his apartment which are not part of the common elements. Each owner shall also be responsible for maintaining the roof, exterior siding, parking areas, concrete driveways, fenced yards and other limited common elements appurtenant to his apartment. Each Apartment Owner shall perform promptly all repair and maintenance work to 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 if he fails to do so.

**SECTION 2. Maintenance and Repair of Common Elements.** All maintenance, repairs and replacements of the common elements, whether located inside or outside of the apartment, shall be made only by or at the direction of the Board and be charged to all the Owners as a common expense. The costs of maintenance, repairs and replacements

caused by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment establishing a lien on such Owner's apartment in accordance with Article VI, Section 4 [Default in Payment of Assessments]. Additionally, all costs of maintenance, repair, replacement, additions and improvements to any limited common element shall be charged to the Owners of the apartments to which such limited common element is appurtenant as a special assessment constituting a lien of such Owner's apartment in accordance with Article VI, Section 4.

### **SECTION 3. Use of Property.**

**(a)** The apartments of the Property shall be used only for such purposes as set forth in the Declaration.

**(b)** All common elements of the Property shall be used only for their respective purposes as designed, subject to:

- (i)** The right of the Board, upon the approval of seventy-five percent (75%) of the Owners, to change the use of the common elements;
- (ii)** The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the Owners for an originally intended special purpose, as determined by the Board; provided that unless the approval of seventy-five percent (75%) of the Owners is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice;
- (iii)** The right of the Board to lease or otherwise use for the benefit of the Association those common elements not falling within subsection (ii) above, upon obtaining (A) the approval of seventy-five percent (75%) of the Owners, which includes all directly affected Owners and all Owners to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on apartments with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees.

**(c)** It is intended that the exterior of the buildings shall present a uniform appearance. The Board may therefore require the painting, staining, refinishing or repair of 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 and pay for

such painting, staining, refinishing and repair out of the capital improvements fund, subject to direct charges for negligence, misuse or neglect, as provided above. No awnings, shades, жалousies or other device shall be erected or placed on any portion of the apartment so as to be visible from the exterior without prior written permission from the Board. No portion of the Property may be used for openly storing material or displaying signs of any kind.

(d) No Apartment Owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air-conditioning units or other equipment fixtures, appliances or appurtenances whatsoever on the exterior of the Property or protruding through the wall, windows or roof.

(e) Nothing shall be allowed, done or kept in any apartment or common element of the Property which would overload or impair the floors, walls or roofs, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association, unless the Owner of said apartment shall agree to pay any such increases or obtain substitute insurance.

#### **SECTION 4. Alteration of Property.**

(a) Additions, alterations, repairs or improvements to the common or limited common elements of the property may be made only by or at the direction of the Board. No Owner may make, except with the prior written permission of the Board, any alteration, addition, repair or improvement (i) to his apartment which may affect the common elements or change the exterior appearance of the buildings, or (ii) to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his apartment.

(b) Whenever in the judgment of the Board, the common or limited common elements shall require additions, alterations, repairs or improvements with a total cost of less than TEN THOUSAND DOLLARS (\$10,000.00), the Board may proceed with such additions, alterations, repairs or improvements and shall assess the cost thereof as a common expense, except that the cost of any such work performed on any limited common elements may be charged to the Owners of apartments to which such limited common elements are appurtenant. Any additions, alterations, repairs or improvements costing in excess of TEN THOUSAND DOLLARS (\$10,000.00) may be made by the Board only after obtaining approval of a majority of the Owners. Such approval shall not be required for any additions, alterations, repairs or improvements required by law or in the event of an emergency threatening immediate and substantial damage to person or property. If such approval is obtained, the cost shall constitute part of the common expense.

Upon merger of this Project with other phases of LAS BRISAS, as provided for in Section 15 of the Declaration [Merger of Phases], the \$10,000.00 limit mentioned above shall be automatically increased to Twenty Five Thousand and No/100 Dollars (\$25,000.00).

(c) Unless otherwise prohibited by the provisions of the Declaration or these By-Laws, an Apartment Owner may make additions, alterations or improvements solely within

his apartment or within a limited common element appurtenant to and for the exclusive use of his apartment at his sole cost and expense with the approval of the Board.

(d) Any structural alteration or addition to any common area different in any material respect from the Condominium Map, undertaken by the Association shall be done pursuant to an amendment of the Declaration, duly executed by affirmative vote of all the Apartment Owners and accompanied by the written consent of the holders of all liens affecting any of the affected apartments, and in accordance with complete plans and specifications first approved in writing by the Board. Any structural alteration or addition to any apartment or appurtenant limited common element made by an Owner may be done pursuant an amendment of the Declaration executed by the Apartment Owner with written consent of the lien holder, if any, and shall be in accordance with completed plans approved by the Board of Directors. Promptly upon completion of such restoration, replacement or construction, the Association or Apartment Owner shall duly record or file of record such amendment together with a complete set of floor plans reflecting such alteration certified by a registered architect or professional engineer to accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

Notwithstanding the foregoing, an Owner may add a second floor lanai up to sixty square feet (60 sq. ft) in size or may cover up to fifty percent (50%) of the limited common element yard areas without amending the condominium documents, subject, however, to obtaining the necessary Association and governmental permits and approvals.

**SECTION 5. Alterations over \$10,000.00.** Neither any Apartment Owner nor the Association will make any additions, alterations, repairs or improvements of the Property or its limited common elements, change the grading or drainage of the Project, where it involves an expenditure in excess of \$10,000.00 in any one instance, except in accordance with complete plans and specifications and detailed plot plans first approved by the Board.

