

RECORDATION REQUESTED BY:

80-112601

Bruce C. Dinman, Esq.

AFTER RECORDATION, RETURN TO:

WITHERWAX, CHU & DINMAN
1420 Davies Pacific Center
Honolulu, HI 96813

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RETURN BY: MAIL () PICKUP (x)

AMENDMENT OF THE DECLARATION OF
HORIZONTAL PROPERTY REGIME AND BY-LAWS
OF
DIAMOND HEAD SANDS

WHEREAS, REBMA HAWAII THREE, INC., a Missouri corporation, whose principal place of business and Post Office address is BMA Tower, 1 Penn Valley Park, Kansas City, Missouri, executed on November 12, 1974 the Declaration of Horizontal Property Regime of Diamond Head Sands (hereinafter called the "Declaration"), under Chapter 514, Hawaii Revised Statutes, as amended, and attached thereto the Bylaws of the Association of Apartment Owners of Diamond Head Sands, which said Declaration was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 10334, Page 417; and

WHEREAS, the Association of Apartment Owners of Diamond Head Sands, an unincorporated association created by the Declaration in accordance with Chapter 514, Hawaii Revised Statutes, as amended, approved the following amendments by vote of the owners of at least seventy-five percent (75%) of the common interest in the common elements of Diamond Head Sands at the meeting held on May 20, 1980, in compliance with Article X, Section 10 of said Bylaws.

NOW, THEREFORE, said Declaration and Bylaws of Diamond Head Sands is hereby amended by the Owners as follows:

Sub-paragraph (b) of Article V, Section 3 of the Bylaws is amended to read in its entirety as follows:

(b) Whenever in the judgment of the Board of Directors the common or limited common elements shall require additions, alterations or improvements, the Board of Directors may proceed with such additions, alterations or improvements and shall assess all Owners for the cost thereof as a common expense. The expenses shall constitute part of the common expenses of the Project.

In all other respects, the Declaration and Bylaws, as amended, are hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

The undersigned President and Treasurer of the Association hereby certify that the foregoing amendment was adopted at a duly held meeting of the Association of Apartment Owners of Diamond Head Sands on May 20, 1980, by a vote of the owners of at least seventy-five percent of the common interest in the common elements of Diamond Head Sands.

IN WITNESS WHEREOF, the Association of Apartment Owners of Diamond Head Sands has caused these presents to be duly executed on this 3rd day of October, 1980.

ASSOCIATION OF APARTMENT OWNERS OF DIAMOND HEAD SANDS

By William C. Eyer
Its President

By Edward M. [Signature]
Its Treasurer

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

On this 3rd day of October, 1980,
before me appeared William A. Pryde, to
me personally known, who being by me duly sworn, did say
that he is President of the Board of
Directors of the Association of Apartment Owners of Diamond
Head Sands; that the foregoing instrument was signed on
behalf of said Association by authority of its Board of
Directors, and that he executed the same as the free act
and deed of said Association. Said Association has no seal.

Marvin E. Titus
Notary Public
State of Hawaii
My commission expires: 4th 30 81

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

On this 3rd day of October, 1980,
before me appeared Armand M. Channon, to
me personally known, who being by me duly sworn, did say
that he is Treasurer of the Board of
Directors of the Association of Apartment Owners of Diamond
Head Sands; that the foregoing instrument was signed on
behalf of said Association by authority of its Board of
Directors, and that he executed the same as the free act
and deed of said Association. Said Association has no seal.

Marvin E. Titus
Notary Public
State of Hawaii
My commission expires: 4th 30 81

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LAND COURT SYSTEM

REGULAR SYSTEM

Return by: Mail [] Pickup [X] To:

LOWELL SCOTTY HU, ESQ.
DINMAN, NAKAMURA, ELISHA, NAKATANI & NEELEY
707 Richards Street, PH-1
Honolulu, Hawaii 96813
Telephone: (808) 523-7021

AMENDMENT OF THE BY-LAWS OF DIAMOND HEAD SANDS

WHEREAS, by Declaration of Horizontal Property Regime dated November 12, 1974, recorded at the Bureau of Conveyances of the State of Hawaii in Liber 10334, at Page 417, REBMA Hawaii Three, Inc., a Missouri corporation, on behalf of Leahi Development Company, a Hawaii registered partnership, the fee owner, did submit the property described in the Declaration to the provisions of the Horizontal Property Act, Chapter 514 (now known as the "Condominium Property Act, Chapter 514A, Hawaii Revised Statutes") as amended;

WHEREAS, said Declaration, as amended (hereinafter referred to as the "Declaration"), provided for the organization of the ASSOCIATION OF APARTMENT OWNERS OF DIAMOND HEAD SANDS (hereinafter referred to as the "ASSOCIATION") and established By-Laws therefor, which said By-Laws (hereinafter referred to as the "By-Laws") were attached to the Declaration and incorporated therein by reference;

WHEREAS, Section 514A-82(b)(2), Hawaii Revised Statutes, provides that the by-laws of condominium associations in the State of Hawaii may be amended by the vote or written consent of sixty-

five percent (65%) of the owners;

WHEREAS, at the ASSOCIATION's 1989 annual meeting, which meeting was held on May 8, 1989, the vote of more than sixty-five percent (65%) of the Diamond Head Sands apartment owners was obtained in favor of amending the By-Laws as hereinafter set forth.

NOW, THEREFORE, the By-Laws are hereby amended as follows:

AMENDMENT NUMBER ONE:

Article I, Section 2 of the By-Laws is amended to read as follows:

SECTION 2. Conflicts. These Bylaws are set forth to comply with the requirements of Chapter 514A, Hawaii Revised Statutes, as amended. In case any of these Bylaws conflict with the provisions of said Chapter 514A or of the Declaration, the provisions of said Chapter 514A and the Declaration, in that order, shall control.

