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RESTATED BY-LAWS
OF THE ASSOCIATION OF APARTMENT OWNERS
OF THE VILLA ON EATON SQUARE

RESTATED BY-LAWS OF ASSOCIATION OF APARTMENT OWNERS
OF THE VILLA ON EATON SQUARE
A CONDOMINIUM PROPERTY REGIME

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RESTATED BY-LAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF
THE VILLA ON EATON SQUARE

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers boards of directors of condominium associations to restate their by-laws to set forth amendments thereto, and to conform the provisions thereof to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by such boards; and

WHEREAS, the By-Laws of the Association of Apartment Owners at The Villa on Eaton Square were attached to and incorporated by reference (hereinafter called the "By-Laws"), to the Declaration of Condominium Property Regime of The Villa on Eaton Square, dated August 17, 1971, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 549326 (hereinafter called the "Declaration"); and

WHEREAS, at a meeting duly held on JUNE 25, 1990, the Board of Directors of the Association of Owners of The Villa on Eaton Square (hereinafter called the "Board of Directors") resolved to restate the By-Laws, pursuant to Section 514A-82.2, Hawaii Revised Statutes, in the manner set forth herein.

NOW, THEREFORE, the By-Laws are hereby restated to read as follows:

The following By-Laws shall apply to the above-named condominium project (herein called the "project"), as described in and created by the Declaration and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project. The term "apartment" means any unit in the project whether a residential unit or a commercial unit as these terms are defined in the Declaration. The term "commercial element" means a limited common element appurtenant only to one or more commercial units, but not appurtenant to any residential unit. The term "residential elements" means all other limited common elements, that is, limited common elements which are (a) appurtenant to only a residential unit or units, or (b) appurtenant both to one or more residential units and also to one or more commercial units. Each person who is a lessee of an apartment under an Apartment Lease issued by Lessor and approved by Fee Owner is herein called an "owner", and the rights of said person with respect to said apartment are determined by said Apartment Lease.

ARTICLE I

MEMBERSHIP

Section 1. Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment upon acquiring his interest therein shall automatically become a member of the Association and shall remain a member thereof until such time as his interest in such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by any sublease (by an owner, as sublessor) of any apartment filed with the Board of Directors of the Association (hereinafter sometimes called the "Board") the sublessee of such apartment shall be deemed to be the owner thereof. Notwithstanding anything in these By-Laws to the

contrary, at all times prior to the time at which the Apartment Lease of the first unit becomes effective to vest in the owner his rights as lessee of his unit, the Fee Owner, Lessor and the Developer together shall act in any and all matters as the Association and the Board of Directors.

Section 2. Place of Meetings. Meetings of the Association shall be held at the project or such other suitable place within the State convenient to the apartment owners as may be designated by the Board.

Section 3. Annual Meetings. The first meeting of the Association shall be held as soon as practicable after the completion of the project upon the call of at least ten percent (10%) of the apartment owners, or upon the call of the Developer. Thereafter the annual meetings of the Association shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary. All powers of the Association may be exercised at any such special meetings, but business considered shall be limited to that stated in the notice of the special meeting. Notwithstanding anything in these By-Laws to the contrary, the Fee Owner, Lessor and Developer, when acting for the Association as provided in Section 1 of this Article I, may act without a formal meeting, and without call or notice.

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, at least fourteen² days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and, if a special meeting, the items of business to be considered, and a standard proxy form authorized by the Association, if any,³ in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. Where notice is mailed, it shall be deemed to be delivered three (3) days after having been deposited in the mail. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he 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. Any apartment owner may waive notice before, at or after any meeting by written waiver filed with the Secretary.

Section 6. Quorum. The presence at any meeting in person or by proxy of thirty-three percent (33%) of apartment owners shall constitute a quorum; and at any meeting at which a quorum is present, action by a majority of the voting power represented at such meeting shall be valid and binding on the Association except as otherwise provided herein.

Section 7. Voting. Voting rights are assigned to the apartment owners, subject to certain reservations, under the terms of the Apartment Lease of each unit. Voting shall be on a

percentage basis; the percentage of the total vote to which each apartment is entitled shall be the same as the percentage of the common interests assigned to such apartment in the Declaration; and any percentage of apartment owners specified in these By-Laws means the owners of apartment to which are appurtenant such percentage of the common interests. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The 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 written protest by the other or others filed with the Secretary at or before the meeting, and in case of such protest each co-owner shall be entitled to only the share of such vote in proportion to his share of ownership in such apartment.