**SECTION 6. Certain Work Prohibited.** Anything herein to the contrary notwithstanding, no Apartment Owner shall do any work which could jeopardize the soundness or safety of the Property, reduce its value, impair any easement or hereditament, nor may any Apartment Owner add any material structure or excavate any basement or cellar without in every such case the prior consent of seventy-five percent (75%) of the Apartment Owners, and a hundred percent (100%) of all Apartment Owners whose apartments or appurtenant limited common elements are directly affected.

**SECTION 7. State and Federal Fair Housing Act.** None of the above provisions are intended to contravene the State or Federal Fair Housing Act. The Board will at all times comply with the provisions of the Fair Housing Act when acting upon requests by handicapped persons to make reasonable modifications to the common areas to allow full enjoyment of the Project. Costs of such alterations shall be borne by the requesting residents. The Board shall also comply with the Fair Housing Act when acting upon requests by handicapped persons for exemptions from any of the provisions of the Project Documents which may interfere with said handicapped persons' equal opportunity to use or enjoy their apartments and the common elements of the Project.

## **SECTION 8. Insurance - Casualty and Liability.**

**(a)** Pursuant to Section 514A-86 of the Act, the Board, on behalf of the Association, at its common expense, shall purchase and maintain property insurance covering all buildings, structures, improvements and fixtures of this Project, including the common elements and, whether or not part of the common elements, all exterior and interior walls, exterior glass, floors and ceilings, common personal property and supplies of the Association and any fixtures, appliances, equipment or other property originally installed within any apartment (whether or not the same is a common element or owned by the Association). The property insurance shall insure against damage, destruction or loss by fire and other perils covered by an ISO Commercial Property "Special" Causes of Loss Form or its equivalent with an Agreed Amount Endorsement written on a Replacement Cost basis and an Increased Cost of Construction endorsement. If the Land is located in an identified flood hazard area as designated by the Federal Emergency Management Agency, the Association shall purchase flood insurance in an amount required by mortgage lenders. Coverage shall be for full replacement cost at time of loss. The policy shall be issued by a responsible insurance company authorized to do business in Hawaii and shall be for the use and benefit of each Apartment Owner, and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board shall designate as trustee for each Apartment Owner and its mortgagee, if any, for custody and disposition as herein provided of all proceeds of such insurance, without prejudice to the right of each Apartment Owner to insure his or her apartment for his or her own benefit. Except as provided in Section 13 of the Declaration [Insured Casualty and Uninsured Casualty], in every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the Project's original plans and elevations or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided. The Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall (unless unobtainable at reasonable cost):

- (i)** Provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim any right of, set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Apartment Owner;
- (ii)** Contain no provision relieving the insurer from liability for loss occurring while hazard to any building is increased (whether or not within the knowledge or control of the Board) because of any breach of warranty or condition or any other act or neglect by the Board or any Apartment Owner or any other persons under either of them (the Board will, however, give notice to the insurers of an increased hazard as soon as practical);



- (iii)** Provide that the policy may not lapse, be canceled or reduced by amount or type of coverage (whether or not requested by the Board) except by the insurer giving at least sixty (60) days prior written notice to the Board, any mortgagee, and any other person in interest who shall have requested such notice from the insurer;
- (iv)** Contain a waiver by the insurer of any right of subrogation to any right of the Board or any Apartment Owner against any of them or any other persons under them;
- (v)** Contain a waiver by the insurer of any right to deny liability because of vacancy of fewer than 85% of the apartments;
- (vi)** Contain a provision requiring the insurer, at the commencement of the policy and on each anniversary date, 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 limits, amount of annual premium, and renewal dates. The Board shall provide this information to each Apartment Owner.
- (vii)** Contain a standard mortgagee clause with special condominium endorsement which shall:
  - (a)** provide that any reference to a mortgagee in the policy shall include all holders of mortgages of any apartment in the project whether or not named in the policy;
  - (b)** provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or any Apartment Owner or any persons under any of them;
  - (c)** waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and
  - (d)** provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

**(b)** The Board on behalf of and at the common expense of the Association, shall purchase and maintain commercial general liability insurance written on an occurrence form, including coverage for premises and operation, independent contractors, products and completed operations, and personal and advertising injury. The policy shall cover all Apartment

Owners with respect to the Project and be with a responsible insurance company authorized to do business in Hawaii. The policy shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury and property damage, and \$2,000,000 products and completed operations aggregate, or other higher limits as the Board may from time to time establish with due regard to then prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the Association, the Board and each Apartment Owner. The scope of coverage shall include all other coverages in the kinds and amounts required by private institutional lenders for projects similar in construction, location and use. Every such policy of insurance shall (if obtainable at reasonable cost):

- (i) Contain an endorsement precluding the insurer from denying the claim of an Apartment Owner because of the negligent acts of the Association or other Apartment Owners;
- (ii) Provide for or contain identical terms required in subsection (a) hereof.

(c) The Board, on behalf of and at the common expense of the Association, may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the Board.

(d) The Board shall review not less frequently than annually the adequacy of its insurance program and shall report in writing the Board's conclusions and any action taken on such review to each Apartment Owner and to the holder of any mortgage on any apartment who shall have requested a copy of such report. In addition, the Board shall give timely written notice to each Apartment Owner and to any mortgagee of an apartment of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

(e) Copies of every policy of insurance procured by the Board shall be available for inspection by an Owner (or his mortgagee or purchaser holding a contract to purchase an interest in an apartment) at a place designated by the Board.

(f) Any coverage procured by the Board shall be without prejudice to the right of any Owner to insure his apartment and the contents thereof for his own benefit at his own expense.

(g) Any insurance coverage specified in this Section shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for projects similar in construction, location and use.