AMENDMENT NUMBER TWO:

Article I of the By-Laws is amended by adding a new Section 4 to read as follows:

SECTION 4. Condominium Property Act. All references herein to Chapter 514, Hawaii Revised Statutes, shall refer to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as that Chapter now exists or hereafter may be amended.

AMENDMENT NUMBER THREE:

Article III, Section 1 of the By-Laws is amended to read as follows:

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of five (5) persons. All members of the Board of Directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. In case of a fiduciary owner, the fiduciaries or officers of such fiduciary shall be deemed to be the owners for this purpose. There shall not be more than one representative on the Board of Directors from any one apartment. The Association's resident manager may not serve on the Board of Directors.

AMENDMENT NUMBER FOUR:

Article IV, Section 1 of the By-Laws is amended to read as follows:

SECTION 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. All officers shall be members of the Association and of the Board of Directors.

AMENDMENT NUMBER FIVE:

Article VI, Section 4(c) of the By-Laws is amended to read as follows:

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment to the Association of the actual amount paid by it for said certificate. In the event any claims of liens have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment to the Association of a reasonable fee, not to exceed the actual amount paid by the Association in connection with the preparation of said release of lien instrument, the Board, acting by any two members, shall execute and acknowledge (in the manner provided above) a release of lien instrument, stating the date of the original claim of lien, the amount claimed, the date, the book and page where such lien is recorded at the Bureau of Conveyances, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the Owner or his successor upon payment of the fee.

AMENDMENT NUMBER SIX:

Article VI, Section 6 of the By-Laws is amended to read as follows:

SECTION 6. Collection from Tenants and Rental Agents. If the Owner shall at any time rent or lease his Apartment and shall default for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Apartment or

from any rental agent of such Owner who is in receipt of proceeds from the rental or lease of such Owner's Apartment, the rent due or becoming due from such lessee or from any rental agent to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, late fees, expenses, costs, and attorneys' fees, if any, and any such payment of such rent to the Board by the lessee or rental agent shall be sufficient discharge of such lessee or rental agent, as between such lessee and/or rental agent and the Owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee or rental agent shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender of any rights or duties hereunder. In the event that the Board makes demand upon the lessee or rental agent as aforesaid, the lessee and/or rental agent shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

AMENDMENT NUMBER SEVEN:

Article VIII, Section 2 of the By-Laws is deleted in its entirety and Article VIII, Sections 3, 4(a) and 4(b), and 5 are renumbered as Sections 2, 3(a) and 3(b), and 4 respectively.

In all other respects, the By-Laws, as amended, are hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

The undersigned officers of the ASSOCIATION hereby certify that the foregoing amendments to the By-Laws were adopted by more than sixty-five percent (65%) of the Diamond Head Sands apartment owners on May 8, 1989, at a duly held meeting of the Association.

IN WITNESS WHEREOF, the parties hereto have executed these presents this 22 day of June, 1989.

ASSOCIATION OF APARTMENT OWNERS
OF DIAMOND HEAD SANDS

BY: *Theodore F. Escobar* President
Its

BY: *J. Lopez* v/p.
Its

THE STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

On this 22nd day of June, 1989, before me personally appeared Theodore F. Escobar, to me personally known, who being by me duly sworn, did say that he is the President of the Board of Directors of the Association of Apartment Owners of Diamond Head Sands; that the foregoing instrument was signed on behalf of said Association by authority of its Board of Directors, and that he executed the same as the free act and deed of said Association. Said Association has no seal.

L.S.

Maria Elena J. Rapue
Notary Public, State of Hawaii
My Commission Expires: 11/15/92

THE STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

On this 22nd day of June, 1989, before me personally appeared Fredrick J. Linari, to me personally known, who being by me duly sworn, did say that he is the Vice-President of the Board of Directors of the Association of Apartment Owners of Diamond Head Sands; that the foregoing instrument was signed on behalf of said Association by authority of its Board of Directors, and that he executed the same as the free act and deed of said Association. Said Association has no seal.

L.S.

Maria Elena J. Rapue
Notary Public, State of Hawaii
My Commission Expires 11/15/92

DIAMOND HEAD SANDS
BYLAWS OF ASSOCIATION OF APARTMENT OWNERS

WHEREAS, REEMA HAWAII THREE, INC., hereinafter called "Developer", is owner in fee of the land described in the Declaration of Horizontal Property Regime to which these Bylaws are annexed; and

WHEREAS, the Developer is desirous of submitting the aforesaid land and buildings thereon to a horizontal property regime by filing a Declaration of Horizontal Property Regime and adopting these Bylaws which shall be annexed to the said Declaration all as provided for by Chapter 514 of the Hawaii Revised Statutes, as amended;

NOW, THEREFORE, Developer hereby declares that all of the property hereinabove described is 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 of Horizontal Property Regime to which these Bylaws are annexed, to constitute said property a Horizontal Property Regime or Condominium under the aforesaid Chapter 514 and are established and agreed upon for said purposes and for the purpose of enhancing and perfecting the value, desirability, and attractiveness of said property. These Bylaws shall run with the aforesaid land and apartments and shall be binding upon all parties having or acquiring any right, title or interest therein. The Developer, acting as the present Association of Apartment Owners of said property, hereby approves and adopts these Bylaws pursuant to said Chapter 514.

