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AMENDED AND RESTATED BYLAWS
OF THE ASSOCIATION OF
WAILEA BEACH RESORT & RESIDENCES

**AMENDED AND RESTATED BYLAWS OF THE ASSOCIATION OF
WAILEA BEACH RESORT & RESIDENCES**

THESE AMENDED AND RESTATED BYLAWS are made this 9th day of November, 2006 by **WAILEA HOTEL & BEACH RESORT, L.L.C.**, a Delaware limited liability company ("**Developer**"), with its principal place of business and post office address at Kobayashi Group, LLC, 1288 Ala Moana Boulevard, Suite 201, Honolulu, Hawaii 96814.

WITNESSETH:

WHEREAS, by way of that certain Declaration of Condominium Property Regime of Wailea Beach Resort & Residences dated June 23, 2006, filed with the Office of the Registrar of the Land Court of the State of Hawaii as Document No. 3446757 and duly noted on Land Court Certificate of Title No. 669,405 ("**Original Declaration**"), Developer submitted that certain property located at Honuaua, District of Makawao, Island and County of Maui, State of Hawaii, and more particularly described in Exhibit "A" to said Declaration, plus all improvements thereon, to a condominium property regime known as "Wailea Beach Resort & Residences" ("**Project**"); and

WHEREAS, concurrently therewith, Developer filed the Bylaws of the Association of Apartment Owners of Wailea Beach Resort & Residences dated June 23, 2006 at said Office as Document No. 3446758 and duly noted on Land Court Certificate of Title No. 669,405 ("**Original Bylaws**"); and

WHEREAS, by way of that certain Amended and Restated Declaration of Condominium Property Regime of Wailea Beach Resort & Residences and Condominium Map of even date herewith ("**Declaration**"), filed at said Office, the Original Declaration was amended and restated in its entirety; and

WHEREAS, Article X, Section 12 of the Original Bylaws authorize amendments to the Original Bylaws upon vote or written consent of at least sixty-seven percent (67%) of the total Common Interest; and

WHEREAS, one hundred percent (100%) of the Common Interest of the Project is currently held by Developer;

NOW, THEREFORE, the Original Bylaws shall be amended and restated in its entirety as follows: Developer hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness such property. These Bylaws shall constitute covenants running with the land and Units established thereon, and equitable servitudes, and shall be binding on all parties having or acquiring any right, title or interest therein.

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1. **AUTHORITY FOR BYLAWS.** Developer, acting as the present Association of the Project, hereby approves and adopts these Bylaws pursuant to Chapter 514B, Hawaii Revised Statutes ("**Act**"). The Bylaws of the Project 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 ("**HAR**"), as the same are amended from time to time.

Section 2. **PURPOSE OF BYLAWS; COVENANTS TO RUN WITH THE LAND.** The Land and the Improvements are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following Bylaws, all of which are declared and agreed to be in furtherance of the plan set forth in the Declaration, to constitute a condominium property regime under the Act and for the purposes of enhancing and perfecting the value, desirability and attractiveness of the Project. These Bylaws shall run with the Land and Units, shall constitute equitable servitudes and liens, and shall be binding upon all parties having or acquiring any right, title or interest therein.

Section 3. **DEFINITIONS.** The terms used herein with initial capital letters shall have the meanings given to them in Article I of the Declaration, except as expressly otherwise provided herein.

Section 4. **CONFLICTS.** These Bylaws are set forth to comply with the requirements of the Act and the HAR. In any case where any of these Bylaws conflict with the provisions of the Act, the HAR, the Master Declaration or the Declaration, the provisions of the Act, the HAR, the Master Declaration or the Declaration, as the case may be, shall control.

Section 5. **BINDING EFFECT OF BYLAWS ON OWNERS, MORTGAGEES AND LESSEES.** All present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and occupants of Units and their employees, business invitees and any other persons who may use any part of the Project in any manner are subject to these Bylaws, the Master Declaration, the Declaration and the House Rules. The acceptance of a Unit Deed, or conveyance or mortgage or Agreement of Sale or the entering into of a lease or the act of occupancy of a Unit shall constitute an acceptance, ratification and agreement to comply with the provisions of these Bylaws, the House Rules, the Master Declaration and the Declaration, as the same may be amended from time to time.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. **MEMBERSHIP.** The membership of the Association shall consist exclusively of all Unit Owners. Each Unit Owner shall become a member of the Association upon acquiring title to a Unit. The Unit Owner shall remain a member of the Association until such time as Owner's ownership of the Unit ceases, at which time Owner's membership in the Association shall automatically cease.

Section 2. **PURPOSE.** The Association shall be organized and operated for the purposes of managing, maintaining, acquiring, constructing and caring for the Association property, which includes the Common Elements, any real property which is not part of the Common Elements but which the Association either owns or leases for a term of more than one (1) year, any personal or moveable property owned or leased by the Association and any fixtures owned or leased by the Association; provided, however, that the Limited Common Elements shall be managed and maintained by the Owner of the Unit to which such Limited Common Element is appurtenant, unless otherwise provided in the Declaration or these Bylaws.

Section 3. **VOTING.** Except with respect to those matters requiring voting by Unit type, each Unit Owner shall be entitled to that percentage of the total vote of all of the Unit Owners which equals the percentage of the Common Interest appurtenant to such Unit as set forth in the Declaration. The respective Unit Owners may cast votes in person or by proxy. The vendee of a Unit pursuant to an Agreement of Sale shall have the right to vote unless the vote is retained by the vendor as may be provided in said Agreement of Sale pursuant to Section 514B-124 of the Act. An executor, administrator, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any Unit owned or controlled by him or her in such capacity, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such Unit in such capacity not later than the commencement of the meeting. The vote for any Unit owned of record by two (2) 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. If more than one (1) Owner is present, the votes allocated to that Unit may be cast only in accordance with the agreement of the majority in interest of the Owners. There is a majority agreement if any one of the Owners casts the votes allocated to that Unit without protest being made by any of the other Owners of the Unit to the person presiding over the meeting before the polls are closed. Corporations, general partnerships, limited partnerships, limited liability partnerships and limited liability companies which are Owners shall designate a general partner, officer, member or manager, as appropriate, for the purpose of exercising the vote; and such representative of an Owner which is a corporation, general partnership, limited partnership or limited liability company shall present satisfactory written evidence to the Secretary of his or her designation as representative not later than the commencement of the meeting.

Section 4. **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of thirty-three percent (33%) of Unit Owners (defined in Article II, Section 5, below) shall constitute a quorum at all meetings of the Unit Owners.

Section 5. **MAJORITY VOTE.** The vote of a majority of the Common Interest present or represented at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes, except where a higher percentage vote is required in the Declaration, these Bylaws or by law. Notwithstanding the preceding sentence, where a vote requires a Majority of Unit Owners, or a specific percentage of Unit Owners, the term "**Majority of Unit Owners**" shall mean the Unit Owners to which are appurtenant more than fifty percent (50%) of the total Common Interest, and any specified percentage of the Owners means Unit Owners to which are appurtenant such percentage of the Common Interest.

Section 6. **CUMULATIVE VOTING.** Election of Directors shall be by cumulative voting by Unit type, and each Owner may cast for any one or more nominees to the Board a vote equivalent to the votes that such Owner is entitled to, multiplied by the number of Directors to be elected for the Unit type. Each Owner shall be entitled to cumulate his or her votes and give all thereof to one nominee or to distribute his or her votes in such manner as he or she shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected.

Section 7. **PROXIES.** Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. A Unit Owner may vote by mail or electronic transmission through a duly executed proxy. If more than one (1) person owns a Unit, each Owner of the Unit may vote or register a protest to the casting of votes by the other Owners of the Unit through a duly executed proxy.

The authority given by any Unit Owner to another person to represent said Owner at meetings of the Association shall be in writing, signed by the Owner, and must be delivered to the Secretary or the Managing Agent, if any, no later than 4:30 p.m. Hawaii Standard Time on the second business day prior to the date of the meeting to which it pertains. The proxy must contain at least (a) the name of the Association, (b) the date of the meeting of the Association, (c) the printed name and signature of the Owner giving the proxy, (d) the Unit or Units for which the proxy is given, (e) the date that the proxy is given, and (f) the name of the person to whom the proxy is given.

If a standard proxy form authorized by the Association, the proxy shall comply with the requirements of the Act. The proxy form shall also contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act.

All proxies shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy and may be limited as the Unit Owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit. Voting rights transferred or pledged by mortgage, deed of trust, Agreement of Sale or lease of any Unit or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. Nothing in this Section shall affect the holder of any proxy under a first mortgage of record encumbering a Unit or under an Agreement of Sale affecting a Unit. The Managing Agent, the resident manager and their respective employees shall not solicit, for use by such Managing Agent or resident manager, any proxies from any Unit Owner, nor shall the Managing Agent or resident manager cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No Director shall use Association funds to solicit proxies except for the distribution of proxies as set forth in Section 514B-123(h) of the Act, provided that this shall not prevent an individual Director from soliciting proxies as a Unit Owner under Section 514B-123(h) of the Act.

Proxies shall be revoked by writing filed with the Secretary or Managing Agent or by the attendance of an Owner at the meeting, if so requested by the Owner. Any one of two or more persons and/or entities owning any Unit may give or revoke a proxy for the entire vote of such Unit. A proxy is void if it purports to be revocable without notice. No votes allocated to a Unit owned by the Association may be cast for the election or re-election of the Board.

A copy, facsimile telecommunication or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original proxy.

If the Board intends to use Association funds to distribute proxies, including the standard proxy form, it shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days before its distribution of proxies. If the Board receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, which shall be limited to black text on white paper and shall not exceed one single-sided 8-1/2" by 11" page, and indicating the Owner's qualifications to serve on the Board or reasons for wanting to receive proxies, the Board shall either:

(a) Mail to all Owners a proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

(b) Mail to all Owners a proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

Section 8. **PLACE OF MEETINGS.** All meetings of the Association shall be held at such place within the Project, or elsewhere within the State, as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State.

Section 9. **ANNUAL MEETINGS.** The first annual meeting of the Association shall be held as called by the Developer, and shall be held upon the earlier of: (a) one hundred eighty (180) days from the filing of the first Unit Deed conveying a Unit in the Project, provided that not less than forty percent (40%) of the Project has been sold and filed at the Office (or if less than forty percent (40%) of the Units in the Project have been sold and filed, then within one (1) year of the filing of the first Unit Deed, provided that ten percent (10%) of the Unit Owners request, in writing, that the first annual meeting be held), (b) four (4) months after seventy-five percent (75%) of the Units in the Project have been conveyed by Developer to other Owners, or (c) five (5) years after the filing of the first Unit Deed conveying a Unit in the Project at said Office. The terms "filed" and "filing" shall mean and refer to the filing of a Unit Deed transferring a Unit to an Owner. At such meeting the Unit Owners shall elect a Board. Prior to that time, the Association shall consist solely of Developer, which shall have authority to act in all matters as the Association and the Board and may act without a formal meeting and without call or notice. Thereafter, the annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year on a date selected by the Board, or at such other time as the Board shall from time to time determine. At such meetings the Board shall be elected by "secret" ballot of the Unit Owners in accordance with the requirements of Article III, Section 1 of these Bylaws. The Unit Owners may transact such other business at such meetings as may properly come before the Association.

Section 10. **REGULAR MEETINGS.** In addition to annual meetings as provided in Article II, Section 9, the Board, by resolution or a Majority of the Unit Owners by petition may establish regular meetings at semi-annual, quarter-annual, or other regular intervals.

Section 11. **SPECIAL MEETINGS.** Special meetings of the Association may be held at any time upon the call of the President or of any five (5) Directors, or by a petition to the Secretary or the Managing Agent signed by not less than twenty-five percent (25%) of the Owners as shown on the Association's record of ownership. Except as otherwise provided in these Bylaws or by law, the business considered shall be limited to that stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary or the Managing Agent shall send written notice of the meeting to all Unit Owners in the manner provided in Article II, Section 12, below. In the event that the Secretary or the Managing Agent shall fail to send out notices within fourteen (14) days of receipt of any petition to have such meeting, or such other period as may be required by Section 514B-121 of the Act, the petitioners calling for the meeting may send the notice in accordance with the provisions for such notice contained in these Bylaws. The meeting shall be held at the time and place specified in such call, or if unspecified, at any reasonable time within forty-five (45) days from the date the call was received. A special meeting and procedures adopted for the removal and replacement of Directors shall be conducted in accordance with Article III, Section 4 of these Bylaws pertaining to the removal, replacement and election of Directors.