(h) The Board may designate and appoint a qualified bank or trust company authorized to do business in the State of Hawaii to act as trustee on behalf of the Association (the "Insurance Trustee") in negotiating losses under any insurance policy carried by the Association

and in performing such other functions as are necessary to recover and apply the insurance proceeds in accordance with the terms of this Declaration.

**ARTICLE VI  
COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING**

**SECTION 1. Common Expenses.**

**(a) Definition of Common Expenses.** Each Apartment Owner shall be liable for and pay a share of the common expenses in proportion to the common interest appurtenant to his apartment. In addition to the items otherwise designated in the Declaration or these By-Laws as common expenses, the following sums are hereby designated as common expenses: All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project including, without limiting the operation thereof, all charges for taxes (except real property taxes and other such taxes which are or may be assessed separately on each apartment and its appurtenant common interest or the personal property or any other interest of the Apartment Owner); 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 premises; 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; and the cost of all common area utility services, including water, electricity, gas, garbage disposal, telephone and sewer service for the apartments, unless separately metered. The Board shall also have the right, as a common expense, to install additional or separate meters to gauge utility use.

**(b) Metered Utilities.** All charges separately attributable to an apartment or group of apartments shall be payable by the Owners of such apartments. Such amounts shall not be common expenses of the Project.

**(c) Maintenance Reserve Fund or Funds.** The Board shall establish a working capital fund for the initial months of the project operations equal to at least two months' estimated common expenses for each apartment. The Board shall also establish and maintain a maintenance reserve fund or funds by the monthly assessment against and payment by all the Apartment Owners in proportion to their respective common interests, of such annual amount as the Board determines to be adequate to provide for the common utilities, insurance, maintenance, repair, restoration, and replacement of the common elements and other expenses of administration of the Project, and the furniture, fixtures, and mechanical equipment thereof, and for such other purposes as the Board deems necessary, all of which shall be deemed conclusively to be a common expense of the Project. Such fund or funds shall meet any requirements mandated by the Act, the Veteran's Administration or the Department of Housing and Urban Development and are further outlined in the By-Laws. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or decreased at the discretion of the Board. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed

income to the Association but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the Apartment Owner. The proportionate interest of each Apartment Owner in said fund or funds shall not be withdrawn or assigned separately but shall be deemed to be transferred with such apartment even though not mentioned or described expressly in the instrument of transfer. If the condominium property regime established hereby is terminated or waived, said fund or funds remaining after full payment of all common expenses of the Association shall be distributed to all Apartment Owners, except for the owners of apartments reconstituted as a new condominium property regime, in proportion to their respective common interest.

**(d) Special Assessments for Purchasing or Leasing Apartments.** 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; provided, however, that the Board may not purchase an apartment and hold the same, or lease an apartment for a period in excess of one (1) year without obtaining approval of fifty percent (50%) of Owners.

**(e) Payment of Assessments.** Assessments of common expenses shall be payable in monthly installments on the first day of each month, commencing with respect to each apartment on the first day of the first month following the issuance by the appropriate county agencies of a temporary or permanent certificate of occupancy for each apartment. The first monthly installment of common expenses shall be prorated for each apartment from the date of issuance of such certificate of occupancy. The Developer shall fix the rate of monthly installments of common expenses until such rate shall be redetermined by the Board of Directors. The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board sends to all Apartment Owners affected written notice of any such increase or special assessment not less than 30 days before the effective date of such increase or assessment. Any portion of an Owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid in surplus.

**SECTION 2. Payment as Agent.** The Board will pay or cause to be paid, on behalf of the appropriate Owners, all common expenses. Each Owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these By-Laws, of all such 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 payment must be made by the Owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as principal but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owners.

**SECTION 3. Taxes and Assessments.** Each Owner of an apartment shall be obligated to have the real property taxes for such apartment and its appurtenant common interest assessed separately by the proper governmental authority and to pay the amount of all such real

property taxes so determined. The foregoing shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each apartment and its appurtenant common interest 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 the entire premises or any part of the common elements as a whole and not separately. Such payment shall be made as directed by the Board. The assessments shall be levied by mailing to each Owner at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the individual apartment. If in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Article VI, Section 4 [Default in Payment of Assessments].

**SECTION 4. Default in Payment of Assessments.** Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same are assessed and, in the case of an apartment owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment not paid within ten (10) days after its due date shall accrue interest at the rate of ten percent (10%) per annum from such due date until paid. In the event of a default or defaults in the payment of any such assessment or assessments and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) The Board may direct the Managing Agent to deduct and apply portions of common expense payments received from an Apartment Owner to unpaid late fees (other than amounts remitted by an Apartment Owner in payment of late fees) provided it delivers or mails a written notice to such Apartment Owner, at least seven days prior to the first such deduction, which states that:

- (i) Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist.
- (ii) Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payment.

(b) The Board may institute legal action to enforce such assessment obligations. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought by the Board in the name of the Board and the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include,

where permissible under any law, 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 of its members, acting in the name of the Board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction document.

(c) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority of the Board 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) stating the date of the delinquency, the amount of the delinquency and making demand for its payment. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may record a lien against the apartment of such delinquent Owner, which lien shall be prior to all liens except government imposed lien for taxes and assessments against the apartment and all sums unpaid on any mortgage of record recorded prior to the recording of a notice of lien by the Association and any costs and expenses, including attorneys' fees provided in such mortgage. Such lien shall state (i) the name of the delinquent Owner, (ii) a designation of the apartment against which the lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper off-set), (iv) that the lien is made by the Board pursuant to the terms of these By-Laws and the Act, and (v) that a lien is claimed against such apartment in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of enforcement, including attorneys' fees, if any. Such liens shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board, or by the Managing Agent and shall be dated as of the date of the execution by such attorney or the Managing Agent or the last such Board member to execute such lien. Upon recordation of a duly executed original or copy of such lien, the Board shall have all remedies provided in the Act. Each default shall constitute a separate basis for a lien, but a separate lien may be recorded with respect to more than one default. Action to recover a monetary judgment may be maintained without foreclosure or waiver of the lien.