ARTICLE I

INTRODUCTORY PROVISIONS

SECTION 1. Definitions. The terms used herein shall have the meanings given to them in said Chapter 514, except as expressly otherwise provided herein. The term "common elements" means those elements designated in the aforesaid Declaration as common elements and limited common elements, if any. The term "property" shall include the land, the buildings and all other improvements thereon (including the Apartments and the common elements) and all easements, rights and appurtenances belonging thereto, and all other property affixed thereto and intended for use in connection therewith. The term "Rules and Regulations" refers to the Rules and Regulations for the conduct of occupants of the buildings adopted by the Board of Directors as hereinafter provided. "Owner" means a person owning severally or as a co-tenant an Apartment and the common interest appertaining thereto, to the extent of such interest so owned. The terms "Apartment Owners, Association of Owners, Association" and similar terms mean and refer to (except where such meaning would be clearly repugnant to the context) the Association of Apartment Owners. "Project" means the Property comprising DIAMOND HEAD SANDS.

SECTION 2. Conflicts. These Bylaws are set forth to comply with the requirements of Chapter 514, Hawaii Revised Statutes, as amended. In case any of these Bylaws conflict with the provisions of said Chapter 514 or of the Declaration, the provisions of said Chapter 514 or of the Declaration, as the case may be, shall control.

SECTION 3. Application. All present and future owners, mortgagees, tenants and occupants of Apartments and their employees, and any other persons who may use the said property in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations. The acceptance of an assignment of lease or conveyance or the entering into of a lease or the act of occupancy of an Apartment shall constitute an agreement that these Bylaws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

ARTICLE II

ASSOCIATION OF OWNERS

SECTION 1. Annual Meetings. Promptly after Apartments to which fifty percent (50%) or more of the common interest is appurtenant have been acquired by persons other than the Developer, the Developer shall notify all Apartment Owners thereof, and the first annual meeting of the Apartment Owners shall be held within thirty (30) days after such notice on a call issued by the Developer. At such meeting the Apartment Owners shall elect a Board of Directors. Thereafter, the annual meetings of the Apartment Owners shall be held on the first Monday of November of each succeeding year or at such other time as the Board of Directors may designate. At such meetings the Board of Directors shall be elected by ballot of the Apartment Owners in accordance with the requirements of Section 4 of ARTICLE III of these Bylaws. The Apartment Owners may transact such other business at such meetings as may properly come before them.

SECTION 2. Place of Meetings. Meetings of the Apartment Owners shall be held at such suitable place convenient to the Apartment Owners as may be designated by the Board of Directors.

SECTION 3. Special Meetings. Special meetings of the Owners of the Apartments may be held at any time upon the call of the President or of any three (3) Directors, or upon the written request of not less than forty percent (40%) of the Owners.

SECTION 4. Notice of Meetings and Other Notices. Written notice of all meetings, annual or special, stating the place, day and hour of the meeting and whether it is annual or special and in case of each special meeting stating briefly the business proposed to be transacted thereat, and any other notices permitted or required to be delivered by these Bylaws shall be given by mailing such notice, postage prepaid, at least ten (10) days before the date assigned for

the meeting or by delivery of such notice personally at least three (3) days before the date assigned for the meeting, to the Owners of the Apartments at their address at the property or at the address given to the Board for the purpose of service of such notices. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage or deed of trust from any Owner of an Apartment may obtain a copy of any and all notices permitted or required to be given to the Owner of an Apartment, 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 Owner of an Apartment to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each such Owner shall keep the Board informed of any changes in address.

SECTION 5. Adjournment of Meetings. If any meeting of Apartment Owners cannot be held because a quorum has not attended, a majority in common interest of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

SECTION 6. (a) Voting. Voting shall be on a percentage basis, and the percentage of the total votes to which each Apartment is entitled shall be the percentage of the common interests assigned to such Apartment in the Declaration. Votes may be cast in person or by proxy by the respective Apartment Owners. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association, the percentage of vote for any Apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such Apartment in such capacity. The vote for any Apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such Apartment.

(b) Proxies and Pledges. The authority given by any Apartment Owner to another person to represent him at meetings of the Association shall be in writing, signed by such Owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such Owner. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

SECTION 7. Order of Business. The order of business at all meetings of the Apartment Owners 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 of Directors;
- (f) Reports of committees;
- (g) Election of inspectors of election (when so required);
- (h) Election of members of the Board of Directors (when so required);
- (i) Unfinished business; and
- (j) New business.

SECTION 8. Cumulative Voting. If not less than forty-eight (48) hours prior to the time fixed for any meeting of the Association for the election of Directors, not less than ten percent (10%) of the Owners shall deliver to any officer of the Association a request in writing that the election of the Directors to be elected be by cumulative voting, then each Owner shall cumulate his votes, and may cast for any one or more nominees to the Board of Directors a vote equivalent to the votes which such Owner is entitled to multiplied by the number of Directors to be elected. Each owner shall be entitled to cumulate his votes and give all thereof to one nominee or to distribute his votes in such manner as he shall determine among any or all of the nominees, and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of Directors to be elected, shall be deemed elected.

SECTION 9. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners having one-half (1/2) of the total authorized votes of all Apartment Owners shall constitute a quorum at all meetings of the Apartment Owners.

SECTION 10. Majority Vote. The vote of a majority of Apartment Owners at a meeting at which a quorum shall be present shall be binding upon all Apartment Owners for all purposes except where in the Declaration or these Bylaws or by law, a higher percentage vote is required.

SECTION 11. Majority of Apartment Owners. As used in these Bylaws, the term "majority of Apartment Owners" shall mean those Apartment Owners having more than fifty percent (50%) of the total authorized votes present at any meeting of the Apartment Owners, and any specified percentage of the Owners means Owners having the specified percentage of the total votes.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of five (5) persons, all of whom shall be Owners or spouses of Owners, or in the case of corporate Owners, shall be officers, stockholders or employees of such corporations, or in the case of partnership Owners, any general partner of such partnership, or in the case of fiduciary Owners, shall be the fiduciaries or officers or employees of such fiduciaries.