Section 8. Proxies and Pledges. With the exception of the power of attorney and proxy which is given to Lessor by any apartment owner under the terms of the Apartment Lease on his apartment, 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 or Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given, and a box wherein the owner may indicate, for a proxy given to the Board, that the owner wishes the vote to be shared with each Board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the Board.³ Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein 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; provided, however, that said voting rights so transferred or pledged may not be exercised by said person unless and until said mortgage, deed of trust or agreement of sale is recorded in the Bureau of Conveyances of the State of Hawaii and a copy thereof has been filed with the Board.

A proxy shall be valid only for the meeting to which the proxy pertains and its adjournments, if any, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Apartment⁶ and provided, further, that nothing in this paragraph shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.⁷ No officer of the Board shall use Association funds to solicit proxies, provided that this shall not prevent an officer from exercising his right as an owner under the following provisions of this section.⁸

No resident manager or Managing Agent, if any, employed by the Association, shall solicit, for use by such manager or Managing Agent, any proxies from any owner, nor shall he or she cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No Board member who uses

Association funds to solicit proxies shall cast any such proxy votes for the election or reelection of Board members at any Association meeting unless the proxy specifically authorizes the Board member to vote for the election or reelection of Board members and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty days prior to its solicitation of proxies, provided that if the Board receives within seven days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall either:

- (i) Mail to all owners a proxy containing the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or
- (ii) Mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the Board and reasons for wanting to receive proxies.⁹

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the apartment owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

Section 11. Robert's Rules of Order. All Board and Association meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.¹⁰

Section 12. Meeting Minutes. Minutes of meetings of the Board and of the Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session.¹¹

Section 13. Prohibition Against the Selling or Renting of Apartments by Association Employees. An employee of the Association shall not engage in the selling or renting of apartments in the project, except Association-owned units, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the membership.¹²

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs the Association shall be governed by a Board of Directors composed of nine (9) persons each of whom shall be the sole owner or co-owner of record of an apartment or a vendee under an agreement of sale.¹³ If a corporation is an apartment owner, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation. 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.¹⁴ The directors shall serve without compensation.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor except (i) those acts or things which are by law, the Declaration or these By-Laws directed to be exercised or done only by the apartment owners, and (ii) those acts or things which are reserved to the Merchants' Association by these By-Laws.

Section 3. Election and Term. - Election of directors shall be by cumulative voting by secret ballot at each annual meeting and each special meeting called for the purpose. Directors shall hold office for a period of three years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one year, one-third for two years and one-third for three years.

Section 4. Vacancies. Except as provided in the following paragraph, any vacancies in the Board of Directors (other than a vacancy caused by the natural expiration of the term of a director) shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall serve until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six months, or his ceasing to be the sole owner or co-owner of an apartment, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association, any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor shall then and there¹⁵ be elected to fill the vacancy thus created. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the owners as shown in the Association's record of ownership, and provided that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special Association meeting, and to send out the notices for the special Association meeting in accordance with the requirements of these By-Laws. Except as otherwise provided by law, such meeting for the removal and replacement from office of directors shall be

scheduled, noticed, and conducted in accordance with these By-Laws.¹⁶

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

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting. For purposes of this and the following paragraphs, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail, or twelve (12) hours after communicated to a telegraph agent.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight (8) hours notice to each director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors. Notwithstanding anything in these By-Laws to the contrary, the Fee Owner, Lessor and the Developer, when acting as the Board of Directors as provided in Section 1, may act without a formal meeting, and without call or notice.

Section 9. Waiver of Notice. Before, at, or within one week after any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business, and action by a majority of the directors present at any meeting at which a quorum is present shall constitute action by the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors shall secure annually a fidelity bond in at least the amount required by Section 514A-95.1(a)(1), Hawaii Revised Statutes, to cover¹⁷ all officers, employees and agents of the Association handling or responsible for its funds. The premiums on such bonds shall be paid by the Association as a common expense. Notwithstanding the foregoing, the Managing Agent, at its own expense, shall obtain its own fidelity bonds covering its officers, employees and other agents in such amounts and from such insurer

as may be required by the Board of Directors. The bond shall protect the Association against fraudulent and dishonest acts by persons, including the Managing Agent, handling the Association's funds.¹⁸

Section 12. Participation in Board Meetings by Association Members. All Board meetings, other than executive sessions, shall be open to all owners. Owners who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. The participation of such owners may be subject to such terms as may be determined by a majority of a quorum of the Board.¹⁹

Section 13. Executive Session. The Board, with the approval of a majority of a quorum of its members, may adjourn a Board meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.²⁰