(d) If the Owner of an apartment rents or leases the apartment and is in default for thirty (30) days or more in the payment of the apartment's share of the common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the Apartment Owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

Prior to taking any action under this section, the Board of Directors shall give to the delinquent Apartment Owner written notice of its intent to collect the rent owed. The notice shall:

- (1) Be sent both by first-class and certified mail;
- (2) Set forth the exact amount the Association claims is due and owing by the Apartment Owner; and

- (3)** Indicate the intent of the Board of Directors to collect such among from the rent, along with any other amounts that become due and remain unpaid.

The Apartment Owner shall not take any retaliatory action against the tenant for payments under this section.

The payment of any portion of the apartment's share of common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the Apartment Owner against the tenant.

The Board may not demand payment from the tenant pursuant to this section if:

- (1)** A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;
- (2)** A mortgagee is in possession pending a mortgage foreclosures; or
- (3)** The tenant is served with a court order directing payment to a third party.

**(e)** In a voluntary conveyance of an apartment, the grantee of the apartment shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee prior to conveyance. Any such grantee shall be entitled to a statement from the Managing Agent or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth.

**(f)** No Apartment Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment, nor shall an Apartment Owner withhold any assessment claimed by the Association. An Apartment Owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (i)** The amount of common expenses included in the assessments, including the due date of each amount claimed;
- (ii)** The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (iii)** The amount of attorneys' fees and costs, if any, included in the assessment;

- (iv) That under Hawaii law, an Apartment Owner has no right to withhold assessments for any reason;
- (v) That an Apartment Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the Apartment Owner immediately pays the assessment in full and keeps assessments current; and
- (vi) That payment in full of the assessment does not prevent the Owner from contesting the assessment or receiving a refund of amounts now owed.

Nothing in this Section shall limit the rights of an Owner to the protection of all fair debt collection procedures mandated under federal and state law.

(g) An Apartment Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Apartment Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII of the Act. An Apartment Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Apartment Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Apartment Owner pays all Association assessments within thirty (30) days of the date of suspension, the Apartment Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Apartment Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

(h) For the purposes of this Section 4, a certificate executed and acknowledged or made by any two members of the Board or the Managing Agent shall be conclusive upon the Board, the Owners and all persons who rely upon it in good faith, except as to the amount of any check received within the 30 day period immediately preceding the date of such statement which is subsequently dishonored. 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) within fifteen (15) days after demand thereof and upon payment of a reasonable fee not to exceed TEN DOLLARS (\$10.00). If any claim of lien is recorded and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest and any costs of enforcement), then upon demand of the Owner and payment of a reasonable fee, not to exceed TWENTY-FIVE DOLLARS (\$25.00), the Board, acting by any two members, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the recordation data and/or the Land Court document number of the claim of lien and that the lien is fully satisfied, released and discharged.



(i) Notwithstanding anything stated in these By-Laws to the contrary, if any damage or destruction to a common element or limited common element is caused solely by the acts or conduct of one Apartment Owner, his tenants, guests, visitors or co-occupants, then only such Apartment Owner shall be responsible and be liable to pay for the repair to any such damaged common element. Said Apartment Owner shall promptly reimburse the Association for any and all costs and expenses incurred in restoring or repairing any such damaged or destroyed common element. All sums assessed by the Association but remaining unpaid in connection with the restoration or repair of any such damaged or destroyed common element shall be subject to the same provisions governing unpaid common expenses, and the Association shall have all of the rights and remedies afforded the Association with respect to unpaid common expenses as provided in these By-Laws.

**SECTION 5. Foreclosure.** Any lien created pursuant to Article VI, Section 4 [Default in Payment of Assessments] above may be foreclosed upon by action of the Managing Agent or Board of Directors, acting on behalf of the Apartment Owners. In any such foreclosure, the Apartment Owner shall be required to pay a reasonable rental for the apartment and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rent. The Managing Agent, or Board of Directors, acting on behalf of the Apartment Owners may bid on the apartment at the foreclosure sale, and may acquire and hold, lease, mortgage and convey it pursuant to the Declaration and these By-Laws. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the judgment.

Prior to foreclosing upon such lien, the Board of Directors or Managing Agent shall provide thirty (30) days prior written notice of intention to foreclose by mailing written notice, postage prepaid, to all persons having any interest in such apartment as shown in the Association's record of ownership, including, but not limited to, any holder or insurer of a mortgage of any interest in such apartment.

Where the mortgagee of a mortgage of record or other purchaser of any apartment obtains title to the apartment pursuant to the mortgage, or as a result of foreclosure of the mortgage, a conveyance in lieu of foreclosure, or exercise of the remedies provided in the mortgage, the acquirer of title, his successors and assigns, shall not be solely liable for the share of the common expenses or assessments by the Association chargeable to the apartment which become due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the Apartment Owners, including the acquirer, his successors or assigns.

(a) As an alternative to foreclosure proceedings, where an apartment is owner-occupied, the Association of Apartment Owners may authorize its managing agent or Board of Directors to, after sixty (60) days' written notice to the apartment owners and to the apartment's first mortgagee of the nonpayment of the apartment's share of common expenses, terminated the delinquent apartment's access to the common elements and cease supplying the a delinquent apartment with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments. Before the Board of Directors may take the actions permitted under this section, the Board must

adopt a written policy providing for such actions and have the policy approved by a majority of the apartment owners at an annual or special meeting of the Association of by written consent of a majority of the apartment owners.