SECTION 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Apartment Owners. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

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

(b) Preparation annually of a budget of the common expenses required for the affairs of the Association, including, without limitation, the operation and maintenance of the property;

(c) Collection of the common expenses from the Apartment Owners;

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

(e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the property;

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

(g) Obtaining of insurance for the property, including the Apartments, pursuant to the provisions of ARTICLE VII hereof;

(h) Making of repairs, additions and improvements to or alterations of the property and repairs to and restoration of the property in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(i) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these Bylaws;

(j) Purchasing of any other materials, supplies, furniture, labor and services, the making of repairs and structural alterations, and the payment of all insurance, taxes or assessments and other common expenses which the Board is required to secure, make or pay for pursuant to the terms of these Bylaws or by law or which in its opinion shall be necessary or proper for the operation of the buildings as apartment buildings for the enforcement of these Bylaws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, or assessments are required because of the particular actions or negligence of the Owners of particular Apartments, the cost thereof shall be specially assessed to the Owners of such Apartments;

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

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

(m) Purchasing or leasing or otherwise acquiring in the name of the Board of Directors, or its designee, corporate or otherwise, on behalf of all Apartment Owners, Apartments offered for sale or lease;

(n) Purchasing of Apartments at foreclosure or other judicial sales in the name of the Board of Directors or its designee, corporate or otherwise, on behalf of all Apartment Owners;

(o) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board of Directors), or otherwise dealing with Apartments acquired by, and subleasing Apartments leased by, the Board of Directors or its designee, corporate or otherwise, on behalf of all Apartment Owners; and

(p) Organizing corporations to act as designees of the Board of Directors in acquiring title to or leasing of Apartments on behalf of all Apartment Owners.

SECTION 3. Managing Agent and Manager. Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible individual or corporation as Managing Agent to manage and control the property, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified from time to time by the Board.

The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration of the common elements and any additions or alteration thereto, (c) purchase, maintenance and replacement of any equipment, (d) provision for service of all utilities to the buildings and the various Apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, (i) purchase of such insurance as is contemplated by these Bylaws, (j) custody and control of all funds and maintenance of books and records and preparation of financial reports.

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

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

SECTION 4. Election and Term of Office. At the first annual meeting of the Apartment Owners, the term of office of three members of the Board of Directors shall be fixed at two (2) years and the term of office of two members of the Board of Directors shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board of Directors shall be elected to serve for a term of two (2) years. Each member of the Board of Directors shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Apartment Owners.

SECTION 5. Removal of Members of the Board of Directors. At any regular or special meeting of Apartment Owners, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Apartment Owners and a successor may then and there or thereafter be elected for the remainder of the term to fill the vacancy thus created; provided that an individual Director shall not be removed, unless the entire Board is removed, if Owners having sufficient votes to elect one Director by cumulative voting present at such meeting shall vote against his removal. Any member of the Board of Directors whose removal has been proposed by the Apartment 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 majority vote of the other members may remove him and select a replacement to serve his unexpired term.

SECTION 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a member thereof by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Directors for the remainder of the term of the member whose vacancy he filled and until a successor shall be elected at the next annual meeting of the Apartment Owners.

SECTION 7. Organization Meetings. The first meeting of the Board of Directors following the annual meeting of the Apartment Owners shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the Apartment Owners at the meeting at which such Board of Directors shall have been elected, and no notice shall be necessary to the newly elected members of the Board of Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present thereat.

SECTION 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each member of the Board of Directors by mail at least three (3) business days prior to the day named for such meeting.

SECTION 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) business days' notice to each member of the Board of Directors, given by mail, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice by the written request of at least three (3) members of the Board of Directors.

SECTION 10. Waiver of Notice. Any member of the Board of Directors may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

SECTION 11. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of busi-

ness, and the votes of a majority of the members of the Board of Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors 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 12. Fidelity Bonds. The Board of Directors may obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a common expense.

SECTION 13. Compensation. No member of the Board of Directors shall receive any compensation from the Association for acting as such.

SECTION 14. Liability and Indemnity of the Board of Directors. The members of the Board of Directors shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association of Owners shall indemnify each Director of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director, or by reason of any past or future action taken or authorized or approved by him or any omission to act as such Director, whether or not he continues to be such Director at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such Director. As to whether or not a Director was liable by reason of gross negligence or willful misconduct toward the Association in the performance of his duties as such Director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each Director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such Director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such Director.

ARTICLE IV

OFFICERS

SECTION 1, Designation. The principal officers of the Association shall be the President, the Vice President,

the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board of Directors.

SECTION 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

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

SECTION 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Apartment Owners and of the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a stock corporation organized under the laws of the State of Hawaii, including but not limited to the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

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 of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the Apartment Owners and of the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the laws of the State of Hawaii.

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. He 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 of Directors, and he shall, in general, perform all the duties incident to the office of Treasurer of a stock corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent.

SECTION 8. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the Bylaws as hereafter provided, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board of Directors.

SECTION 9. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such.

ARTICLE V

USE, MAINTENANCE AND ALTERATION OF THE PROJECT

SECTION 1. Use of Apartments. (a) Each Apartment shall at all times be used as a private dwelling for the Owner, his family, tenants and social guests; provided, however, that the Developer may use any of such Apartments for sales or display purposes prior to the sale thereof by the Developer. The Apartments shall not be rented for transient or hotel purposes, which are defined as (i) rental for any period less than one (1) month, or (ii) any rental in which the occupants of the Apartments are provided customary hotel services, such as room service for food and beverage, maid service, laundry, linen or bellboy service. The Owner of each such Apartment may utilize the Apartment solely in accordance with the foregoing provisions of this paragraph, utilizing the established ways and means provided for ingress and egress thereto, and for such other purposes and in such manner as shall be permitted in these Bylaws and the Rules and Regulations.