Section 12. **NOTICE OF MEETINGS AND OTHER NOTICES.** The Secretary shall cause written notice of all meetings, annual or special, stating the date, time and place of the meeting and whether it is annual or special, together with a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws, to be given by hand-delivering such notice(s) and form, by mailing, postage prepaid to the mailing address of each Unit or any other address designated in writing by the Unit Owner, or, at the option of the Unit Owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the Unit Owner, at least fourteen (14) days before the date assigned for the meeting. The notice must state the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws, and any proposal to remove a Director; provided that nothing herein shall preclude a Unit Owner from proposing an amendment to the Declaration or these Bylaws or to remove a Director at any annual meeting. Upon written request for notices delivered to the Board, the holder of any duly filed mortgage or deed of trust from any Unit Owner may obtain a copy of any and all notices permitted or required to be given to the Unit Owner, whose interest is subject to said mortgage or deed of trust. Upon notice being given in accordance with the provisions hereof, the failure of any Unit Owner to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of any Unit 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 or she shall, at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof. Each Unit Owner shall keep the Association informed of any changes in address.

Section 13. **ADJOURNMENT OF MEETINGS.** If any meeting of the Association cannot be held because a quorum is not present, a majority in Common Interest of those Unit 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 as may be determined by majority vote of the Unit Owners 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 14. **CONDUCT OF MEETINGS AND ORDER OF BUSINESS.** All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order Newly Revised. The order of business at all regular 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 so required);
- (h) Election of members of the Board (when so required);
- (i) Unfinished business; and
- (j) New business.

Section 15. **MINUTES OF ASSOCIATION MEETINGS.** Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) days after the meeting, if authorized by the Unit Owners at an annual meeting. Minutes of all meetings of the Association shall be available within seven (7) days after approval and unapproved final drafts of minutes shall be available within sixty (60) days after the meeting. If approved by the Board, Unit Owners shall be given a copy of the approved minutes or notified

of the availability of the minutes within thirty (30) days after approval. A Unit Owner shall be allowed to offer corrections to the minutes at an Association meeting.

Section 16. **ASSOCIATION POWERS.** Except as otherwise provided herein, and subject to the provisions of the Declaration and these Bylaws, the Association, even if unincorporated, shall have those powers set forth in Section 514B-104 of the Act, as limited by Section 514B-105 of the Act.

ARTICLE III

BOARD OF DIRECTORS

Section 1. **NUMBER AND QUALIFICATION.** Developer shall have the right to appoint and remove Directors and Officers during the Developer Control Period. Upon the expiration or termination of the Developer Control Period, the Board shall be replaced by a Board consisting of nine (9) persons elected at the first annual meeting of the Association. The Board shall be elected by Unit type, with all Commercial Unit Owners (the "Commercial Unit Class") electing one (1) Director (the "Commercial Director") and all Residential Unit Owners (the "Residential Unit Class") electing eight (8) Directors (the "Residential Directors"). Each member of the Board shall be an Owner, co-Owner, a vendee under Agreement of Sale, a trustee or beneficiary of a trust that owns a Unit, an officer of any corporate owner or a representative of any entity which owns a Unit, and so long as Developer owns at least one (1) Residential Unit, to the extent permitted by applicable law, Developer has the right, but not the obligation, to appoint one (1) Residential Director. The partners of a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be Owners of a Unit for the purposes of serving on the Board. There shall not be more than one (1) representative on the Board from any one Unit. No resident manager or employee of the Association shall serve on the Board. Any Director who is an employee of the Managing Agent shall not participate in any discussions regarding the Management Agreement and shall be excluded from any executive session where the Managing Agent or Management Agreement will be discussed.

Section 2. **POWERS AND DUTIES.** The Board shall have the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and the Declaration, and for the maintenance, upkeep and repair of the Project in good order and condition in accordance with the First Class Standard, and may do all such acts and things except as by law or by the Declaration or by these Bylaws may not be delegated to the Board by the Association. The Board shall have all rights set forth in the Act subject to any and all approval requirements as set forth in the Act, the Declaration and these Bylaws. In the performance of their duties, Officers and Directors shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended. Subject to the terms of the Declaration, the powers and duties of the Board shall include, but shall not be limited to, the following:

- (a) Enforcing the provisions of the Declaration, these Bylaws and the House Rules;
- (b) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof which may in the opinion of the Board constitute a lien against the Project or against the Common Elements or Limited Common Elements rather than merely against the interest therein of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and for the costs incurred by the Board by reason of such lien;
- (c) Purchasing 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 Bylaws or by law or which in its opinion shall be necessary or proper for the operation of the Project or the enforcement of these Bylaws, provided that if any such costs and expenses are required because of the particular actions or negligence of the Owners of particular Units, the cost thereof shall be specially assessed to the Owners of such Units and the Association shall have a right to lien such Unit or Units pursuant to Article VI, Section 5 hereof;

(d) Contracting for property, liability and other insurance on behalf of the Association, pursuant to the provisions of Article VII hereof;

(e) Operation, care, upkeep, maintenance and repair of the Common Elements and any additions or alterations thereto, subject to the rights and obligations of Unit Owners with respect to the Limited Common Elements, as set forth in the Declaration;

(f) Preparation and adoption annually of a budget of the Common Expenses required for the affairs of the Association in compliance with Section 514B-148 of the Act and the HAR (including, without limitation, the operation and maintenance of the Project in accordance with the Declaration and these Bylaws), and determination of the amounts of regular and special assessments;

(g) To cause a reserve study to be conducted on behalf of the Association and establishment of reserve funds as required by law;

(h) 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;

(i) Exercising a right of entry in or upon any privately owned Unit or any Limited Common Element at any time and from time to time during reasonable hours and without liability to any Owner for trespass, damage or otherwise, but only when necessary or appropriate (in connection with construction, maintenance or repair) to protect the Common Elements, Limited Common Elements, or any Unit or Units; provided that the Board shall have a right of entry in the event of emergencies pursuant to Section 514B-137(b) of the Act and in accordance with the Declaration;

(j) Maintenance and repair of any Unit 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 Unit shall have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof is delivered by the Board to said Owner or Owners; provided that the Board shall levy a special assessment against such Unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying or collecting such special assessment, and provided further that the Association shall have a right to lien such Unit for the special assessment pursuant to Article VI, Section 5 hereof;

(k) Levy and collection of regular and special assessments of the Common Expenses and other charges payable by the Unit Owners;

(l) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements;

(m) Subject to the provisions of Article X, Section 1 of these Bylaws, adoption and amendment of House Rules covering the details of the operation and use of the Common Elements of the Project and the enforcement of those House Rules;

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

(o) To the extent permitted by law, purchasing or leasing or otherwise acquiring in the name of the Board or its designee, corporate or otherwise, on behalf of the Association, Units offered for sale or lease, but only with prior approval of Unit Owners owning not less than sixty-seven percent (67%) of the Common Interests; provided, however, that the purchase of the first such Unit by the Association shall require only Board approval. The expense of any leasing, acquiring, maintaining or operation of any such Unit by the Board shall be a Common Expense;

(p) To the extent permitted by law, purchasing Units at foreclosure or other judicial sales in the name of the Board or its designee, corporate or otherwise, on behalf of all Unit Owners;

(q) To the extent permitted by law, selling (including entering into listing agreements with real estate brokers), leasing, subleasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), or otherwise dealing with Units acquired by the Association or its designee, corporate or otherwise, on behalf of all Unit Owners;

(r) Organizing corporations to act as designees of the Board in acquiring title to or leasing of Units on behalf of the Association;

(s) Making additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the other provisions of these Bylaws and the Declaration;

(t) To the extent permitted by law, the Board may borrow funds from time to time on behalf of the Association for (i) the repair, replacement, maintenance, operation or administration of the Common Elements of the Project, (ii) the purchase of property, (iii) the making of repairs, additions, alterations or improvements to the Project, or (iv) for such other purpose or purposes as the Board may determine in its reasonable discretion;

(u) Procuring legal, financial consulting, real estate brokerage, accounting, architectural and other consulting services, including opinions of counsel necessary or proper in the operation of the Project or enforcement or implementation of the Declaration, these Bylaws, the House Rules and any other material documents affecting the Project;

(v) Representing the Unit Owners in any proceedings, negotiations, settlements or agreements related to the allocation of any losses, awards or proceeds from the condemnation, destruction or liquidation of all or part of the Project, or from the termination of the Project;

(w) Paying for all Common Expenses which the Board is required to pay for pursuant to the terms of these Bylaws or by law, or which in the Board's opinion shall be necessary or proper for the operation of the Project or for the enforcement of these Bylaws, provided that if any such payment is required because of the particular actions or negligence of the Owners of particular Units, the cost thereof shall be specially assessed to the Owners of such Units and the Association shall have a right to lien such Unit or Units pursuant to Article VI, Section 5 hereof;

(x) Keeping, or causing the Managing Agent to keep, copies of conveyance documents provided to the Association from the Unit Owners for questions as to ownership and voting rights, the addresses of Unit Owners, and the names and addresses of the vendees under Agreements of Sale, if any, as provided in Article III, Section 18(f) of these Bylaws; provided, that each Owner shall be responsible for providing the Managing Agent with the most current information;

(y) Reviewing for the purpose of approval or disapproval of any Unit Owner's requests to alter their respective Units;

(z) Appointing a Managing Agent and delegating to it such of its powers as it deems necessary or appropriate, delegation of which is not otherwise prohibited herein or in the Declaration or by law;

(aa) Establishment of such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the House Rules, including, but not limited to, 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 the provisions herein. The unpaid amount of such penalties and fines against any Unit Owner shall constitute a lien against its Unit which may be foreclosed by the Board or Managing Agent in the same manner as provided herein and in the Act for Common Expenses; provided, however, that said lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Unit and to all sums unpaid on mortgages of record recorded prior to the Association's notice of lien;

(bb) Receiving easements in favor of the Association as necessary for the operation of the Project;
and

(cc) Any and all other actions required to administer the affairs of the Project, comply with all government requirements and the Declaration for maintenance, upkeep and repair of the Project.

Section 3. ELECTION AND TERM OF OFFICE. At the first annual meeting of the Association, each Class Director will be elected only by those Unit Owners in the Unit Class represented by such Director. Such voting shall be by secret ballot. The term of office for the initial Directors shall be as follows: (i) the four (4) Directors from the Residential Unit Class receiving the highest number of votes shall serve for a term of two (2) years and the four (4) Directors from the Residential Unit Class receiving the next highest number of votes shall serve for a term of one (1) year; and (ii) the Director from the Commercial Unit Class receiving the highest number of votes shall serve for a term of two (2) years. If elected during the Developer Control Period, the term of the Class Directors elected herein shall commence upon the expiration or termination of the Developer Control Period. At the expiration of the term of office of each initial Director, his or her successor shall be elected to serve a term of two (2) years. Each Director shall continue to exercise the powers and duties of the office until his or her successor shall have been elected by the Unit Class that the Director represents in the case of delay in the election of a successor.

Section 4. REMOVAL OF MEMBERS OF THE BOARD. A Director may be removed at any time, with or without cause, upon a vote of the Unit Owners of the Unit Class represented by the Director at any regular meeting or special meeting called for such purpose; provided, however that upon any such removal, at the same meeting at which the removal occurs, the Unit Class that removed the Director shall elect a successor for the remainder of the term of the Director who was removed. If such removal and replacement is to occur at a special meeting, the call for such meeting shall be as set forth in Article II, Section 11. Except as otherwise provided in this paragraph, any such meeting shall be conducted in accordance with all applicable requirements and procedures contained in these Bylaws for the removal and replacement of Directors. Any Director whose removal is proposed by the Unit Owners shall be given an opportunity to be heard at the meeting. In addition, if any Director shall fail to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a vote of a majority of the other Directors may remove such Director and select a replacement to serve for the remainder of his or her unexpired term from the same Unit Class represented by the Director so removed.