(b) If the owner of any apartment rents or leases the apartment and is in default for thirty (30) days or more in the payment of the apartment's share of the common expenses or the limited common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the apartment owner of the Association including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation and any contractual provision to the contrary shall be void as a matter of law. Prior to taking any action under this section, the Board of Directors shall give the delinquent apartment owner written notice of its intent to collect the rent owed. The notice shall: 1) be sent both by first class and certified mail; 2) set forth the exact amount the Association claims is due and owing by the apartment owners and 3) invalidate the intent of the Board of Directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid. The apartment owner shall not take any retaliatory action against the tenant for payments under this section. The payment of any portion of the apartment's share of the common expenses and/or limited common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for non-payment of rent brought by the apartment owners against a tenant.

**SECTION 6. Waiver.** The failure of the Board to insist in any one or more instances upon strict performance of or compliance with any of the covenants of the Owner contained in these By-Laws 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 an Owner, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach. No waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board of Directors.

**SECTION 7. Books of Account; Audit.** The Board, on behalf of all Owners, will maintain or cause to be maintained books of account of the common expenses in accordance with recognized accounting practices and shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

The members of the Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant. If the Association is comprised of less than 20 Owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority

vote of all Apartment Owners taken at an Association meeting. The Board shall make available a copy of the annual audit to each Apartment Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. All proxy forms shall provide a box where the Owner may indicate that he wishes to obtain either a summary or an unabridged copy of the annual audit report. The Board shall not be required to provide the report or a summary if the proxy form is not marked. If the annual audit is not completed by that date, the Board shall make available:

(a) An unaudited year-end financial statement for the fiscal year to each Apartment Owner at least thirty (30) days prior to the annual meeting; and

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

If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. Any Owner may, at his expense, cause an annual inspection to be made of the books and records of the Association.

#### **SECTION 8. Association of Apartment Owners Funds; Handling and Disbursement.**

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the Managing Agent commingle any Association funds with the Managing Agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association; provided that:

(i) The collection is allowed by the provisions of the Declaration and By-Laws; and

(ii) The system of lease rent collection is approved by a majority of all Apartment Owners at a meeting of the Association.

(c) All funds collected by the Association, or by the Managing Agent for the Association, shall be:

(i) Deposited in a financial institution located in the state whose deposits are insured by an agency of the United States government;

(ii) Held by a corporation authorized to do business under Chapter 406, Hawaii Revised Statutes; or

- (iii) Invested in the obligations of the United States government.

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

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

(e) The Managing Agent shall keep and disburse funds collected on behalf of the Apartment Owners in strict compliance with any agreement made with the Apartment Owners, Chapter 467 of the Hawaii Revised Statutes, the rules of the Real Estate Commission, and all other applicable laws.

(f) Any person who embezzles or knowingly misapplies Association funds received by the Managing Agent or the Association shall be guilty of a class C felony.

**SECTION 9. Examination of Records.** Financial statements, general ledgers, the accounts receivable and payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more, shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board, and shall be available for examination by any Owner at no cost, or on twenty-four (24) hour loan, at a convenient location designated by the Board; provided that:

(a) The Board may require the Apartment Owner to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both; and

(b) The Apartment Owner must pay for any administrative costs connected with furnishing such information in the event that providing such information exceeds eight hours of an Association employee's time to comply with the request.

Copies of these items shall be provided to any Apartment Owner upon the Owner's request, provided that the Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

**SECTION 10. Disposal of Records.** The Managing Agent may dispose of the records of the Association which are more than five years old without liability if the Managing Agent first provides the Board with written notice of the Managing Agent's intent to dispose of

the records if not retrieved by the Board within sixty days. The notice shall include an itemized list of the records of which the Managing Agent intends to dispose.

**SECTION 11. No Alteration of Documents.** No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of either the Managing Agent or the Association. No person shall knowingly alter, destroy, mutilate or conceal any books or records of the Managing Agent or the Association.

## **ARTICLE VII MORTGAGEES**

**SECTION 1. Notice of Unpaid Common Expenses.** The Board, whenever so requested in writing by a purchaser or mortgagee of an interest in an apartment, shall promptly report any then unpaid assessments for common expenses due from the Owner of the apartment involved.

**SECTION 2. Notice of Default.** When giving notice to an Apartment Owner of a default in paying common expenses or other default, the Board of Directors shall send a copy of such notice to each holder and insurer of a mortgage covering any interest in such apartment whose name and address has previously been furnished to the Board.

**SECTION 3. Additional Notices to Mortgagees.** A holder or insurer of a first mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the apartment number), will be entitled to:

- (a) Timely written notice of any proposed amendment to the Declaration or these By-Laws effecting a change in (1) the boundaries of an apartment, (2) the common interest appertaining to the apartment, or (3) the purposes to which the apartment, the limited common elements appurtenant thereto or the common elements are restricted;
- (b) Prior written notice of any proposed termination of the Condominium Property Regime;
- (c) Prior written notice of any actual or threatened condemnation or eminent domain proceedings affecting the Project or any portion thereof;
- (d) Timely written notice of any significant damage or destruction to the common elements or a casualty loss affecting the apartment on which there is a first mortgage held or insured by the party requesting notice;
- (e) A copy of all pleadings recorded in any lawsuit, administrative proceeding or other action affecting the Project or any portion thereof excluding, however, judicial foreclosures of liens for common expenses in favor of the Association and any foreclosures of mortgages in which the Association is a named party;
- (f) A copy of any bond required to be posted before commencing or permitting construction of any improvements on the Project;

(g) Prior written notice of any proposal to subdivide, encumber, sell or transfer all or part of the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause); and

(h) Timely written notice of all meetings of the Association. Said holder or insurer of a first mortgage shall be permitted to designate a representative to attend all such meetings.