(b) The Owner of an Apartment shall not use the same for any purpose which will injure the reputation of the Project. Such Owner shall not suffer anything to be done or kept in the Apartment beyond those customarily done or kept for uses set forth in Section 1 of this Article V or which will jeopardize the soundness of the buildings in the Project, or which will interfere with or unreasonably disturb the rights of other Owners, or which will obstruct any public halls or stairways of any such buildings, or which will increase the rate of fire insurance on such buildings or the contents thereof, or which will reduce the value of the Project.

(c) The Owner of an Apartment shall not, without the prior written consent of the Board or the Managing Agent, display any sign or any other device in or upon any door, window, wall or other portion of the Apartment, or otherwise so as to be visible from the exterior; provided, however, that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of Apartments in the Project.

SECTION 2. Maintenance of the Project. (a) Each Owner of an Apartment shall, at the Owner's expense, keep the Apartment and all appurtenances and equipment in good order, condition and repair and in a clean and sanitary condition and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his Apartment.

In addition to decorating and keeping his Apartment in good repair, the Owner of the Apartment shall be responsible for the maintenance, repair and replacement of any plumbing fixtures, water heaters, heating or cooling equipment, lighting fixtures, refrigerators, dishwasher, garbage disposals and compactors, ranges, or similar equipment that may be described in the Declaration as being in the Apartment.

(b) Without limiting the generality of the foregoing, each Owner shall be responsible for the care and maintenance of any lanais which are included in his Apartment or are limited common elements appurtenant thereto. An Owner may not, however, paint or otherwise decorate his lanais or any portion of the limited common elements appurtenant to his Apartment without the prior written approval of the same by the Board of Directors. It is intended that the exterior of all buildings and other structures in the Project shall represent a uniform appearance, and to effect that end each Owner hereby agrees that the Board may require the painting of each lanai or exterior wall or other part of the Apartment or its appurtenant limited common elements visible from the common elements and regulate the type and color of the paint to be used. The Board is authorized to contract for the painting of all such areas and to make payment therefor out of the maintenance fund. No awnings, shades, jalousies or other device shall be erected or placed on the lanais or any portion of the Apartment or limited common elements so as to be visible from any portion of the Project unless written permission shall have been obtained from the Board of Directors. No Apartment Owner may plant in any garden area any shrub, tree, bush or other thing, or construct or place anything therein, which would detract from the Project or constitute a nuisance to, or an unreasonable interference with the rights of, other Apartment Owners to use and enjoy their Apartments and the common elements.

(c) All maintenance, repairs and replacements to the common or limited common elements, whether located inside or outside of the Apartments, shall be made by the Board of Directors. The expense thereof shall be charged to all Apartment Owners as a common expense, unless the expense was necessitated by the negligence, misuse or neglect of an Apartment Owner, in which case such expense shall be charged to such Apartment Owner.

SECTION 3. Alteration of the Project. (a) Additions, alterations or improvements to the common or limited common elements of the Project may be made only by or at the direction of the Board of Directors. No Apartment Owner may, except with the written permission of the Board of Directors, make any alteration, addition or improvement to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his Apartment, except that such approval shall not be required for additions, alterations or improvements required by law.

(b) Whenever in the judgment of the Board of Directors the common or limited common elements shall require additions, alterations or improvements with a total cost of less than Three Thousand Dollars (\$3,000.00), the Board of Directors may proceed with such additions, alterations or

improvements and shall assess all Owners for the cost thereof as a common expense. Any additions, alterations or improvements costing in excess of Three Thousand Dollars (\$3,000.00) may be made by the Board of Directors only after obtaining approval of Owners of Apartments to which are appurtenant not less than eighty percent (80%) of the common interests of the Project, except that such approval shall not be required for additions, alterations or improvements required by law. The expenses shall constitute part of the common expenses of the Project.

(c) Unless otherwise prohibited by the provisions of the Declaration or these Bylaws, an Apartment Owner may make additions, alterations or improvements to his Apartment at his sole cost and expense.

(d) Except as otherwise provided in the Declaration or these Bylaws, any addition to, removal from or change in (such addition, removal or change hereinafter "alteration") any portion of the Project which would render any description of the Project in the Declaration, or any depiction thereof on the Condominium Map inaccurate or less than complete, may not be made or done by any Apartment Owner, group of Apartment Owners or the Board of Directors unless:

(i) Such alteration is undertaken and completed in accordance with plans and specifications including detailed drawings which, prior to the commencement of such alteration have been approved in writing by (x) the Board as well as (y) Owners of Apartments to which are appurtenant eighty percent (80%) of the common interests in the Project; and

(ii) Promptly upon completion of such alteration, the Board shall duly record (x) an amendment to the Declaration and the Condominium Map accurately describing and depicting the Project as changed by the alteration, and (y) if the alteration composes in whole or in part a structure, the erection of which requires a building permit, a certificate of a registered professional architect or engineer stating that the plans showing the alteration being recorded as aforesaid fully and accurately depict the alteration as approved by the Officer of the City and County of Honolulu having jurisdiction over the issuance of building permits.

(e) In the event the alteration is in whole or in part to an Apartment and the Owner has requested such alteration, each and every provision of the foregoing paragraph shall apply except that:

(i) The approval of Owners of Apartments to which are appurtenant eighty percent (80%) of the common interests of the Project shall not be necessary for such part of the alteration as comprises an alteration to an Apartment;

(ii) The Board of Directors shall give

its written consent to the alteration of the Apartment and shall execute the amendment to the Declaration and Condominium Map in respect thereof unless the Board delivers to the Apartment Owner a written statement detailing its objection to the proposed alteration. The Board shall make no objection to the proposal for the alteration of an Apartment if such alteration has no effect on the integrity, use and enjoyment of the common elements or other Apartments in the Project by the Owners of those Apartments, and

(iii) The Owner of the Apartment shall bear all costs of compliance with the requirements of (i) and (ii) attributable to alteration of the Apartment.