Section 5. VACANCIES. Vacancies in the Board caused by any reason other than the natural expiration of the term of any Director, or the removal of a Director by a vote of the Unit Owners of the Unit Class represented by the Director, shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, or at the next regular meeting, even though the Directors present at such meeting may constitute less than a quorum, and each person so elected shall be a Director for the remainder of the term of the member whose vacancy such person filled (unless sooner removed) and until a successor shall be elected at the next annual meeting of the Association. Any Director appointed by the Board to fill a vacancy shall be selected from the same Unit Class represented by the Director who has vacated the position. A vacancy will be deemed to occur upon the death, mental incapacity, or voluntary resignation of any Director, or upon such person ceasing to have the qualifications for a Director as defined in Article III, Section 1, or at the discretion of the Board, as provided in Article III, Section 4 above.

Section 6. ORGANIZATIONAL MEETING AND CONDUCT OF MEETINGS. The first meeting of the Board shall be held immediately after the first annual meeting of the Association and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided that a majority of the whole Board shall be present thereat. Notwithstanding the foregoing, if elected during the Developer Control Period, the first meeting of the newly elected Directors shall be held upon the expiration or termination thereof, upon notice as provided in Article III, Section 7, herein. At such meeting, the Board shall elect the Officers for the ensuing year.

All meetings of the Board (whether organizational, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order Newly Revised. The Association shall provide each Director with a current copy of the Master Declaration, the Declaration, these Bylaws, the House Rules and, annually, the Act and the HAR.

Meetings may be conducted by any means of communication through which all Directors participating may simultaneously hear each other at the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the Board, any Unit Owner may participate in a meeting conducted as provided herein, provided that the Board may request that the Unit Owner pay for the costs associated with the participation.

Section 7. **REGULAR MEETINGS.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each Director personally or by first class mail, facsimile or electronic mail at least fourteen (14) business days, if practicable, prior to the day named for such meeting. The Managing Agent or a member of the Board shall post notice of all meetings of the Board at two (2) or more prominent locations within the Project seventy-two (72) hours prior to the meeting, or at the same time that notice is given to Directors.

Section 8. **BOARD MEETINGS OPEN TO OWNERS.** With the exception of executive sessions, all meetings of the Board shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion unless a majority of a quorum of the Board determines that such non-Directors shall not so participate in the meeting.

Section 9. **EXECUTIVE SESSION.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in private in executive session to discuss and vote upon matters: (a) concerning personnel; (b) concerning litigation in which the Association is or may become involved; (c) necessary to protect the attorney-client privilege of the Association; or (d) necessary to protect the interests of the Association while negotiating contracts, leases and other commercial transactions. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 10. **SPECIAL MEETINGS.** Special meetings of the Board may be called by the President on three (3) business days' notice to each Director, given personally or by mail, facsimile transmission or electronic mail transmission (which notice shall state the time, place and purpose of the meeting), and on posting of notice, if practicable, as provided in Article III, Section 7; provided, however, that in the case of emergency situations, as determined by the President, a special meeting of the Board may be called by the President on eight (8) hours notice to each Director. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice, if practicable, on the written request of at least two (2) Directors.

Section 11. **WAIVER OF NOTICE.** Any Director 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 giving of such notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice by him or her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. **QUORUM OF BOARD.** At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors 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 13. **COMPENSATION.** No Director shall receive any compensation from the Association for travel expenses, Directors' fees and per diem expenses, unless Owners are informed and a majority of Owners approve such expenses; provided that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the meeting shall reflect in detail the items and the amounts of the reimbursements. The Directors may expend Association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses include registration fees, books, videos, tapes, other educational materials and

economy travel expenses. Except for economy travel expenses within the State, all reimbursement for other travel expenses shall be subject to approval by the Board and shall be reflected in the minutes as discussed above.

Section 14. LIABILITY AND INDEMNITY OF THE BOARD AND OFFICERS. The Directors and Officers shall not be liable to the Association for any mistake of judgment or otherwise except for their own individual gross negligence or willful misconduct. The Association shall obtain and maintain at the Association's expense a policy of directors' and officers' liability insurance covering the Board and Officers as provided in Article VII, Section 4.

The Association shall defend and indemnify each Director and Officer against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for reasonable attorneys' fees and other related expenses which may be incurred by or imposed on the Directors and Officers in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted, or threatened in which such Director or Officer may be involved as a party or otherwise by reason of his being or having been a Director or Officer, or by reason of any past or future action taken or authorized or approved by such Director or Officer, or any omission to act as a Director or Officer, whether or not he or she continues to be a Director or Officer at the time of the incurring or imposition of such costs, expenses or liabilities. The Association shall not defend and indemnify the Directors or Officers for such costs, expenses or liabilities as shall relate to matters as to which such Director or Officer is liable by reason of such Director's or such Officer's gross negligence or willful misconduct toward the Association in the performance of such Director's or Officers duties as a Director or Officer. As to whether or not a Director or Officer was liable by reason of gross negligence or willful misconduct toward the Association in the performance of such Director's or such Officer's duties as a Director or Officer, in the absence of such final adjudication of the existence of such liability, each Director and Officer may conclusively rely upon an opinion obtained by the Association's attorney. The foregoing right of indemnification shall not be exclusive of other rights to which a Director or Officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each Director or Officer.

Section 15. NO PROXY VOTE; CONFLICT OF INTEREST. A Director shall not cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a conflict of interest. The Director shall disclose the nature of the conflict of interest prior to a vote at the Board meeting and the minutes of the meeting shall record the fact that a disclosure was made. For the purposes of this Section, "conflict of interest" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. Ownership and use of a Unit by a Director for the purposes permitted by the Declaration and these Bylaws do not, by themselves, create a conflict of interest.

Section 16. EMPLOYEES; BACKGROUND CHECK. Upon written authorization of an applicant for employment as a security guard, resident manager, or a position that would allow the employee access to the keys of or entry into Units or access to Association funds, the Board, the Managing Agent, and, to the extent permitted by law, the Front Desk Unit Owner and the Resort Manager, are empowered to conduct a background check or direct another responsible party to conduct the check as provided in Section 514B-133 of the Act. This information shall be used only for the purpose of conducting the criminal history check authorized by this Section and the Act. The failure of the Association, the Board, the Managing Agent, the Front Desk Unit Owner or the Resort Manager to conduct or verify a background check shall not give rise to a private cause of action against the Board, the Managing Agent, the Front Desk Unit Owner or the Resort Manager for acts and omissions of the employee or vendor hired.

Section 17. MINUTES OF BOARD MEETINGS. Minutes of meetings of the Board shall include a recorded vote of each Board member on all motions except for motions voted on in executive session and shall be approved no later than the second succeeding regular meeting of the Board. Minutes of all meetings of the Board shall be available within seven (7) days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive sessions may be withheld if their publication would defeat the lawful purpose of the executive session.

Section 18. **MANAGING AGENT.**

(a) Management Agreement. The Board shall employ a responsible Managing Agent duly qualified to act as a Managing Agent under the requirements of Section 514B-132 of the Act to manage and operate the Project, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Board. Any Management Agreement entered into before the election of the Board at the first annual meeting of the Association may be terminated without penalty within one hundred eighty (180) days after said Board is elected upon not less than ninety (90) days notice to the Managing Agent.

(b) Powers and Duties. The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Project, (ii) purchase, maintenance and replacement of any equipment, (iii) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (iv) contracting with others for the furnishing of such services as it deems proper for the Project, (v) preparation of a proposed budget and schedule of assessments, (vi) administration of Association functions, (vii) collection of assessments, and payment of bills to third parties, (viii) overseeing the purchase of such insurance as is contemplated by these Bylaws and/or by the Declaration, (ix) custody and control of all funds of the Association and the maintenance of books and records with respect thereto, (x) the preparation and filing of financial reports and (xi) filing of any other applications or reports that may be required by governmental and non-governmental entities. The Board may, in its discretion, limit any of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent.

(c) Statement of Account. Upon written request of any Unit Owner or the holder, insurer or guarantor of a mortgage of an interest in any Unit and upon payment of a reasonable charge therefor, the Managing Agent shall deliver to such party a certified statement of the status of the account of such Unit.

(d) Representation in Proceedings. The Managing Agent, subject to the direction of the Board, may represent the Unit Owners or any two or more Unit Owners similarly situated, as a class, in any action, suit, hearing, or other proceeding concerning the Unit Owners, the Common Elements, or more than one (1) Unit, or the Association, 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 Unit Owner individually to appear, sue or be sued.

(e) Fidelity Bond. The Managing Agent shall be required to maintain, to the extent reasonably possible, fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association.

(f) Maintenance of Project Documents. The Managing Agent shall maintain at its office a current and accurate copy of the Declaration, these Bylaws, the Articles of Incorporation of the Association, if any, the House Rules, all public reports for the Project and any amendments thereto, a sample of the original Unit Deed, the annual report, names and addresses of the Board and Officers, all minutes and resolutions, and a current list of all Unit Owners. Copies of these documents will be made available to Owners, holders, insurers and guarantors of first mortgages, prospective purchasers and their respective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplication costs. Each Owner shall give copies of the Project Documents to their lenders and buyers, as may be required. If the Project at any time is not managed by a Managing Agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association, to whom this function shall be delegated.

ARTICLE IV

OFFICERS

Section 1. **DESIGNATION.** The principal Officers shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other Officers as in its judgment may be necessary. The President and Vice President shall be, but no other Officers need be, Directors. The Secretary and the Treasurer may be the same person, and the Assistant Secretary and Assistant Treasurer may also be the same person. No employee of the Managing Agent shall be designated as an Officer.

Section 2. **ELECTION OF OFFICERS.** The Officers shall be elected annually 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 Directors, any Officer may be removed, either with or without cause, and his or her 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. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are incident to the office of a president of a non-profit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended, including but not limited to the power to appoint committees from among the Unit Owners from time to time as the President may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall also have such other powers and duties as may be provided by these Bylaws 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 shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the place of the President, on an interim basis. The Vice President shall also perform such other powers and duties as shall from time to time be imposed upon him by the Board or the President.

Section 6. **SECRETARY.** The Secretary shall keep the minutes of all meetings of the Association and of the Board. The Secretary shall also have charge of such documents, books and records as the Board may direct and shall keep the minute book wherein resolutions shall be recorded; and shall, in general, perform all the duties incident to the office of secretary of a nonprofit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended. The duties of the Secretary may be delegated to and performed by the Managing Agent under the Secretary's supervision.

Section 7. **TREASURER.** The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data and reports. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the Board; and the Treasurer shall, in general, perform all the duties incident to the office of treasurer of a nonprofit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended. The duties of the Treasurer may be delegated to the Managing Agent under the Treasurer's supervision.

Section 8. **AUDIT.** The Association shall require an annual audit of the books of the Association and no less than one (1) annual unannounced verification of the Association's cash balance by a certified public accountant. The Association shall contract with annually a certified public accountant or accounting firm as auditor, who shall not be a Director or Officer or own any interest in any Unit, to audit the books and financial records of the Association. A copy of the annual audit shall be made available to each Unit Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. Requests to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report shall be made upon all standard proxy forms. If the annual audit is not completed, the Board shall make available (a) an unaudited year end financial statement to each Unit Owner at least thirty (30) days prior to the annual meeting of the Association, and (b) an annual audit report to all

Owners at the annual meeting or as soon as the audit is completed, but not less than six (6) months after the annual meeting. Unless otherwise prohibited by law, the Board may charge the costs of duplicating and distributing the summary of the annual audit report or unabridged copy of the annual audit report to the requesting Owner.

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

Section 9. **EXECUTION OF AGREEMENTS, CONTRACTS, DEEDS, CHECKS, ETC.** After the first annual meeting of the Association, all agreements, contracts, deeds, leases, checks, and other instruments of the Association, including any amendments to the Declaration or these Bylaws, shall be executed by any two (2) of the President, Vice President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated in writing by the Board.