Section 14. Notice to Association Members of Board Meetings. Whenever practicable, notice of all Board meetings shall be posted by the Resident Manager or a member of the Board in prominent locations within the Project, seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board.²¹

Section 15. Conflict of Interest. No director shall vote at any meeting of the Board of Directors on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue shall disclose the nature of the conflict prior to a vote on that issue, and the minutes of the meeting shall record the fact that a disclosure was made.²²

Section 16. Documents to be Given to Directors. The Association, at its expense, shall provide all directors with a current copy of the Declaration, these By-Laws, the House Rules, and annually, a copy of Chapter 514A, Hawaii Revised Statutes.²³

Section 17. Compensation. Directors shall not expend Association funds for their travel, directors' fees, or per diem, unless the owners are informed and a majority approve of those expenses.²⁴

ARTICLE III

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by, and in the case of the President, from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

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

Section 3. Removal. Any officers may be removed either with or without cause by vote of a majority of the members of the Board of Directors and his successor elected at any regular meeting of the Board or any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

Section 5. Vice-President. The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. He shall also have such other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities.

Section 8. Auditor. The Association shall appoint annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors.

Section 9. Merchants' Association. Nothing in this Article III shall give the Association or any of its officers any powers or duties over the management of the commercial elements or the business and affairs of the Merchants' Association provided for by the Declaration or these By-Laws.

ARTICLE IV

ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the project and have such powers and duties as may be necessary or proper therefor including without limitation the following:

(a) Supervision of its immediate management and operation except that the Merchants' Association shall supervise the management and operation of the commercial elements;

(b) Maintenance, repair, replacement and restoration of the common elements (excluding commercial elements) and the residential elements and any additions and alterations thereto;

(c) Purchase, maintenance and replacement of any equipment for the common elements (excluding commercial elements) and residential elements;

(d) Provision at each residential unit of all water, sewer, electricity (in the manner specified in the Declaration) and

such other utility services and utilities as the Board shall deem necessary as a common expense of the residential units as determined by the Board; provided that if the cost of any utilities are charged to the individual units according to use, said cost shall not be a common expense;

(e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the areas under the management jurisdiction of the Board of Directors;

(f) Preparation of at least 60 days before each fiscal year of a proposed budget and schedule of assessments for such year;

(g) Collection of all rent and installments of governmental assessments levied on some or all apartments and payment of all common expenses authorized by the Board including all expenses authorized by the Board pertaining to the common elements (excluding the commercial elements) and the residential elements;

(h) Purchase and maintenance in effect of policies of hazard and liability insurance as set forth in Article VI hereof;

(i) Notification of all persons having any interest in any residential unit according to the Association's record of ownership of delinquency exceeding 60 days in the payment of any assessment against such unit;

(j) If required by the Board, prior approval of each person (other than an apartment owner) subleasing or otherwise occupying any residential unit; and

(k) In the case of any sublease of any residential unit filed with the Board, the collection, custody and payment of all rents and other charges due from the sublessee to the owner of said unit, subject to a reasonable charge for said services.

Section 2. Managing Agent. The Board of Directors shall (subject to the terms of the Apartment Lease on the individual units) annually employ a responsible Hawaii corporation as Managing Agent (herein called the "Managing Agent") to manage and control the portion of the project within the management jurisdiction of the Board subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation as the Board may establish. All of the terms of each employment agreement with each Managing Agent shall be approved in advance by a majority of owners of all residential units and a majority of owners of all commercial units; provided however that the initial Managing Agent shall be Rainalter Land Company, Inc., a Hawaii corporation (or its nominee which shall be a Hawaii corporation under ownership and management substantially the same as said Rainalter Land Company, Inc.), which shall serve for a fixed period of three years at a fee of \$5.00 per apartment per month. The compensation of each Managing Agent shall be charged to the apartments at the rate of \$5.00 per apartment per month.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements, the residential elements or more than one residential apartment, and

on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent. Every Managing Agent shall also be the agent of the respective sublessees under any apartment subleases filed with the Board for the collection, custody and payment of rent and other charges as provided above.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary.

Section 5. Merchants' Association. The operation of the commercial elements, including (a) the administration, operation, and insuring of the commercial elements and the maintenance, repair, and replacement thereof, and the making of any additions and improvements thereto, and (b) providing for electricity, water and other utilities and services to the commercial units, shall be vested solely and exclusively in the Merchants' Association. The Merchants' Association shall consist of all the owners of the commercial units (including the Additional Units, as set forth in the Declaration). Upon giving reasonable notice to all owners of the commercial units, including the Additional Units, the Merchants' Association may by majority vote adopt, amend or repeal any rules or regulations governing the details of its organization, business and affairs. The Merchants' Association may employ a responsible Hawaii corporation as its managing agent. Without limiting the generality of the foregoing, as soon as is reasonably practicable after completion of construction of the project (not including the Additional Units) the Merchants' Association will establish rules or make other provision for liability and hazard insurance as set forth in Article VI hereof, execution of instruments, acceptance of service of process and for representation of the owners of commercial units in class actions involving the commercial elements, more than one commercial unit, or the Merchants' Association.