ARTICLE VI

COMMON EXPENSES, APARTMENT EXPENSES AND TAXES

SECTION 1. Common Expenses. The Owner of each Apartment shall be liable for and pay a share of the common expenses in proportion to his interest in the common elements appurtenant to his Apartment. Common expenses shall include all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, cost of repair, reinstatement, rebuilding and replacement of the premises, yard, janitorial and other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements, including limited common elements, and the cost of all utility services, including water, electricity and gas, garbage disposal and any other similar services, unless separately metered in which case the amounts charged to each Apartment shall be payable by the Owner of the Apartment. The common expenses may also include such amounts as the Board of Directors may deem proper to make up any deficit in the common expenses for any prior year and a reserve fund for the operation and maintenance of the property, including, without limitation, anticipated needs for working capital of the Project, and for replacements, repairs and contingencies. Payments of common expenses shall be made to the Board, as agent of the Owners of the Apartments, and the Board shall transmit said payments on behalf of each such Owner to the third person entitled to said payments from each Owner.

The common expenses may also include such amounts as may be required for the purchase or lease by the Board of Directors or its designees, corporate or otherwise, on behalf of all Apartment Owners, of any Apartment whose Owner has elected to sell or lease such Apartment or of any Apartment which is to be sold at a foreclosure or other judicial sale;

provided, however, that except for any Manager's Apartment, the Board of Directors may not purchase an Apartment and hold the same or lease an Apartment for a period in excess of one (1) year without obtaining the approval of the Owners of at least eighty (80%) percent of the Apartments.

SECTION 2. Payment as Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses. The Board, on behalf of all Owners, will maintain or cause to be maintained books of account of common expenses in accordance with recognized accounting practices, and will have such books of account available for inspection by each Owner or his authorized representative at reasonable business hours. The Board will annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year, which statement may be certified by an independent certified public accountant. Each Owner, as principal, shall be liable for and pay his share, determined as aforesaid, of all common expenses and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be made by the Owner. The Board collecting the common expenses shall not be liable for payment of said common expenses as a principal but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owner.

SECTION 3. Taxes and Assessments. Each Owner of an Apartment shall be obligated to have the real property taxes for his own Apartment and its appurtenant interest in the common elements assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Apartment and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against 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 for assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments and shall assess the same to the Owners in their proportionate share as determined by the Board. Such assessments by the Board shall be secured by the lien created by Section 4 of this ARTICLE VI.

SECTION 4. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies hereby or by law provided, the Board of Directors may enforce each such obligation as follows:

- (a) By suit or suits at law to enforce each such

assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Manager if the latter is so authorized in writing. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorney's fees in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time within ninety (90) days after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner, with a copy to the mortgagee of such Owner, if such mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the Apartment of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Apartment against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these Bylaws and of Chapter 514, Hawaii Revised Statutes, as amended, and (5) that a lien is claimed against said described Apartment in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Upon recordation of a duly executed original or copy of such claim of lien with the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances, as the case may be, the Board shall have all remedies provided in Section 514-24, Hawaii Revised Statutes, as amended. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under power of sale, the Board, or any person designated by it in writing, shall be entitled to actual expenses and such fees, including attorney's fees, as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the person conducting the sale.

(c) For the purposes of this Section 4, a certificate executed and acknowledged or made under penalty or perjury by any two members of the Board shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Apartment (or the fact that all

assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00). In the event any claims of liens have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Board, acting by any two members, shall execute and acknowledge (in the manner provided above), a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the Land Court document number of the claim of lien or the book and page where such lien is recorded in the Bureau of Conveyances, the fact that the lien has been fully satisfied and that the particular lien is released and discharged, such release of lien to be delivered to the Owner or his successor upon payment of the fee.

SECTION 5. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 6. Collection from Tenant. If the Owner shall at any time rent or lease his Apartment and shall default for a period of thirty (30) days or more in the payment of the Owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, demand and receive from any renter or lessee (hereinafter in this paragraph referred to as "lessee") of the Owner occupying the Apartment, 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, and 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; but 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. In the event that 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 receiver has been appointed to take charge of the premises pending a mortgage foreclosure or if a mortgagee is in possession pending a mortgage foreclosure.

ARTICLE VII

INSURANCE AND RESTORATION

SECTION 1. Fire and Extended Coverage Insurance.

The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsement or such broader forms of protection as the Board shall determine, for an amount as nearly as practicable equal to the replacement cost without deduction for depreciation, covering the Apartments and fixtures therein and the buildings, fixtures and building service equipment, but excluding any improvements made by an Owner which the Owner himself may insure and excluding property of every kind and description while underground (meaning thereby, below the level of contiguous ground and covered by earth, except underground conduit or wiring therein when beneath the buildings), in the name of the Board as insured as trustee for each of the Owners of the Apartments in proportion to their respective common interests in the common elements. Such Policy:

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

(b) Shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board, or if obtainable, shall contain no provision of relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the Owner or tenant of any Apartment, or by reason of any act or neglect of the Board or the Owner or tenant of any Apartment;

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

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

(e) Shall provide that any loss shall be adjusted with the insured and the Owner and the mortgagee of any Apartment directly affected by the loss;

(f) Shall contain a standard mortgage clause which:

(i) Shall name the holder of any mortgage affecting any Apartment whose name shall have been furnished to the Board and to the insurer;

(ii) Shall provide that the insurance as to the interest of the mortgages shall not be invalidated by any act or neglect of the Board or the Owner or tenant of any Apartment;

(iii) Shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay 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 by reason of the nonpayment of the premium), any contribution clause, and any right to be subrogated to the right of any mortgagee against the Owner or lessee of any Apartment or the Board or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or Owner, but without impairing mortgagee's right to sue;

(iv) Shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause if in excess of Ten Thousand Dollars (\$10,000.00) shall be payable to a corporate trustee selected by the Board who shall be a bank or trust company or real estate management company doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000.00), herein referred to as the "Insurance Trustee" or "Trustee";

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

(g) Shall provide for payment of the proceeds to the Insurance Trustee.