Section 10. **COMPENSATION OF OFFICERS.** Except as specifically authorized by the adopted Association budget or a Majority of Unit Owners at a regular or special meeting, no officer shall receive any compensation from the Association for acting as such.

ARTICLE V

UPKEEP OF PROJECT

Section 1. **GENERAL PROVISIONS.** Except to the extent provided by the Declaration and these Bylaws, the Association is responsible for the maintenance of the Project, and each Unit Owner is responsible for maintenance, repair and replacement of the Owner's Unit and the Limited Common Elements appurtenant thereto. The Front Desk Unit Owner shall be responsible for the maintenance of the Resort Amenities.

(a) **Access to Units.** Each Unit Owner shall afford to the Association, the Front Desk Unit Owner and other Unit Owners, and to their agents or employees, during reasonable hours, access through the Owner's Unit reasonably necessary for those purposes, or at any time, without notice, for making emergency repairs in the Unit necessary to prevent damage to the Resort Amenities or to another Unit or Units. If damage is inflicted to the Resort Amenities or on any Unit through which access is taken, the Unit Owner, the Association, or the Front Desk Unit Owner, if responsible for the damage, shall promptly repair the damage; provided that the Front Desk Unit Owner shall not be responsible to pay the costs of removing any finished surfaces or other barriers that impede its ability to maintain and repair the Resort Amenities.

(b) **Owners' Duty to Maintain.** Every Owner from time to time and at all times shall perform promptly all repair, maintenance and alteration work within his or her Unit the omission of which, as determined by the Association or the Front Desk Unit Owner, would adversely affect the Project, the Resort Amenities, any other Unit, or the exterior appearance of the Project, and shall be responsible for all loss and damage caused by his or her failure to do so. All repairs of internal installations within each Unit such as water, light, gas (if any), power, sewage, telephone, sanitation, doors, windows, lamps, and all other appliances, equipment, fixtures and accessories belonging to such Unit, including interior walls and partitions, the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Unit, and the Limited Common Elements appurtenant to the Unit, shall be at the responsibility of the Owner of such Unit at the Owner's sole cost and expense; provided that the Front Desk Unit Owner shall be entitled to reimbursement for the cost of maintaining the Resort Amenities as provided in the Declaration.

(c) **Owners' Duty to Reimburse.** Every Owner shall reimburse the Association or the Front Desk Unit Owner for any expenditures incurred in repairing damage to, or in preventing or attempting to prevent damage to the Resort Amenities or to another Unit, and shall reimburse any other Unit Owner for damage to furniture, furnishings, or other property of the other Unit Owner damaged or lost through the fault of such Owner or any person using the Project under him or her, and such Owner shall give prompt notice to the Managing Agent of any such damage, loss, or other defect when discovered.

Section 2. **HIGH RISK COMPONENTS.** The Board may, after notice to all Unit Owners and an opportunity for Unit Owner comment, and upon consultation with the Front Desk Unit Owner, determine that certain portions of the Units, or certain objects or appliances therein, pose a particular risk of damage to other Units or the Resort Amenities if they are not properly inspected, maintained, repaired or replaced by Unit Owners ("High Risk Components").

With respect to items designated as High Risk Components, the Board may require any or all of the following: (a) inspection at specified intervals or upon replacement or repair by the Board or the Front Desk Unit Owner; (b) replacement or repair at specified intervals whether or not the component is deteriorated or defective; and/or (c) replacement or repair that either meets particular standards or specifications established by the Board in consultation with the Front Desk Unit Owner, includes additional components or installations by the Board or the Front Desk Unit Owner, or uses contractors with specific licensing, training or certification approved by the Board and the Front Desk Unit Owner. Notwithstanding any additional requirements imposed by the Board and the Front Desk Unit Owner, a Unit Owner shall not be relieved of his or her obligations regarding High Risk Components, including, without limitation, the obligation to maintain, repair and replace such components.

If a Unit Owner fails to follow the requirements imposed by Board or the Front Desk Unit Owner pursuant to this Section, the Association or the Front Desk Unit Owner shall, after reasonable notice, have the right to enter the Unit to perform said requirements with regard to the High Risk Components at the sole cost and expense of the Unit Owner, which shall constitute a lien against the Unit pursuant to Article VI, Section 5 herein. Nothing in this Section shall be deemed to limit the remedies of the Association or the Front Desk Unit Owner for damage or injunctive relief, or both.

Section 3. **USE.** The Units of the Project shall be used only for the purposes set forth in the Declaration, these Bylaws and the House Rules and for no other purpose.

The following provisions regarding use and occupancy shall also apply:

(a) Except as permitted by the Declaration, no Owner or occupant of a Unit shall post any advertisement, bill, poster, or other sign on or about the Project, except as authorized by the Front Desk Unit Owner.

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

(c) No Owner or occupant shall permit any guest visiting with him to loiter in any Resort Amenities.

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

(e) Except as otherwise permitted by the Declaration, no Owner or occupant shall install any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the buildings or protruding through the perimeter walls, windows, or roof thereof, without the prior written consent of the Front Desk Unit Owner.

(f) Nothing shall be allowed, done, or kept in any Unit which will overload or impair the floors, walls, or roofs of the buildings in which the Unit is located, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Front Desk Unit Owner with respect thereto, nor shall any noxious or offensive activity or nuisance be made or suffered thereon.

(g) In furtherance of a uniform exterior appearance of the Units, except as permitted by the Declaration, no Owner or occupant of a Unit shall do anything to change the external appearance of the buildings in which such Unit is located, including, without limitation, the posting of signs on the interior side of glass windows, sliding doors or lanai enclosures, without the prior written consent of the Front Desk Unit Owner.

Section 4. **EXEMPTIONS FOR PERSONS WITH DISABILITIES.** Notwithstanding anything to the contrary contained in these Bylaws, the Declaration or the House Rules, Owners with disabilities shall be permitted to make reasonable modifications to their Units and/or Common Elements, at their expense (including the cost of obtaining any bonds required by the Declaration, these Bylaws or the Act), if such modifications are necessary to enable them to use and enjoy their Units and/or the Common Elements, as the case may be, provided that any Owner with a disability desiring to make such modifications shall make such request, in writing, to the Board. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications, together with copies of any requisite permits and/or plans filed with the appropriate government entity. The Board shall consider the request upon consultation with the Front Desk Unit Owner, and the Board or the Front Desk Unit Owner may, at the expense of such requesting Owner, consult with an appropriate design professional in reviewing said plans. The Board shall not unreasonably withhold or delay their consent to such request. Nothing contained in this Section shall exempt an Owner from making all amendments to these Bylaws, the Declaration or the Condominium Map necessitated by any changes under this Section.

ARTICLE VI

COMMON EXPENSES AND TAXES

Section 1. COMMON EXPENSES.

(a) **Assessment.** Except as otherwise provided in these Bylaws or the Declaration, all Common Expenses shall be assessed among and against the Units in proportion to their respective Common Interests. Such Common Expenses are set forth in the Declaration and include, without limitation, costs affiliated with (i) the License Fee associated with the Association's License to use the Resort Amenities; and (ii) the Hospitality Services Fee charged to the Association and payable by all Residential Unit Owners. No Owner may exempt himself from liability for contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements, the Resort Amenities, and the Standard Hospitality Services or by abandonment of the Unit. In the event that the Owner shall be a vendee under an Agreement of Sale, the vendor shall also be responsible, along with vendee for the payment of a share of the Common Expenses. Payments of Common Expenses shall be made to the Board, as agent of the Unit Owners, and the Board shall transmit said payments on behalf of each such Owner to the third person entitled to said payments from each Owner.

(b) **General Operating Reserve.** The Board shall establish and maintain a General Operating Reserve by monthly assessment against (and payment by) all Owners in proportion to their respective Common Interests in such additional amount as the Board determines to be adequate to provide financial stability in the administration of the Project, which additional amount shall be deemed conclusively to be savings of the Owners held for their benefit for Common Expenses not payable from monthly assessments. The funds in the General Operating Reserve shall not be commingled with funds of other activities, nor shall the Managing Agent commingle any Association funds with the Managing Agent's own funds. The Board shall deposit the General Operating Reserve in an account with a safe and responsible depository as required by Article VI, Section 9. The General Operating Reserve may be kept in an account segregated from other Association accounts if the Board determines that a segregated account is in the best interests of the Association. At the discretion of the Board, the General Operating Reserve may be used in addition to and not in limitation of other purposes, to meet any deficiencies in operating funds from time to time resulting from delinquency by Owners in the payment of assessments for Common Expenses, but shall not operate to exempt any Owner from liability to contribute his or her proportionate share of such expenses or to pay any such assessments therefor, and any funds withdrawn from the General Operating Reserve for that purpose shall be reimbursed upon the payment of such delinquent assessments. The proportionate interest of each Owner in the General Operating Reserve shall not be withdrawn, partitioned or assigned separately but shall be deemed to be transferred with each Unit even though not mentioned or described expressly in the instrument of transfer. If the condominium property regime established by the Declaration is terminated, the General Operating Reserve remaining after payment of all Common Expenses shall be distributed to all Owners in proportion to their respective Common Interests, provided that in the event the condominium property regime shall be reconstituted after termination as a condominium property regime as to less than the entire original Project, the share of the Unit Owners who will become Unit Owners under the reconstituted condominium property regime shall be paid to the Association for the reconstituted condominium property regime.

(c) Excess Assessments. At the end of any year, if there shall be any excess assessments or General Operating Reserve on hand, and if such funds shall be qualified to be treated as "exempt function income," as that term is defined by Internal Revenue Code Section 528, then the Association may file such documents as may be required to have such income treated as tax exempt.

(d) Determination of Replacement Reserves. Each Owner and the Association acknowledge and agree that although the Front Desk Unit Owner and/or the Board may have absolute control with respect to determination of the amount of replacement reserves, the amount thereof shall never be less than an amount necessary (and the Board shall always be required to approve budgets with no less than an amount of funding in order) to repair and replace the Common Elements and Limited Common Elements (including the Resort Amenities) at the First Class Standard and to satisfy the obligations of Developer, the Front Desk Unit Owner and the Association pursuant to the Resort Management Agreement.

Section 2. **COLLECTION AND PAYMENT OF COMMON EXPENSES.** The Association will pay or cause to be paid, for and on behalf of the Owners, all Common Expenses. All Owners shall pay to the Association or the Managing Agent all monthly and special assessments of the Common Expenses against their respective Units as the Board from time to time may approve as being necessary or advisable for the payment of or other provision for the Common Expenses of the Project. Except as otherwise provided in these Bylaws or the Declaration, all of such assessments shall be assessed among and against the Units in proportion to their respective Common Interests. Regular monthly assessments shall be payable in advance on or before the first day of each and every month and without notice or demand; provided that the Board or the Managing Agent shall notify Unit Owners in writing of any increases in assessments at least thirty (30) days prior to such increase.

Special assessments for Common Expenses and costs, expenses and fees recoverable by the Association under Section 514B-157 of the Act and the provisions of these Bylaws, and any penalties and late charges shall be payable upon request therefor as from time to time rendered by the Board or the Managing Agent; provided that the Managing Agent or the Board shall notify the Unit Owners in writing at least thirty (30) days prior to such assessment. Special assessments may be made, without limitation, to cover shortfalls in the budget or to cover an expense directly attributable to a particular Owner or the activities of such Owner or his or her guests or visitors.

No Owner shall withhold any assessments claimed by the Association. An Owner who disputes the amount of an assessment may request a written statement clearly indicating (1) the amount of Common Expenses included in the assessments, including the due date of each amount claimed; (2) the amount of any penalty, late fee, lien filing fee, any other charge included in the assessment; (3) the amount of attorneys' fees and costs, if any, included in the assessments; (4) that under Hawaii law, an Owner has no right to withhold assessments for any reason; (5) that an Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association assessment, provided the Owner immediately pays the assessment in full and keeps assessments current; and (6) that payment in full of the assessment does not prevent the Owner from contesting the assessment or reclaiming a refund of amounts not owed.