#### **SECTION 4. Mortgagee Approval.**

(a) Except as provided in Section 514A-21 of the Act, the Project shall not by act or omission be abandoned, terminated, or removed from the Condominium Property Regime without prior written consent of all mortgagees.

(b) No apartment shall be partitioned or subdivided without the prior written consent of the mortgagee of such apartments.

(c) Unless at least eighty percent (80%) of the first mortgagees (based upon one vote for each first mortgage held), and eighty percent (80%) of the Apartment Owners (other than the Developer) have given their prior written approval, the Association shall not be entitled to:

- (i) By act or omission, abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this clause);
- (ii) Use hazard insurance proceeds for losses to the Project or any part thereof (whether to apartments or to common elements) for other than the repair, replacement or reconstruction of the same, except as otherwise provided by the Declaration, these By-Laws or the Act;
- (iii) Terminate professional management and assume self-management of the Project.

**SECTION 5. Examination of Books.** Each holder or insurer of a mortgage of an apartment shall be permitted to examine the books of account of the Association at reasonable times on business days, but not more often than once a month.

**SECTION 6. Annual Reports and Other Financial Data.** Each holder or insurer of a mortgage of an apartment may require, and shall receive upon request, such financial data and/or an annual audited financial statement of the financial status of the Association and of the Project within ninety (90) days following the end of any fiscal year of the Project.

**SECTION 7. Mortgagee Protection.** Notwithstanding all other provisions hereof:

(a) The liens by these By-Laws upon any apartment shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage of such interests made for value, which was recorded prior to the recordation of a notice of a lien by the Association. After the foreclosure of any such mortgage, there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed to such apartment if falling due after the date of such foreclosure sale, and such purchaser's pro rata share of unpaid assessments falling due before the conveyance to the purchaser. The lien shall have the same effect and be enforced in the same manner as provided in Article VI, Section 4 [Default in Payment of Assessments].

(b) No amendment to this Section 7 shall affect the rights of the holder of any such mortgage which has been duly recorded prior to the recordation of such amendment, who does not join in the execution thereof.

**SECTION 8. Notice to Board of Directors.** An Apartment Owner who mortgages his interest in an apartment shall notify the Board of the name and address of his mortgagee and within ten (10) days after the execution of the same shall record a conformed copy of the mortgage with the Board. The Board shall maintain such information in a book entitled "Mortgagees of Apartments".

## **ARTICLE VIII LAND TRUST**

**SECTION 1. Operation and Control.** If title to any apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all common expenses and all other charges, costs and expenses assessed against such apartment or the owner thereof pursuant to the Declaration, these By-Laws, the Rules and Regulations or the Act.

**SECTION 2. Common Expenses.** No claim for payment of common expenses or other charges, costs or expenses shall be made against any such trustee personally and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the apartment as provided in the Declaration, these By-Laws and the Act, notwithstanding any transfer of beneficial interest under such trust.

## **ARTICLE IX LITIGATION**

No judicial or administrative proceedings shall be commenced or prosecuted by the Board or the Association unless approved by a vote of seventy-five percent (75%) of the Apartment Owners. This Article shall not apply, however, to (a) actions to enforce the provisions of the Declaration, By-Laws or any other rules and regulations adopted by the Board

or the Association relating to the use or occupancy of the apartments or the common areas, or the conduct of owners or occupants of the apartments; (b) actions to enforce the rights of the Association under any contract for goods or services entered into by the Board pursuant to the powers given it under these By-Laws, the Declaration or by statute; (c) the imposition and collection of assessments as provided in the Declaration and in Article VI hereof (including, without limitation, the foreclosure of liens); or (d) counterclaims brought by the Association in proceedings instituted against it.

## **ARTICLE X GENERAL PROVISIONS**

**SECTION 1. Rules and Regulations.** The Developer shall initially establish and the Board (upon giving notice to all Apartment Owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon) may thereafter establish and amend such Rules and Regulations as the Developer or the Board, as the case may be, may deem necessary for the operation and use of the common elements and limited common elements. The Apartment Owner's rights under this instrument shall in all respects be subject to the Rules and Regulations, which shall be deemed to be a part hereof. Each Apartment Owner shall abide by all such Rules and Regulations, as amended and shall see that they are faithfully observed by the invitees, guests, employees and tenants of the Apartment Owner. The Rules and Regulations shall uniformly apply to and be binding upon all occupants of the apartments. The Board may establish reasonable fines and penalties to enforce the Rules and Regulations and provisions of the condominium documents upon giving notice to all Apartment Owners in the same manner as herein prescribed for notice of meetings.

**SECTION 2. Restrictions on Pets.** No livestock, poultry or other animals whatsoever shall be allowed or kept in any part of the premises except that dogs, cats and other household pets limited to a total of two (2) in number, may be kept by occupants in their respective apartments, but shall not be kept, bred, or used for any commercial purposes. The animals shall not include those described as pests under Section 150A-2, Hawaii Revised Statutes, or animals prohibited from importation under Sections 141-2, 150A-5 or 150A-6, Hawaii Revised Statutes. No animals shall be allowed on any common elements except in transit when carried or on a leash and, in any case, no animals shall be allowed on any part of the recreation areas. Owners must immediately clean up any droppings left by their pets on common areas and in the fenced backyards. Any pet causing a nuisance or unreasonable disturbance to any occupant of the premises shall be promptly and permanently removed upon notice given by the Board of Directors or with the Managing Agent. All pets must be registered immediately with the Managing Agent.