SECTION 2. Comprehensive Liability Insurance. The Board shall procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Board, the Developer, each Apartment Owner, and the Managing Agent and other employees of the Association of Apartment Owners against claims for personal injury, death and property damage arising out of the condition of the property or activities thereon or construction work under a Comprehensive General Liability form. Said insurance shall be for such limits as the Board may decide. Such Policy:

(a) Shall if obtainable contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board, or by any breach of

warranty or condition caused by the Owner of any Apartment, or by any act or neglect of the Owner or tenant of any Apartment; and

(b) Shall provide that the policy may not be cancelled by the insurer except by giving to the Board and to the Owner of each Apartment and any mortgagee, who shall have requested such notice of the insurer in writing, thirty (30) days' written notice of such cancellation.

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

SECTION 4. Miscellaneous Insurance Provisions. The Board shall review at appropriate intervals in time the adequacy of its insurance program. At the request of any mortgagee of any Apartment, the Board shall furnish to such mortgagee a copy of the Policy described in Section 1 of this Article and of any other Policy to which a mortgagee endorsement shall have been attached. Copies of every policy of insurance procured by the Board shall be available for inspection by an Apartment Owner (or purchaser holding a contract to purchase an interest in an Apartment) at the office of the Managing Agent. Any coverage procured by the Board shall be without prejudice to the right of the Owners of Apartments to insure such Apartments and the contents thereof for their own benefit at their own expense.

SECTION 5. Damage and Destruction. If a building is damaged by fire or other casualty which is insured against and said damage is limited to a single Apartment, the insurance proceeds shall be used by the Board or the Trustee for payment of the contractor retained by the Board to rebuild or repair such Apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If the insurance proceeds are insufficient to pay all costs of repair, the remaining deficiency shall be paid from the maintenance fund. If the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on all the Owners of Apartments in proportion to their respective common interests. If such damage extends to two or more Apartments or extends to any part of the limited common elements, if any, or to the common elements:

(a) If the Owners of the Apartments do not within sixty (60) days after such casualty or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days thereafter, agree in writing in accordance with the provisions of the Declaration and this section 5 that the building or any portion thereof need not be rebuilt or repaired, or if the Owners at an earlier date agree to rebuild immediately, THEN:

(1) The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Apartments so damaged, as well as common elements, in accordance with plans and specifications therefor,

which will restore the same in conformity with the design immediately prior to the destruction, or

(ii) If reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be approved by the Board, provided that in the event said modified plan eliminates any Apartment and such Apartment is not reconstructed, the Insurance Trustee shall pay to the Owner of said Apartment the portion of said insurance proceeds allocable to said Apartment (less the proportionate share of said Apartment in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the Contractor employed for such work in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 5. If the insurance proceeds are insufficient to pay all the costs of repairing and rebuilding all damaged Apartments as well as the common elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of Apartments in proportion to their respective common interests. The special assessment shall be secured by the lien created under Section 4 of Article VI hereof.

If a decision is made in accordance with the Declaration, this section and Hawaii Revised Statutes, Chapter 514, not to repair or rebuild all or any lesser number of damaged or destroyed Apartments, insurance proceeds allocable to any Apartment which is not to be rebuilt (hereinafter "eliminated Apartments") (less cost of debris removal) shall be paid to the Owner of the eliminated Apartment. Remaining insurance proceeds shall be paid to the Insurance Trustee who shall apply such moneys to repair and rebuild any portion of the building that is to be reconstructed in accordance with this section. If a decision is made to eliminate an Apartment, the common interests and other rights of remaining Apartment Owners in the Project shall be adjusted by amendment of the Declaration pursuant to Hawaii Revised Statutes, §514-6(b) and Section 15 of the Declaration; provided, however, that the common interest of any Owner shall not be altered without his consent. The owner of any such eliminated Apartment shall be discharged from all obligations to the Project after proper amendment of the Declaration. Alternatively, in the event the Declaration is not amended so as to discharge the Owners of eliminated Apartments of all obligations to the Project and so as to equitably adjust the common interests appurtenant to those Apartments not eliminated, pursuant to Hawaii Revised Statutes, §514-22, the Owner of any eliminated Apartment may convey his interest to the Board of Directors on behalf of all other Apartment Owners and thereby be discharged of all obligations to the Project. The Owner of any eliminated

Apartment may, in addition to his allocable share of insurance proceeds, receive such reimbursement as the Board deems appropriate.

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

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

(ii) 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 sums requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services 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;

(iii) 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 filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record;

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

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

(vi) 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 Board or the Trustee shall be paid or credited to the Owners of the Apartments (or to the mortgagee or lessor of an Apartment if there be a mortgage

or if the lessor is entitled by the lease to share in the proceeds) in proportion to their respective common interests.

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

SECTION 6. Disposition of Buildings. In the event the common elements of the Project suffer substantial damage, as provided for in Section 514-17(a)(2), Hawaii Revised Statutes, and if Apartment Owners holding eighty percent (80%) of the common interests of the Project shall agree in writing that the Project need not be rebuilt, the insurance proceeds shall be used to remove any remaining improvements on the land included in the Project, and the balance, if any, shall be allocated among the Apartment Owners and their mortgagees, in accordance with the interest in the common elements appurtenant to each Apartment.

ARTICLE VIII

MORTGAGES

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

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

SECTION 3. Examination of Books. Each Owner and each mortgagee of an Apartment shall be permitted to examine the books of account of the Condominium at reasonable times, on business days, but not more often than once a month.