Section 3. **UNIT EXPENSES.** In addition to the Common Expenses, the Front Desk unit Owner shall assess Unit Owners for all costs attributable to the Limited Common Elements appurtenant to an Owner's Unit that are operated and maintained by the Front Desk Unit Owner, if any, and if there is more than one (1) Unit to which the Limited Common Element shall be appurtenant, than in proportion to the Common Interest appurtenant to each of the respective Units. No Owner may exempt himself from liability for such payment by waiver of the use or enjoyment of any Limited Common Element appurtenant to the Owner's Unit by abandonment of the Unit. In the event that the Owner shall be a vendee under an Agreement of Sale, the vendor shall be responsible, along with the vendee for the payment of any costs attributable to the Limited Common Elements appurtenant to the Unit. Payment of any costs attributable to the Limited Common Elements appurtenant to one or more Units maintained by the Front Desk Unit Owner (except the License Fee, discussed in Article IV, Section I of the Declaration) shall be paid directly to the Front Desk Unit Owner, and the Front Desk Unit Owner shall transmit said payments on behalf of each such Owner to the third-party entitled to such payments from each Owner.

Section 4. **TAXES AND ASSESSMENTS.** Except as may be otherwise provided in the Declaration, each Unit Owner shall be obligated to have the real property taxes for his or her own Unit and its appurtenant interest in the Common Elements assessed separately by the proper governmental authority and to pay

the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Unit and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his or her proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the Common Elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Project or any part of the Common Elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 5 of this Article VI.

Section 5. DEFAULT IN PAYMENT OF ASSESSMENTS; LIEN. Each monthly assessment, each special assessment and each obligation of an Owner under these Bylaws, Declaration and House Rules, including, without limitation, any tax obligation, which is enforceable as a special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. All sums chargeable to a Unit for Common Expenses or costs chargeable by the Front Desk Unit Owner which have been assessed but which are unpaid shall constitute a lien against the Unit; the priority of such lien shall be as set forth in the Act. If the Owner shall fail to pay his or her assessment when due, then such Owner shall pay an additional assessment of Fifty and No/100 Dollars (\$50.00) for each such failure and all delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date, provided that this Fifty and No/100 Dollar (\$50.00) limit and applied interest rate may be adjusted from time to time by the Board or the Front Desk Unit Owner, as applicable, at its discretion. In the event of a default or defaults in payment of any such assessment or assessments, in addition to any other remedies herein or by law provided hereof, the Board or the Front Desk Unit Owner may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such assessment obligation. Any such suit may be instituted on behalf of the Association, by the Board or by the Managing Agent, if the latter is so authorized by the Board in writing, and shall be brought in the name of the Association by its Board. Any judgment rendered in any such action shall include, where permissible under any law, interest and a sum for reasonable attorneys' fees and costs in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment: (i) if to the Front Desk Unit Owner, the Front Desk Unit Owner shall execute and deliver to the judgment debtor an appropriate satisfaction thereof; or (ii) if to the Board, the Board shall have the duty to authorize any two (2) Directors thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof. An Owner who pays the Association or the Front Desk Unit Owner the full amount claimed by the Association or the Front Desk Unit Owner may file an action in small claims court or require the Association or the Front Desk Unit Owner to mediate. If unable to resolve the dispute through mediation, either party may file for arbitration under Part VI.C of the Act. The Owner shall be entitled to a refund of any amounts paid to the Association or the Front Desk Unit Owner not owed.

(b) At any time after the occurrence of any such default, the Board or the Front Desk Unit Owner, as applicable, may give notice to the defaulting Owner, which notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. The Board or the Front Desk Unit Owner may elect to record in said Office a notice of lien against the Unit of such delinquent Owner. Such notice of lien shall state (i) the name of the delinquent Owner or reputed Owner, (ii) a description of the Unit against which claim of lien is made, (iii) the amount claimed to be due and owing (including any applicable fees, charges and penalties with any proper offset allowed), (iv) that the claim of lien is made by the Board or the Front Desk Unit Owner pursuant to the terms of these Bylaws and the Act, and (v) that a lien is claimed against said described Unit in an amount equal to the amount of the stated delinquency. Any such notice of lien (or the release thereof) shall be signed and acknowledged by any two (2) members of the Board or by the Managing Agent acting on the direction of the Board, or the Front Desk Unit Owner, and shall be dated as of the date of the execution of the Front Desk Unit Owner or by the last such Board member (or Managing Agent) to execute said notice of lien. Each default shall constitute a separate basis for a notice of lien or a lien. Such lien may be enforced by the Association or the Front Desk Unit Owner in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by Chapter 667 of the Hawaii Revised Statutes, as amended, and the Association shall be entitled to all such fees and expenses as may be allowed by law.

(c) For the purposes of this Section 5 of Article VI, a certificate executed by the Front Desk Unit Owner or any two (2) members of the Board or by the Managing Agent shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his or her Unit (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee not to exceed Fifty and No/100 Dollars (\$50.00), provided that this limit may be adjusted from time to time at the discretion of the Board or the Front Desk Unit Owner.

(d) In the event the lien is foreclosed upon by action by the Managing Agent or Board, acting on behalf of the Unit Owners, or the Front Desk Unit Owner, in like manner as a mortgage of real property, the Unit Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board, acting on behalf of the Association, or the Front Desk Unit Owner may, unless otherwise prohibited in the Declaration, bid on the Unit at the foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Action to recover a money judgment for unpaid Common Expenses or costs attributable to the Limited Common Elements appurtenant to such Unit that are operated and maintained by the Front Desk Unit Owner, and other assessments shall be maintainable without foreclosing or waiving the lien securing the same.

Unless otherwise provided by law, where the mortgagee of a mortgage of record or other purchaser of a Unit obtains title to the Unit pursuant to the mortgage or as a result of foreclosure of the mortgage, or exercise of the remedies provided in the mortgage, the acquirer of title, its successors and assigns, shall not be liable for the share of Common Expenses or other assessments by the Association or the Front Desk Unit Owner chargeable to the Unit which become due prior to the acquisition of title to the Unit by the acquirer. The unpaid share of Common Expenses or other assessments shall be deemed collectible from all the Unit Owners including the acquirer and the acquirer's successors and assigns except, the Board or the Front Desk Unit Owner may specially assess the amount of the unpaid regular monthly Common Expenses or other assessments against a person who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent Unit; provided that (i) a purchaser who holds a mortgage on a delinquent Unit that was filed prior to the filing of a notice of lien by the Association or the Front Desk Unit Owner and who acquires the delinquent Unit through a judicial or non-judicial foreclosure proceeding shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and (ii) a person who subsequently purchases the delinquent Unit from the mortgagee referred to above shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the Association or the Front Desk Unit Owner has filed a notice of lien against the delinquent Unit for the unpaid assessments for Common Expenses or other assessments which form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent Unit.

(e) In a voluntary conveyance, the grantee of a Unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the Common Expenses and other assessments. Any grantor or grantee is entitled to a statement of the unpaid assessments. The grantee is not liable for any unpaid assessments against the grantor in excess of the amount on the statement, except as to the amount of subsequently dishonored checks received within the thirty (30) day period immediately preceding the statement date noted in the statement.

(f) As an alternative to foreclosure proceedings, where a Unit is owner-occupied, the Association may authorize its Managing Agent or Board to, or the Front Desk Unit Owner may, after sixty (60) days written notice to the Owner and the first mortgagee of such non-payment, terminate the delinquent Unit's access to the Resort Amenities and cease supplying a delinquent Unit Owner will any and all services normally supplied or paid for by the Association or the Front Desk Unit Owner. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

Section 6. **COLLECTION FROM TENANT.** If the Owner shall at any time rent or lease his or her Unit and shall default for a period of thirty (30) days or more in the payment of the Owner's monthly or special assessments, the Board, at its option and so long as such default shall continue, may demand in writing and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Unit, or any rental agent renting the Unit, the rent due or becoming due from such lessee to the Owner up to an amount

sufficient to pay all sums due from the Owner, including interest, if any. Prior to taking any action under this Section, the Board shall give the delinquent Owner written notice of its intent to collect the rent owed pursuant to Section 514B-145 of the Act.

Any such payment of such rent to the Board by the lessee shall be sufficient discharge of such lessee, as between such lessee and the Owner, to the extent of the amount so paid and shall be a complete defense to the extent of the amount demanded and paid by lessee, in an action for nonpayment of rent brought by the Owner against the lessee. Any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender of any rights or duties hereunder. If the Board makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid, provided, however, that the Board may not exercise this right if (a) a commissioner or receiver has been appointed to take charge of the Unit pending a mortgage foreclosure; (b) a mortgagee is in possession pending a mortgage foreclosure; or (c) the tenant is served with a court order directing payment to a third party.

Section 7. ATTORNEYS' FEES AND EXPENSES OF ENFORCEMENT.

(a) All costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by or on behalf of the Association by the Board for:

- (1) Collecting any delinquent assessments against any Owner's Unit;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the Declaration, these Bylaws, the House Rules, the Act and/or the HAR;

against an Owner, occupant, tenant, employee of an Owner, or any person who may in any manner use the Project shall be promptly paid on demand to the Board by such person or persons; provided that if the claims upon which the Board takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees and costs, incurred by any such person or persons as a result of the action of the Board shall be promptly paid on demand to such person or persons by the Board on behalf of the Association. If the Board is required to repay any person for unsubstantiated claims hereunder, such amounts shall be assessed to all Unit Owners as a Common Expense.

(b) If any claim by an Owner is substantiated in any action against the Association, any of its Officers or Directors, or its Board to enforce any provision of the Declaration, these Bylaws, the House Rules, or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless the requirements of Section 514B-157 of the Act are complied with.

Section 8. WAIVER. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of an Owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision hereof, shall be deemed to have been made unless expressed in writing and signed by an authorized signatory pursuant to authority contained in a general or specific resolution of the Board.

Section 9. FINANCIAL RECORDS.

(a) Maintenance of Records. The Board, or the Managing Agent at the direction and under the supervision of the Board, shall maintain, at the Project or at such other place within the County as may

be designated by the Board, accurate and detailed books of account and other financial records of the Association as required by Section 514B-153 of the Act. The financial records of the Association shall be available at all reasonable and convenient hours of business weekdays for examination and copying by any Owner at his or her cost, all as is more fully set forth in Section 14 of Article X.

(b) No Transfer by Telephone. Neither the Board nor Managing Agent shall transfer by telephone any Association funds between accounts including, but not limited to, the general operating account and General Operating Reserve accounts.

(c) No Commingling of Funds. The funds in the general operating account of the Association shall not be commingled with funds of other activities, nor shall the Managing Agent commingle any Association funds with its own funds. The Managing Agent shall keep and disburse funds collected on behalf of the Owners in strict compliance with any agreement made with the Owners, Chapter 467 of the Hawaii Revised Statutes, and other applicable laws.

(d) Audited Financial Statements. Upon written request from any governmental agency, holder, insurer or guarantor of any first mortgage that is secured by a Unit in the Project, person or entity which has a current or prospective interest in the Project, the Board shall furnish an audited financial statement of the Association for the immediately preceding year. If an annual audit has not been completed by that date, the Board shall make available: (i) an unaudited financial statement; and (ii) an audited financial statement as soon as it is completed, but not later than six (6) months after the annual meeting of the Association.

Section 10. **DEPOSITS IN FINANCIAL INSTITUTIONS.** All funds collected by the Managing Agent shall be:

(a) deposited in financial institutions located in the State of Hawaii whose deposits are insured by an agency of the United States government; or

(b) held by a corporation authorized to do business as a trust company under Chapter 406 of the Hawaii Revised Statutes; or

(c) held by the United States Treasury; or

(d) purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities Exchange Commission, has an office in the State of Hawaii, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation or their respective successor entities.

ARTICLE VII

INSURANCE AND RESTORATION

Section 1. **GENERAL PROVISIONS.** The Front Desk Unit Owner is responsible for maintaining the Resort Amenities pursuant to the First Class Standard. Accordingly, the Front Desk Unit Owner shall be required at all times to maintain insurance for the Resort Amenities, on behalf of the Association, as required in this Article VII, the cost of which shall be charged to the Association through the License Fee and assessed to all Unit Owners as a Common Expense. To the extent the insurance required under this Article VII is not covered by the insurance obtained by the Front Desk Unit Owner for the Resort Amenities, the Association shall at all times maintain insurance as required in this Article VII, the cost of which shall be a Common Expense. Each policy may be separate, or the Association or the Front Desk Unit Owner can buy one or more commercial package policies.