Notwithstanding the foregoing, certified guide dogs, signal dogs and service dogs shall be allowed in the common elements while on a leash, provided that such animals shall at all times be accompanied by the handicapped occupant. The foregoing exception shall also apply to certified guide dogs, signal dogs and service dogs used by handicapped guests.

If said certified guide dogs, signal dogs or service dogs cause a nuisance, the handicapped occupant shall be responsible for abating the nuisance within a reasonable time. If



the handicapped occupant is unable to abate the nuisance, the handicapped occupant will be required to remove the animal from the project. The handicapped occupant will be provided with a reasonable amount of time to secure a replacement animal before he is required to remove the animal causing the nuisance.

If the Owner has agreed in writing to allow his tenants to keep pets in the apartment, the tenants may keep only those types of pets which may be kept by the Owner.

Any Owner who is keeping a pet, not prohibited by these By-Laws, as of the effective date of an amendment to these By-Laws which prohibits pets, may, upon the death of the pet, replace the animal with another and continue to do so for as long as the Owner continues to reside in the Project.

**SECTION 3. Abatement and Enjoyment of Violations by Apartment Owners.** The violation of any of the Rules and Regulations, the breach of any of these By-Laws or the breach of any provision of the Declaration shall give the Board the following rights 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 summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these By-Laws or the Declaration. The Board shall not be guilty of any trespass, provided, however, that notwithstanding the foregoing, the Board shall have such right of entry only in the instance where such violation or breach threatens an immediate, substantial and undeniable threat to life, limb or property of any Apartment Owner, member of his family, tenant, guest or invitee; or

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

(c) To implement: (a) a schedule of reasonable fines and/or penalties for specific violations; (b) specific methods and procedures for determining such violations and culpability therefor; and (c) the manner in which such penalties shall be enforced and collected.

**SECTION 4. Penalties for Violations.** The Association shall have the right to charge or assess any penalties for violations against any Owner. The Board may establish a schedule of penalties for specific violations; establish reasonable specific methods and procedures for determining such violations and culpability therefor; and establish the manner in which such penalties shall be enforced and collected. Fines and penalties accrued against an apartment shall be treated as an assessment as described in Section 4, Article VI defaults of which shall be treated pursuant to Sections 4 and 5 of Article X of these By-Laws.

**SECTION 5. Arbitration of Grievances and Disputes.** At the request of any party, any grievance or dispute concerning or involving one or more Apartment Owners and the Association, the Board, the Managing Agent or one or more other Apartment Owners relating to

the interpretation, application or enforcement of the Act, the Declaration, these By-Laws or any Rules or Regulations adopted pursuant to Article X, Section 1 [Rules and Regulations] above, shall be submitted to arbitration as provided by Section 514A-121 of the Act. Notwithstanding any provision in the Act to the contrary, the Declaration or these By-Laws, the award of any costs, expenses and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses and legal fees shall be binding upon all parties. Nothing in this Section shall be interpreted to require the arbitration of any grievance or dispute which is either exempt from arbitration or determined to be unsuitable for arbitration pursuant to Section 514A-121 of the Act.

**SECTION 6. Expenses of Enforcement.** Every Apartment Owner, occupant, tenant, employee of an Owner or any other person who may in any manner use the Property shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or enforcing against such person or persons any provisions of the Declaration, these By-Laws, the Rules and Regulations or the rules of the Real Estate Commission. However, if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by such person or persons as a result of the Association's action shall be promptly paid to such person or persons on demand. The unpaid amount of such costs and expenses incurred as a result of such substantiated claims against any Apartment Owner or the occupant, tenant or employee of any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent as herein provided and in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the lien for such costs and expenses shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record.

If any claim by an Owner against the Association, any of its officers or directors or the Board is substantiated in an action demanding enforcement of any provision of the Declaration, these By-Laws, the Rules and Regulations, the Act, or the rules of the Real Estate Commission, then all reasonable and necessary costs and expenses, including attorneys' fees, incurred by such Owner as a result of such action shall be awarded to such Owner. However, no such award shall be made in any derivative action unless: (a) the Owner shall have demanded and allowed a reasonable time for the Board to pursue such enforcement; or (b) the Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If any claim by an Owner is not substantiated in any court action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, by-laws, rules and regulations, or the Act, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless the action was filed in small claims court or prior to filing the action in a higher court the Owner has first submitted the claim to mediation, or to arbitration under part VII of the Act, and made a good faith effort to resolve the dispute under any of these procedures.

**SECTION 7. Right of Access.** The Managing Agent and any other person authorized by the Board or the Managing Agent shall have a right of access to any Owner's apartment for the purpose of making inspections where there is reason to believe that there is a condition existing in an apartment which threatens to damage another apartment or the common elements, or for the purpose of correcting any condition existing in an 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 an apartment or elsewhere in the buildings, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be granted immediately, whether the Owner is present at the time or not.

**SECTION 8. Owners May Incorporate.** All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a nonprofit membership corporation formed by the Owners under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the written approval of seventy-five percent (75%) in interest of the voting Owners. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth herein, 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.

**SECTION 9. Notices.** All notices to the Association shall be mailed or delivered to the Board, in care of the Managing Agent, or, if there is no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate by notice in writing to all Owners and all mortgagees of apartments. Any notices to mortgagees of apartments shall be sent by mail to their respective addresses, as designated by them in writing given 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. If any interest in an apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, notice shall be deemed given sufficiently for all purposes if it is in writing and is delivered personally or by registered or certified mail to the trustee of any such trust and to any beneficiary whose name and address has been furnished to the Board.