SECTION 4. Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Apartment 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 on 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 Apartment 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 4 of ARTICLE VI hereof.

(b) No amendment to this Section 5 shall affect the rights of the holder of any such mortgage filed in the Office of the Assistant Registrar of the Land Court or the Bureau of Conveyances prior to the filing of such amendment who does not join in the execution thereof.

SECTION 5. Notice to Board of Directors. An Apartment Owner who mortgages his interest in an Apartment shall notify the Board of Directors of the name and address of his mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the note and mortgage with the Board of Directors; the Board of Directors shall maintain such information in a book entitled "Mortgages of Apartments".

ARTICLE IX

CONDEMNATION

In the event of a taking in condemnation or by eminent domain of part or all of the Project, the proceeds of any award of compensation shall be payable to a condemnation trustee ("Trustee") which shall be a bank, trust company or real estate management company designated by the Board doing business in Hawaii and having net assets of not less than Five Million Dollars (\$5,000,000.00).

In the event all or any of the Apartments are taken and there is not a final judicial determination of the amount of condemnation proceeds allocable to each Apartment so taken, the amount of the condemnation proceeds allocable to each Apartment (including the Apartment's appurtenant interest in the common elements and any limited common elements) shall be determined by a real estate appraiser ("Appraiser") who is a member of the American Institute of Real Estate Appraisers, or any successor organization, and who shall have acted on behalf of the Apartment Owners in the condemnation proceedings, or if no such Appraiser acted on behalf of the Apartment Owners or if more than one Appraiser acted on behalf of the Apartment Owners, then an Appraiser with such qualifications shall be selected by the Board of Directors to determine the amount of condemnation proceeds allocable to each Apartment.

In the event that the entire Project is taken, the Trustee shall pay to each Apartment Owner the portion of the condemnation proceeds determined by the Appraiser to be allocable to the Owner's Apartment.

In the event of a partial taking of the Project in which (i) any Apartment is physically eliminated; or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the Apartment and to the Board of Directors, then such apartment shall be removed from the Project and the Trustee

shall disburse to the Owner of such Apartment in full satisfaction of his interest in the Apartment the portion of the proceeds of such award allocable to said eliminated or removed Apartment after deducting the proportionate share of said Apartment in the cost of debris removal.

In the event of any partial taking of the Project the Board shall, subject to the provisions of the preceding sentence concerning removal of an Apartment, arrange for any necessary repair and restoration of the buildings and improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board and the mortgagees of record of each Apartment in the Project remaining after such taking. Such work shall be undertaken, and the disbursements thereof shall be made, in the manner prescribed in ARTICLE VII, Section 5(b). In the event the sums held by the Trustee are insufficient to pay the cost for such repair and restoration, the Board is expressly authorized to pay such excess costs from the maintenance fund and if the maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the Owners of the remaining Apartments in proportion to their common interests. The special assessment shall be secured by the lien created under Section 4 of ARTICLE VI hereof.

In the event sums received as a result of a partial condemnation exceed the total of any amount payable to the Owner of a removed Apartment and the amount of costs for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Apartment Owners in accordance with their interest in the common elements.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. Rules and Regulations. The Owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations (herein called "Rules and Regulations") as the Board may deem necessary for the operation and use of the common elements and limited common elements, including without limitation such aspects of the operation and use of the Apartments as may affect the operation and use of the common elements and limited common elements, and the Owner agrees that the Owner's rights under this instrument shall be in all respects subject to the appropriate Rules and Regulations which shall be taken to be a part hereof; and the Owner agrees to obey all such Rules and Regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees, and under-tenants of the Owner; and the Rules and Regulations shall uniformly apply to and be binding upon all occupants of the Apartments.

SECTION 2. Abatement and Enjoinment of Violations by Apartment Owners. The violation of any rule or regulation

adopted by the Board of Directors, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws:

(a) To enter the Apartment in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors 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 attorney's fees, shall be borne by the defaulting Apartment Owner.

SECTION 3. Right of Access. An Apartment Owner shall grant a right of access to his Apartment to the Manager and/or the Managing Agent and/or any other person authorized by the Board of Directors, the Manager or the Managing Agent, for the purpose of making inspections or for the purpose of correcting any condition existing in his Apartment and threatening another Apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in his Apartment or elsewhere in the buildings, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be deemed granted, to be effective immediately, whether the Owner is present at the time or not.

SECTION 4. Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Owners. Said corporation shall be formed upon the written approval of a majority of the voting Owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and Bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation, which said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

SECTION 5. Notices. All notices hereunder shall be mailed or delivered to the Board of Directors, c/o the Managing Agent, or if there be no Managing Agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all Owners and to all mortgagees of Apartments. All notices to any Owner shall be mailed or delivered to the building or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. Any notices to mortgagees of Apartments shall be sent by mail to their respective addresses, as designated by them from time to time, in writing,

to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

SECTION 6. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provision hereof.

SECTION 7. Gender. The use of any gender in these Bylaws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

SECTION 8. 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 9. Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of Apartments shall carry out and pay for the operation and maintenance of the project as a mutually beneficial and efficient establishment.

SECTION 10. Amendment. The provisions of these Bylaws, other than this paragraph, may be amended by the vote of Apartment Owners owning at least seventy-five percent (75%) of the common interest in the common elements, and evidenced by an instrument in writing, signed and acknowledged by any two officers of the Association of Apartment Owners, which amendment shall be effective upon filing in the Office of the Assistant Registrar of the Land Court or the Bureau of Conveyances, as the case may be.

SECTION 11. 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.

REBMA HAWAII THREE, INC.

BY T. Morgan
Its VICE PRESIDENT

BY Robert M. Meeker
Its Asst. Secy.