(a) Sources of Insurance. The Front Desk Unit Owner shall buy the insurance in its own name, on behalf of the Association. The Association shall buy the insurance in its own name. If the Resort Manager or Managing Agent, or related company manages more than one owners' association or real estate project,

then the Resort Manager or Managing Agent may buy one or more blanket policies that cover the Project and any other owners' association or real estate projects. In that case, the covered projects will split the costs of the policies. The amount charged to the Project for its share of the costs is subject to approval by the Front Desk Unit Owner or the Board, as applicable.

(b) Qualified Insurance Companies. Each insurance company must be licensed to do business in the State of Hawaii except for (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. Each insurance company must have a financial rating of Class VI or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Front Desk Unit Owner or the Board decides that the cost is too high, then the Front Desk Unit Owner or the Association may buy the insurance from any financially sound company of recognized responsibility.

(c) Additional Insurance. The Front Desk Unit Owner and the Board has the right and power to increase coverage or to obtain better terms than those stated in this Article VII if the Front Desk Unit Owner or the Board decides that it is necessary or is in the best interests of the Association. The Front Desk Unit Owner and the Board may also buy other kinds of insurance even if they are not described in this Article VII.

(d) Substitute Coverage; Reduction in Insurance. The Front Desk Unit Owner and the Board shall use its best efforts to obtain and maintain all insurance required under this Article VII. However, except for insurance required by law, the Front Desk Unit Owner and the Board need not buy any insurance if it is advised it cannot reasonably be obtained or if the Front Desk Unit Owner or the Board decides that it is too expensive. In those cases, the Front Desk Unit Owner or the Board may buy other insurance that it believes to be appropriate under the circumstances for units in condominium projects similar in construction, location and use. The Front Desk Unit Owner or the Board may accept deductibles, uninsured retentions, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a License Fee or a Common Expense, as applicable; provided that if a loss results from the negligence or willful misconduct of an Owner, then the Front Desk Unit Owner or the Association may charge the amount to the Owner as provided in these Bylaws.

(e) Summary of Insurance Policies. Each insurance policy obtained by the Front Desk Unit Owner or the Association to provide coverage required under this Article VII shall contain a provision requiring the insurance carrier, at the inception of the insurance policy and on each anniversary date thereof, to provide the Front Desk Unit Owner and the Board with a written summary in layman's terms, of the insurance policy. The summary shall include the type of insurance policy, a description of the coverage and limits thereof, amount of annual premium and renewal dates.

(f) Yearly Review of Insurance Programs. The Front Desk Unit Owner and the Board must review the adequacy of the entire insurance program at least annually. The Front Desk Unit Owner and the Board shall prepare a single report or separate reports of (i) the insurance needs to maintain the Resort Amenities pursuant to the First Class Standard; (ii) the insurance needs of the Association and the Owners; and (ii) the adequacy of existing insurance policies to meet those needs. The Front Desk Unit Owner and the Board shall make changes in the insurance program that it deems necessary or appropriate. All determinations of the Front Desk Unit Owner regarding the required insurance for the Resort Amenities, and all determinations of the Board with respect to additional insurance for the Project shall be final. The Front Desk Unit Owner and the Board must report in writing its conclusions and the action taken after its review.

(g) Liability for Insurance Decisions. The Front Desk Unit Owner and the Board will not be liable to Unit Owners for any decision it makes on insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, the Resort Manager, the Developer and the Managing Agent will not be liable except for their gross negligence or intentional misconduct regarding any decisions on insurance.

(h) Inspection and Copies of Insurance Policies. Any Owner (or any anyone having a contract to purchase a Unit) may inspect copies of the insurance policies, the summaries of the insurance polices and the Front Desk Unit Owner's and the Board's annual reports of the insurance program at the office of the Managing Agent, or at such other location within the County as the Board may determine from time to time. At the

written request of the holder, insurer or guarantor of any mortgage of any Unit, stating both its name and address and the number of the Unit on which it has (or insures or guarantees) the mortgage, and at the expense of such holder, insurer or guarantor, the Board shall provide a copy of the property insurance policy and of any other policy to which a mortgagee endorsement shall have been attached, and proof satisfactory to such mortgagee that payment of premiums on such policy has been made for the period for which the party may request such proof. The holder, insurer or guarantor of the mortgage must pay a reasonable fee for the copy.

(i) Notice of Changes in Insurance. The Front Desk Unit Owner or the Board shall send notice to the Owners and any holder, insurer or guarantor of any mortgage who requests such notice, by first-class mail, as soon as reasonably possible, if:

(1) The Association's policy of property insurance or liability insurance has lapsed, been cancelled, or will not be renewed unless replacement coverage will be in effect before the policies lapse or are cancelled; or

(2) There is a significant adverse change in the coverage of those policies.

Section 2. PROPERTY INSURANCE. The Front Desk Unit Owner shall procure, purchase, and at all times maintain, insurance which covers the Project, including, without limitation, the fixtures, equipment, and the Resort Amenities and, whether or not part of the Resort Amenities, all exterior and interior walls, floors, and ceilings, and, at the option of the Association, all exterior glass, in accordance with the as-built condominium plans and specifications, together with all air conditioning, heating, boiler and machinery and other service type equipment contained in the Project, against loss or damage by fire and other damages under a condominium special perils property insurance, or such other special form policy of insurance that provides equivalent coverage in an amount to provide for the full repair or full replacement thereof without deduction for depreciation (but taking into consideration any reasonable deductible), with an inflation guard endorsement, if available, in the name of the Front Desk Unit Owner, on behalf of the Association, as trustee for all Unit Owners and all mortgagees of record according to the loss or damage to their respective Units and appurtenant Common Interests. The insurance policy or policies (collectively, "policy"):

(a) shall contain no provision limiting or prohibiting other insurance by the Owner of any Unit, such right being provided by statute but, if obtainable, shall provide that the liability of the insurer shall be primary and shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any such other insurance. If any loss intended to be covered by insurance carried by the Front Desk Unit Owner shall occur and the proceeds payable thereunder shall be reduced by reason of any insurance carried by any Unit Owner, such Unit Owner shall assign the proceeds of such insurance carried by it, to the extent of such reduction, to the Front Desk Unit Owner for application to the same purposes as the reduced proceeds are to be applied;

(b) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building(s), whether or not within the control or knowledge of the Front Desk Unit Owner, or if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Front Desk Unit Owner or the Owner or tenant of any Unit or any other person under any of them, or by reason of any act or neglect of the Front Desk Unit Owner or the Owner or tenant of any Unit or any other person under any of them;

(c) shall contain no provision relieving the insurer from liability because any Unit or Units are vacant;

(d) shall contain a provision waiving any right of subrogation by the insurer to any right of the Association, the Board, the Managing Agent, the Front Desk Unit Owner, the Resort Manager, the Owners and any person under any of them;

(e) shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to Section 7 of this Article VII not to repair, reinstate, rebuild or restore the damage or destruction;

(f) shall provide that any loss shall be adjusted with the Front Desk Unit Owner and the mortgagee of any Unit directly affected by the loss;

(g) shall contain a standard mortgagee clause which:

(1) shall name the holder of any mortgage affecting any Unit whose name shall have been furnished to the Board and the insurance company;

(2) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Front Desk Unit Owner, or the Owner or tenant of any Unit or any person under any of them;

(3) shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Front Desk Unit Owner shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), any contribution clause, and any right to be subrogated to the right of any mortgagee against the Owner or lessee of any Unit or the Front Desk Unit Owner or the Association or the Board or to require an assignment of any mortgage to the insurer;

(4) shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to the Front Desk Unit Owner, or, at the option of the Front Desk Unit Owner, a corporate trustee selected by the Front Desk Unit Owner who shall be a substantial bank or trust company doing business in Hawaii (the Front Desk Unit Owner or corporate trustee, when acting in this capacity, shall be herein referred to as the "Insurance Trustee" or "Trustee;"

(5) shall provide that any reference to a mortgagee in the policy shall include all mortgagees on any Unit, in order of preference whether or not named therein;

(h) shall provide for payment of the proceeds to the Insurance Trustee and that any insurance trust agreement will be recognized;

(i) shall have a "loss payable" clause showing the Front Desk Unit Owner or the Insurance Trustee as trustee for each Owner and the holder of each Unit's mortgage; and

(j) shall provide that the policy or the coverage may not be modified or substantially changed (whether or not requested by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send notice to the Front Desk Unit Owner.

Section 3. **GENERAL LIABILITY INSURANCE.** The Front Desk Unit Owner shall procure, purchase and at all times maintain a policy of commercial general liability insurance and, if necessary, commercial umbrella insurance to insure the Front Desk Unit Owner, the Resort Manager, the Association, the Board, the officers, each Unit Owner, the Managing Agent and other employees of the Association, and any licensor, to the extent required under any license agreement, against claims for personal injury, death and property damage arising out of the condition of the Project or activities thereon or on sidewalks or contractors of construction work under a Commercial General Liability form to include but not to be limited to (1) Water Damage Legal Liability and (2) Fire Damage Legal Liability. The policy:

(a) shall contain no provision limiting or prohibiting any Unit Owner from purchasing other liability insurance for the Owner's own benefit;

(b) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Front Desk Unit Owner, the Association or the Board, or by any breach of warranty or condition caused by the Owner of any Unit, or by any act or neglect of the Front Desk Unit Owner, the Association, the Board, or the Owner of any Unit or any persons under any of them;

(c) shall contain minimum limits of not less than Ten Million and No/100 Dollars (\$10,000,000.00) for injury to one or more persons in any one accident or occurrence or for property damage, or such higher limits as the Front Desk Unit Owner may from time to time establish with due regard to then prevailing prudent business practice;

(d) shall contain a waiver by the insurer of any right of subrogation to any right of the Front Desk Unit Owner, the Association, the Board, or the Owner of any Unit against any of them or any other persons under them;

(e) shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of the Unit Owner because of the negligent act of the Front Desk Unit Owner, the Association or any other Unit Owner;

(f) shall contain a "cross-liability" endorsement which shall permit one person covered by the policy to file a claim on the policy based on the acts or failure to act of another person who is also covered by the policy;

(g) shall include, without limitation, legal liability coverage arising out of lawsuits related to employment contracts of the Front Desk Unit Owner; and

(h) shall provide that the policy or the coverage may not be modified or substantially changed (whether or not requested by the Front Desk Unit Owner) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send notice to the Front Desk Unit Owner.

Section 4. DIRECTORS' AND OFFICERS' LIABILITY INSURANCE. The Association shall procure, purchase and at all times maintain directors' and officers' liability insurance covering, to the extent allowed by law, each person who is or was a Director, Officer, agent or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. The Board will choose policy limits from time to time. If it can be obtained at a reasonable cost, the policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The policy must pay for any expenses actually and reasonably incurred, including, but not limited to, attorneys' fees, court costs and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

Section 5. FLOOD INSURANCE AND INSURANCE AGAINST ADDITIONAL RISKS. If the Project is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development, the Front Desk Unit Owner shall procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973 with the same coverage and terms as required for property insurance under Section 2 of this Article VII, in an amount equal to at least the lesser of one hundred percent (100%) of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Administration program. The Front Desk Unit Owner may also procure insurance against such additional risks as it may deem advisable for the protection of the Unit Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

Section 6. FIDELITY BONDS. The Board shall obtain a fidelity bond covering the acts of the Managing Agent and all Directors, Officers, trustees, employees and volunteers of the Association handling or responsible for handling funds belonging to or administered by the Association, naming the Association as obligee and providing coverage in an amount not less than one and one half (1-1/2) times the estimated operating expenses

and reserve of the Association or the minimum amount required under the Act (i.e., Five Hundred and No/100 Dollars (\$500.00) multiplied by the number of Units in the Project), whichever is greater. The Association shall provide evidence of the fidelity bond to the Commission upon request. The premiums on such bond shall constitute a Common Expense. The Managing Agent shall likewise obtain a fidelity bond in the amount required by the Act and shall provide evidence of the same to the Association. The bond shall contain a provision that the bond cannot be canceled or substantially modified except by giving the Association, each Owner and each mortgagee or servicer of a mortgage on each Unit notice of such cancellation or modification.