**SECTION 10. Inspection of Condominium Property Regime Documents.** During normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Owners, lenders (and the insurer of a first mortgage on any apartment) and prospective purchasers, current copies of the Declaration, By-Laws and other rules governing the operation of the Project and the most recent annual financial statement of the Association.

**SECTION 11. Captions.** The captions herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or prescribe the scope of these By-Laws or the intent of any provision hereof.

**SECTION 12. Gender.** The use of any gender in these By-Laws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context requires.

**SECTION 13. Waiver.** No restriction, condition, obligation or provision in these By-Laws shall be deemed abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**SECTION 14. Interpretation.** The provisions of these By-Laws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of apartments shall carry out and pay for the operation and maintenance of the Property as a mutually beneficial and efficient establishment.

Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board to conduct or engage in active business for profit on behalf of any or all of the Apartment Owners.

**SECTION 15. Compliance with Hawaii Law.** The Declaration and these By-Laws are subject to the laws of the State of Hawaii, including but not limited to the Act and the Hawaii Administrative Rules, Title 16, Chapter 107.

**SECTION 16. Amendment.** Except as otherwise provided herein, the provisions of these By-Laws, other than this Section, may be amended in accordance with Section 514A-82 of the Act by the vote or written consent of at least sixty-five percent (65%) of the Apartment Owners; provided that the prior written consent of the first mortgagees, if any, of not less than sixty-five percent (65%) of the apartment owners shall also be required to approve any amendment of this Section or of Article II, Section 3 [Notice of Meetings and Other Notices]; Article II, Section 9 [Proxies and Pledges]; Article III, Section 7(z) [Powers and Duties]; Article III, Section 9(c) [Fidelity Bond]; Article III, Section 14(a) [Fidelity Bonds]; Article V [Use, Maintenance and Alteration of Project]; Article VI [Common Expenses, Apartment Expenses, Taxes and Accounting]; or Article VII [Mortgagees] that materially affects their rights. Each one of the particulars set forth in Section 514A-82 of the Act shall always be embodied in these By-Laws. Amendments to these By-Laws may be proposed by the Board or by a volunteer Apartment Owners' committee, and any proposed amendment shall be accompanied by a written explanation of the rationale therefor. Any amendments proposed by a volunteer Apartment Owners' committee shall be accompanied by a petition in favor of the proposed amendments signed by not less than twenty-five percent (25%) of the Apartment Owners. However, a volunteer Apartment Owners' Committee may not submit a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the Apartment Owners within one year after the original petition was submitted to the Board. Within thirty (30) days after the receipt of such petition to amend the By-Laws, the Board shall mail the proposed amendments, the rationale therefor and ballots for voting on the proposed amendments without change to all Apartment Owners at the expense of the Association. The vote or written consent required to adopt the proposed changes must be obtained within 120 days after mailing. Any amendments to these By-Laws shall be evidenced by a written instrument in form suitable for recordation which sets forth the amendment and the manner in which it was duly approved

and which is signed and acknowledged by any two (2) officers of the Association. The amendment shall be effective only upon recordation of the instrument, together with all required consents.

#### **SECTION 17. Restatement of Declaration and By-Laws.**

(a) Notwithstanding any other provision in these By-Laws or of the Act, the Association may at any time restate the Declaration or these By-Laws to set forth all amendments thereof by a resolution adopted by the Board.

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

(c) Upon the adoption of a resolution pursuant to subsections (a) or (b) above, the restated Declaration or By-Laws shall set forth all of the operative provisions of the Declaration or By-Laws, as amended, together with a statement that the restated Declaration or By-Laws correctly sets forth without change the corresponding provisions of the Declaration or By-Laws, as amended, and that the restated Declaration or By-Laws supersedes the original Declaration or By-Laws and all prior amendments.

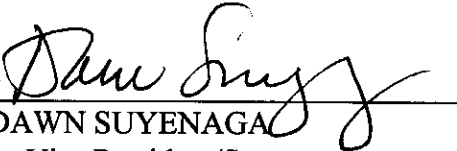
(d) The restated Declaration or By-Laws shall be recorded in the manner provided in Sections 514A-11 or 514A-82 of the Act, or both, and upon recordation shall supersede the original Declaration or By-Laws and all prior amendments. In the event of any conflict, the restated Declaration or By-Laws shall be subordinate to the original Declaration or By-Laws and all prior amendments.

**SECTION 18. 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.

The Developer, acting as the initial Association of Apartment Owners, hereby adopt the foregoing as the By-Laws of the Association of Apartment Owners of LAS BRISAS, PHASE 15 Condominium Project on behalf of the Association on

July 1, 2004

GENTRY HOMES, LTD.,  
a Hawaii corporation

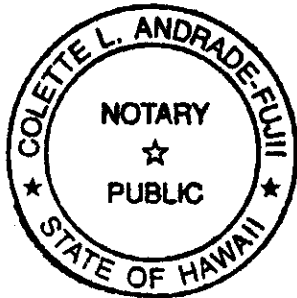
By   
DAWN SUYENAGA

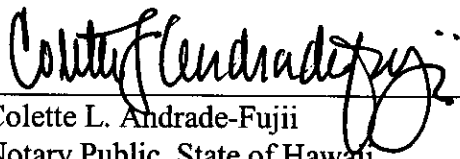
Its Vice President/Secretary

“Developer”

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On July 1, 2004, before me appeared **DAWN SUYENAGA**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



  
\_\_\_\_\_  
Colette L. Andrade-Fujii  
Notary Public, State of Hawaii  
My commission expires July 17, 2004.

**EXHIBIT "A"**

ALL of that certain parcel of land situate at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, described as follows:

**Lot 14736** consisting of 32,123 square feet, as shown on Map 1148, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being the land described in Land Court Certificate of Title No. 704,761.

**END OF EXHIBIT "A"**