Section 7. DAMAGE AND DESTRUCTION. If the buildings are damaged by fire or other casualty which is insured against and said damage is limited to a single Unit, the insurance proceeds shall be used by the Trustee for payment of the contractor employed by the Front Desk Unit Owner to rebuild or repair such Unit, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor (and including improvements of the Unit Owner but only if such improvements are covered by insurance carried by the Front Desk Unit Owner on behalf of the Association pursuant to Paragraph (a) of Section 1 of this Article VII, and then only to the extent made possible by actual recovery of the insurance proceeds thereunder). If such damage extends to two or more Units or extends to any part of the Limited Common Elements or to the Resort Amenities:

(a) The Front Desk Unit Owner shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Units so damaged, as well as the Resort Amenities, in accordance with plans and specifications therefor, (and including improvements of the Unit Owner but only if such improvements are covered by insurance carried by the Front Desk Unit Owner pursuant to Section 2 of this Article VII and then only to the extent made possible by actual recovery of the insurance proceeds thereunder), which will restore the same to the design immediately prior to destruction; or if reconstruction in accordance with said design is not permissible under the laws then in force, such modified plans conforming to the laws and ordinances then in effect, subject to any prior approvals required by the Master Declaration, and subject to the First Class Standard; provided that in the event said modified plan or any decision not to rebuild made pursuant to the Declaration eliminates any Unit and such Unit is not reconstructed, the Insurance Trustee shall pay to the Owner of said Unit and/or said Owner's mortgagee, if any, the portion of said insurance proceeds allocable to said Unit (less the proportionate share of said Unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The Trustee shall pay the insurance proceeds to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 7 of this Article VII. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding, the Front Desk Unit Owner shall first use any replacement reserve funds the Front Desk Unit Owner may have collected with respect to the Resort Amenities, and if such amounts are insufficient for this purpose, the Front Desk Unit Owner shall assess such amounts to the Board, which is expressly authorized to pay such excess costs from the General Operating Reserve and, if such funds are insufficient for this purpose, the Board shall levy a special assessment on the Unit Owners in proportion to their respective Common Interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Unit shall be specially assessed against such Unit and said special assessment shall be secured by the lien created under Section 5 of Article VI hereof.

(b) The cost of the work (as estimated by the Front Desk Unit Owner) shall be paid out from time to time or at the direction of the Front Desk Unit Owner as the work progresses, but subject to the following conditions:

(1) An architect or engineer (who may be an employee of the Front Desk Unit Owner) shall be in charge of the work.

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

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

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

(5) The fees and expenses of the Trustee as determined by the Front Desk Unit Owner and the Trustee shall be paid by the Association as Common Expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

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

(c) Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Front Desk Unit Owner or the Trustee shall be paid or credited to the Unit Owners (or to the holder of any mortgage on a Unit if there be a mortgage) in proportion to their respective Common Interests.

(d) To the extent that any loss, damage or destruction to the building(s) or other property is covered by insurance procured by the Front Desk Unit Owner, the Front Desk Unit Owner shall have no claim or cause of action for such loss, damage or destruction against any Unit Owner or lessee. To the extent that any loss, damage or destruction to the property of any Unit Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Front Desk Unit Owner, the Resort Manager, the Board, the Managing Agent, any other Unit Owner, or the Association. All policies of insurance referred to in this paragraph (d) shall contain appropriate waivers of subrogation.

(e) Any holder, insurer, or guarantor of a mortgage on any Unit may file a written demand for notice with the Front Desk Unit Owner or the Board; upon filing such demand, the party will be entitled to receive notice of any casualty loss to the Unit or to the Project. Any coverage procured by the Front Desk Unit Owner shall be without prejudice to the right of the Unit Owners to insure such Units and the contents thereof for their own benefit at their own expense. A holder, insurer or guarantor of a first mortgage, upon written request to the Front Desk Unit Owner or the Board, which request must state the name and address of such holder, insurer or guarantor and the Unit number, will be entitled to timely written notice of any lapse, cancellation or material modification of any insurance policy maintained by the Front Desk Unit Owner or the Association pursuant to these Bylaws.

ARTICLE VIII

MORTGAGES

Section 1. **NOTICE TO BOARD.** A Unit Owner who mortgages his or her interest in a Unit shall notify the Board of the name and address of his or her mortgagee and within ten (10) days after the execution of the same shall file a copy of the mortgage with the Board; the Board shall maintain such information in a book entitled "Mortgages of Units," provided that the Board shall have no affirmative obligation to monitor the mortgaging of Units.

Section 2. **EXAMINATION OF BOOKS.** Each Owner and each holder, insurer or guarantor of any mortgage of an interest in a Unit shall be permitted to examine the books of account of the Association at reasonable times, on business days. Upon written request, each Owner and each holder, insurer or guarantor of any mortgage of an interest in a Unit shall be entitled to a copy of budgets, audited financial statements (including those

for the preceding fiscal year) and other such reports prepared in connection with the Project upon payment of a reasonable charge therefor.

Section 3. MORTGAGEE PROTECTION. Notwithstanding all other provisions hereof:

(a) Except to the extent that a notice of lien is recorded prior to the recording of any mortgage as otherwise provided in the Act, the liens created hereunder upon any Unit and its appurtenant interests in the Common Elements shall be subject and subordinate to, and shall not affect the rights of, the holder of any indebtedness secured by any recorded mortgage under such interests made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Unit if falling due after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided in Section 5 of Article VI hereof;

(b) No amendment to this Section 3 of this Article VIII shall affect the rights of the holder of any such mortgage filed in the Office prior to the filing of such amendment who does not join in the execution thereof.

Section 4. REQUEST FOR NOTICE. Upon written request to the Association, any holder, insurer, or guarantor of a first mortgages on a Unit shall be provided written notice of any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders; provided that said request shall state the name and address of said holder, insurer, or guarantor, and the Unit number or address upon which it has, insures or guarantees a mortgage.

Section 5. RELEASE OF INFORMATION. The Board may provide any information available to it pertaining to a Unit or the Project to the first mortgagee of such Unit and such mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

ARTICLE IX

CONDEMNATION

Section 1. CONDEMNATION. If there is a taking in condemnation or by eminent domain of part or all of the Project, all compensation payable for or on account thereof shall be payable to the Front Desk Unit Owner, or, at the option of the Front Desk Unit Owner, a condemnation trustee, who shall be designated by the Front Desk Unit Owner and who shall be a substantial bank or trust company doing business in the State of Hawaii (the Association or the condemnation trustee, when acting in this capacity, shall be referred to herein as the "Condemnation Trustee"). If the entire Project or a substantial portion thereof is taken, the condominium property regime may be terminated by the agreement of Unit Owners of the Project who represent at least seventy-five percent (75%) of the total Common Interests, and by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of the Units in the Project that are subject to mortgages held by Eligible Mortgage Holders. In such event the Condemnation Trustee shall pay to each Unit Owner and mortgagee, as their interests may appear, the portion of the condemnation proceeds allocable to the Owner's Unit. Otherwise, the Front Desk Unit Owner shall arrange for the repair and restoration of the building(s) and improvements in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, such modified plans conforming to the laws and ordinances then in effect, subject to any prior approvals required by the Master Declaration, and subject to the First Class Standard. In the event of a partial taking in which any Unit is eliminated or not restored, the Condemnation Trustee shall disburse the portion of the proceeds of such award allocable to said Unit (exclusive of such portion thereof as shall be allocable to the interest of said Unit in the land), less the proportionate share of said Unit in the cost of debris removal, to the Owner of said Unit and his or her mortgagee, if any, as their interests may appear, in satisfaction of their interests in said Unit. The Condemnation Trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs thereof, the Front Desk Unit Owner shall first use any replacement reserve funds the Front Desk Unit Owner may have collected with respect to the Resort Amenities, and if such amounts are insufficient for this purpose, the Front Desk Unit Owner shall assess such amounts to the Board,

which is expressly authorized to pay such costs in excess of the condemnation proceeds from the General Operating Reserve, and if the General Operating Reserve is insufficient for this purpose the Board shall levy a special assessment on the Owners of the Units in proportion to their Common Interests. In the event sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, such excess proceeds shall be divided among the Owners of the Units in accordance with their Common Interests. In the event all or any of the Units are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each Unit so taken, the amount allocable to each Unit (including the Unit's appurtenant interest in the Common Elements) shall be determined by a real estate appraiser who shall be a member of the American Institute of Real Estate Appraisers or any successor association and who shall have acted on behalf of the Association in the condemnation proceedings; or, if no such appraiser shall have acted on behalf of the Association, or if more than one (1) appraiser shall have so acted, then the Board shall select the appraiser; provided, however, if the Owners of the Units taken, within fifteen (15) days after all of such Owners have received notice of the appointment of such appraiser, shall elect, by a majority vote, to have the allocation determined by a panel of three (3) appraisers, then the Board shall select three (3) qualified appraisers and the decision of any two (2) of them shall determine the allocation of the condemnation proceeds.

Section 2. **NOTICE TO MORTGAGEES.** Any holder, insurer or guarantor of any mortgage of an interest in any Unit may file a written demand for notice with the Board stating both its name and address and the number of the Unit on which it has (or insures or guarantees) the mortgage; upon filing such notice, such Party shall be entitled to receive notice of any condemnation proceeding.

ARTICLE X

GENERAL PROVISIONS

Section 1. **HOUSE RULES.** Each Owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations as the Board may deem necessary for the management and control of the Project and, as may be necessary for the protection of the Project and the Units ("**House Rules**"). Each Owner agrees that the Owner's rights under the Declaration and these Bylaws shall be in all respects subject to appropriate House Rules consistent with the foregoing, which shall be taken to be a part hereof; and the Owner agrees to obey all such House Rules as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, contractors, vendors, suppliers, employees and tenants of the Owner. The House Rules shall uniformly apply to and be binding upon all occupants of the Units. The following provisions shall govern the promulgation of the House Rules authorized herein, which shall include the establishment of a system of fines and penalties:

(a) The Board shall have the power to adopt such House Rules, including any amendments thereof, as are consistent with and in furtherance of existing law, these Bylaws and the Declaration, together with a list of specific fines and penalties for the violation of a rule or rules by any Owner. Upon the vote or written consent of a majority of the Board, such House Rules or amendments shall take effect thirty (30) days after mailing a copy of such House Rules and fines and penalties to the Owners.

(b) Any House Rules promulgated pursuant to this Section shall provide that no fine or penalty shall be levied without following specified procedures, which procedures shall include providing the Owner notice and an opportunity to be heard.

Notwithstanding anything contained herein to the contrary, Developer shall not be required to obey and observe the House Rules to the extent any of the provisions thereof are inconsistent with the rights reserved to Developer in the Declaration and these Bylaws.

Section 2. **ABATEMENT AND ENJOINMENT OF VIOLATIONS BY UNIT OWNERS.** The violation of any House Rules, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration shall give the Board the right, in addition to any other rights set forth in these Bylaws:

(a) to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may

exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees and costs, shall be borne by the defaulting Unit Owner; provided, however, that the Board shall not summarily alter or demolish any improvements constructed by an Owner without first initiating judicial proceedings.

Section 3. **RESORT RULES.** Each Owner recognizes that certain areas of the Project defined in the Declaration as the "Resort Amenities" are Limited Common Elements appurtenant to the Front Desk Unit. The Front Desk Unit Owner has granted the Association, for the benefit of each Owner, an irrevocable, nonexclusive license to use the Resort Amenities pursuant to Article IV, Section I of the Declaration, subject to such rules and regulations the Front Desk Unit Owner may promulgate. Accordingly, each Owner recognizes the right of the Front Desk Unit Owner from time to time to establish and amend such uniform rules and regulations as the Front Desk Unit Owner may deem necessary for the management and control of the Resort Amenities, and, as may be necessary for the protection of the Resort Amenities ("Resort Rules"). Each Owner agrees that the Owner's rights under the Declaration and these Bylaws shall be in all respects subject to appropriate Resort Rules consistent with the foregoing, which shall be taken to be a part hereof; and the Owner agrees to obey all such Resort Rules as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, contractors, vendors, suppliers, employees and tenants of Owner. The Resort Rules shall be binding upon all occupants of the Units. The following provisions shall govern the promulgation of the Resort Rules authorized herein, which shall include the establishment of a system of fines and penalties:

(a) The Front Desk Unit Owner shall have the power to adopt such Resort Rules, including any amendments thereof, as are consistent with and in furtherance of existing law, these Bylaws and the Declaration, together with a list of specific fines and penalties for the violation of a rule or ruled by any Owner. Such Resort Rules or amendments shall take effect thirty (30) days after mailing a copy of such Resort Rules and fines and penalties to the Owners.

(b) Any Resort Rules promulgated pursuant to this Section shall provide that no fine or penalty shall be levied without following specified procedures, which procedures shall include providing the Owner with notice and an opportunity to be heard.

Section 4. **ADDITIONS OR ALTERATIONS BY UNIT OWNERS.** Except as set forth in the Declaration, no Owner shall make any addition or alteration in or to his or her Unit.

(a) **WRITTEN SUBMISSION OF REQUEST FOR APPROVAL AND REQUIREMENT OF BOARD AND FRONT DESK UNIT OWNER APPROVAL.** Except as set forth in the Declaration, no Owner shall commence work on any alterations or additions within a Unit or the appurtenant Limited Common Elements until the Owner has submitted to the Board and the Front Desk Unit Owner a written request (which may include plans and specifications if the Board or the Front Desk Unit Owner require) and said Owner has received the written consent of (i) sixty-seven percent (67%) of the Unit Owners; (ii) all Unit Owners whose Units or appurtenant Limited Common Elements are directly affected by such addition or alteration; (iii) the Board and the Front Desk Unit Owner; provided that "nonmaterial alterations or additions," as such term is defined in Section 514B-140 of the Act, shall require only the approval of the Board and the Front Desk Unit Owner as further provided in the Declaration. The Board or the Front Desk Unit Owner, may, at the expense of the requesting Owner, consult with an appropriate design professional in reviewing said plans.

(b) **BOARD AND FRONT DESK UNIT OWNER RESPONSE.** The Board and the Front Desk Unit Owner shall respond to the submission of a request within a reasonable time of the receipt thereof by the Board and the Front Desk Unit Owner. Nothing contained in this Section shall authorize or permit any work affecting the Resort Amenities, including the exterior appearance of the Project or the rights of any other Owner.

(c) **BOARD AND FRONT DESK UNIT OWNER MAY IMPOSE REASONABLE CONDITIONS.** The Board and the Front Desk Unit Owner may impose reasonable conditions on

its approval of any such request including, without limitation, requiring (i) changes or amendments to the request, (ii) supervision of the work by an architect, or engineer, or other construction professional, or (iii) performance of the work by a licensed contractor.

(d) **BOARD AND FRONT DESK UNIT OWNER MAY REQUIRE A HALT IN CONSTRUCTION OR REMOVAL OF UNAUTHORIZED WORK.** The Board or the Front Desk Unit Owner may inspect the work from time to time and direct a halt in construction for any reason and the Board and the Front Desk Unit Owner may require the removal or correction of any work which was (i) not authorized by the Board or the Front Desk Unit Owner, or (ii) which may adversely affect the Resort Amenities, including the exterior of the Project or the rights of any other Unit Owner.

Section 5. **SALES OR RENTAL ACTIVITIES BY EMPLOYEES OF THE ASSOCIATION.** Unless authorized by the vote of the Unit Owners owning not less than sixty-seven percent (67%) of the Common Interest, employees of the Association shall not, except as to any Unit owned by the Association, act as sales or rental agents with respect to Units in the Project.

Section 6. **NOTICES.** Except as otherwise expressly provided herein, all notices hereunder shall be sent by first class mail, postage prepaid. Notices to the Board shall be sent in care of the Managing Agent. Notices to any Owner shall be sent to the Project or to such other address as may have been designated by him or her from time to time, in writing, to the Board. Notices to mortgagees of Units shall be sent to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 7. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions thereof.

Section 8. **GENDER.** The use of any gender in these Bylaws shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 9. **WAIVER.** No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 10. **INTERPRETATION.** The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium property regime whereby the Unit Owners shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

Section 11. **AMENDMENT.** The provisions of these Bylaws may be amended by Developer at any time prior to the closing of the sale of the first Unit, provided that any amendment authorized by this Section shall be in writing, signed and acknowledged by Developer. After the closing of the sale of the first Unit, the provisions of these Bylaws, other than this paragraph, may be amended at any time by the vote or written consent of the Owners of Units to which are appurtenant at least sixty-seven percent (67%) of the total Common Interests, which amendment shall be effective upon the filing in the Office of an instrument in writing, signed and acknowledged by such Owners or by two (2) Officers of the Association; provided, however, that each one of the particulars set forth in Section 514B-108(b) of the Act shall always be embodied in these Bylaws. Any proposed bylaws, together with the detailed rationale for the proposal may be submitted by the Board or by a volunteer Unit Owners group, provided that if submitted by a volunteer Unit Owners group, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Unit Owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five (365) days after mailing of a proposed bylaw submitted by either the Board or a volunteer Unit Owners group. If the bylaw is duly adopted, the Board shall cause the bylaw amendment to be filed. The volunteer Unit Owners group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to owners within three hundred sixty-five (365) days after the original petition

was submitted to the Board. This Section shall not preclude any Unit Owner or volunteer Unit Owners group from proposing any bylaw amendment at any annual Association meeting.

Notwithstanding the foregoing, Developer shall have the reserved right to unilaterally amend these Bylaws for the purpose of complying with any applicable State, Federal or County law, for the purpose of correcting typographical or technical errors, or for the purpose of incorporating requirements imposed by any institutional mortgage lender or by the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, U.S. Department of Housing and Urban Development or Veterans Administration, or for the purpose of bringing the Project and/or these Bylaws into compliance with the laws and rules of any other jurisdiction in which Developer intends to register, market or sell Units. Each and every party acquiring an interest in the Project, by such acquisition, consents to such amendments as described in the preceding sentence and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties. Further, no amendment to the Declaration or these Bylaws that affects the reserved rights of Developer or the Front Desk Unit Owner contained within the Declaration or these Bylaws shall be valid, unless consented to in writing by Developer or the Front Desk Unit Owner, respectively. Further, subject to the reserved rights of the Developer, the Front Desk Unit Owner and the Commercial Unit Owners, any amendments to these Bylaws of a material nature must also be consented to by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units of the Project that are subject to mortgages held by eligible mortgage holders. A change to any of the provisions of these Bylaws governing the following would be considered to be "material in nature":

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens;
- (c) reduction in reserves for maintenance, repair and replacement of the Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Unit to Common Elements or Common Elements to Units;
- (h) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to of from the Project;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units
- (k) imposition of any restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Unit;
- (l) a decision by the Association of the Project to establish self-management if professional management had been required previously by the Project documents or by an Eligible Mortgage Holder;
- (m) restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the documents; or

- (n) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Section 12. **RESTATEMENT OF BYLAWS.** Any other provision of these Bylaws notwithstanding, the Board, upon resolution duly adopted, shall have the authority as set forth in Section 514B-109 of the Act to restate these Bylaws from time to time to set forth any prior amendments hereto, or to amend these Bylaws as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority.

Section 13. **SEVERABILITY.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

Section 14. **EXAMINATION OF DOCUMENTS OF THE ASSOCIATION.** The minutes of meetings of the Board (except for any executive session thereof) and Association and the Association's financial records, including, without limitation, audit reports and budgets, shall be available for examination by Unit Owners or by the holder, insurer or guarantor of any mortgage pertaining to any Unit. Copies of such minutes of meetings and financial records shall be provided to any Owner and to the holder, insurer or guarantor of any mortgage pertaining to any Unit upon such party's written request and upon payment of a reasonable charge for duplicating, postage, stationery and other administrative charges. No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records. No person shall knowingly alter, destroy, mutilate or conceal any such books or records. Such Association documents shall be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board and shall be made available as follows:

(a) The Association's most current financial statement and minutes of the most current regular Board meeting, once approved, shall be available to any Owner at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board.

(b) The meeting minutes of the Board, once approved, for the current and prior year shall either:

(1) Be available for examination by Unit Owners at no cost on a twenty-four (24) hour loan at a convenient location at the Project, to be determined by the Board; or

(2) Be transmitted to any Unit Owner making a request for the minutes, by the Board, the Managing Agent or the Association's representative, within fifteen (15) days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Owner, if the Owner indicated a preference at the time of the request; and provided further that the Owner shall pay a reasonable fee for administrative costs associated with handling the request.

(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the duration those records are kept by the Association and delinquencies of ninety (90) days or more shall be available for examination by Unit Owners at convenient hours at a place designated by the Board, provided that:

(1) The Board may require Unit Owners to furnish the Association with 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

(2) Unit Owners shall pay for administrative costs in excess of eight (8) hours per year.

Copies of these items shall be provided to any Unit Owner upon the Owner's request; provided that the Owner pays a reasonable fee for duplication, postage, stationary and other administrative costs associated with handling the request.

(d) After any Association meeting, but not earlier, Unit Owners shall be permitted to examine proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election, provided that:

(1) Unit Owners shall make a request to examine the documents within thirty (30) days after the Association meeting;

(2) The Board may require Unit Owners to furnish the Association a duly executed 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

(3) Unit Owners shall pay for administrative costs in excess of eight (8) hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty (30) days after the Association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty (60) days, after which they may be destroyed. Copies of tally sheets, Owner's check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Unit Owner upon the Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationary and other administrative costs associated with handling the request.

(e) The Managing Agent shall provide copies of Association records maintained pursuant to this Section to Owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs. If the Project is not managed by a Managing Agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association, to whom this function is delegated.

(f) Prior to the organization of the Association, any Unit Owner shall be entitled to inspect as well as receive a copy of the Management Agreement from the Managing Agent.

(g) 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) days of receipt of the request.

(h) An Association may comply with this Section by making information available to Unit Owners, at the option of each Unit Owner, and at no cost, for downloading the information through an internet site.

(i) The Managing Agent may dispose of the records of the Association which are more than five (5) years old, except for tax records, which shall be kept for seven (7) years, 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 (60) days, which notice shall include an itemized list of the records proposed to be destroyed.

Section 15. **MEMBERSHIP LIST.** Each Owner shall promptly file with the Board a true and complete copy, as filed with the Office, of each Unit Deed, recordable lease, mortgage, Agreement of Sale, condominium conveyance document, or other instrument whereby such Owner acquires, encumbers or disposes of an interest in his or her Unit. The Board or Managing Agent, under the direction of 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. The list shall be maintained at a place designated by the Board and a copy shall be available, at a reasonable charge, to any Owner who furnishes to the Managing Agent or 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 votes or proxies or providing information to other Owners with respect to Association matters and (b) shall not be used by such Owner or furnished to anyone else for any other purpose.

Section 16. **TERMINATION.** Except as provided below, and except as provided in Section 514B-47 of the Act, the Project shall not be abandoned, terminated or removed from the condominium property regime created by the Declaration and the Act without the prior written approval of all mortgagees.

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IN WITNESS WHEREOF, Developer, acting as the initial Association, hereby adopts the foregoing Bylaws as the Bylaws of the Association of Wailea Beach Resort & Residences condominium project on behalf of the Association this 9 day of November, 2006.

WAILEA HOTEL & BEACH RESORT, L.L.C.,
a Delaware limited liability company

By



Kathryn W. Inouye
Its Development Manager

“Developer”

STATE OF HAWAII

CITY & COUNTY OF HONOLULU

SS:

On this 9th day of November, 2006, before me appeared KATHRYN W. INOUE to me personally known, who being by me duly sworn or affirmed, did say that such person~~(s)~~ executed the foregoing instrument as the free act and deed of such person~~(s)~~, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities~~(s)~~.

Evelyn S. Kubota

Name: Evelyn S. Kubota
Notary Public of and for such State, Apr 9, 2008
My commission expires: _____

L.S.