Section 6. Membership List. The resident manager, Managing Agent, or Board of Directors shall keep an accurate and current list of members of the Association and their current addresses and names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member of the Association as provided in the Declaration, By-Laws, or House Rules or, in any case, to any member who furnishes to the resident manager, 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.²⁵

Section 7. Association Documents.

(a) An accurate copy of the Declaration, the By-Laws, the House Rules, the master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of those documents 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. In the event that 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.²⁶

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

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

(d) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices for the current and prior year, and a list of delinquencies of ninety days or more, shall be available for examination by owners at convenient hours at a place designated by the Board; provided:

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

(ii) That owners pay for administrative costs in excess of eight hours per year.

Copies of said documents shall be provided to any owner upon request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(e) Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty days following any Association meeting; provided:

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

(ii) That owners pay for administrative costs in excess of eight hours per year.

Copies of all tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(f) 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 calendar days of receipt of the request.²⁷

Section 8. Right of Entry. The Board or its agent shall have the irrevocable right to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.²⁸

Section 9. Disposition of Unclaimed Possessions.

(a) When personalty in or on the common elements of the Project has been abandoned, the Board shall notify the owner in writing of (i) the identity and location of the personalty, and (ii) the Board's intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested to the owner's address as shown by the records of the Association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or if the identity or address of the owner is unknown the Board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located. Sixty (60) days after the Board has complied with the foregoing, the Board may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion.

(b) The proceeds of any sale or disposition of personalty under subsection (a) shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty (30) days. Any proceeds not claimed within this period shall become the property of the Association.²⁹

Section 10. Attorneys' Fees and Expenses of Enforcement.

(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for: (i) collecting any delinquent assessments against any owner's apartment, (ii) foreclosing any lien thereon, (iii) enforcing any provision of the Declaration, these By-Laws, the House Rules, and the Condominium Property Act, or (iv) enforcing the rules and regulations of the Real Estate Commission of the State of Hawaii, against an owner or any occupant of an apartment, shall be promptly paid on demand to the Association by the owner; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by the owner as a result of the action of the Association, shall be promptly paid on demand to the owner by the Association.

(b) If any claim by an owner is substantiated in any action against the Association, any of the officers or directors, or the Board, to enforce any provision of the Declaration, these By-Laws, or the House Rules, then all reasonable and necessary expenses, costs and attorneys' fees incurred by the owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless: (i) the owner shall have first demanded and allowed reasonable time for the Board to pursue such enforcement, or (ii) the owner demonstrates to the satisfaction of

the court that a demand for enforcement made to the Board would have been fruitless.³⁰

Section 11. Exemptions for Handicapped Occupants. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the House Rules, handicapped occupants shall be allowed reasonable exemptions from the Declaration, these By-Laws, and the House Rules, when necessary to enable them to use and enjoy their apartments and/or the common elements; provided that any handicapped occupant desiring to make such modifications or desiring such request shall so request, in writing. 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 modification or to be granted such an exemption. The Board shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof.³¹

ARTICLE V

OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. Each apartment owner shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against his apartment for the common expenses of the project for which his apartment is responsible and the expenses of those limited common elements over which the Association has management jurisdiction and for which his apartment is responsible in accordance with the Declaration, and also a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all rent, taxes, assessments and other charges thereunder payable by the owner of such apartment. All owners of commercial units shall pay to the Merchants' Association the monthly installments of assessments against their respective units for the expenses of the commercial elements in such manner and at such times as the Merchants' Association shall determine.

Section 2. Notification of Maintenance Fee Increase. The Managing Agent or the Board shall notify all owners in writing of any maintenance fee increase at least thirty (30) days prior to such increase.³²

Section 3. Use of Project.

(a) All apartments of the project shall be used only for the purposes provided by the Declaration.

(b) All common elements of the project shall be used only for their respective purposes as designed

(c) No apartment owner or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, grounds or other common elements or limited common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements or limited common elements. Notwithstanding the foregoing, merchandise displays, kiosks, advertising matter and related things may be placed on or within the commercial elements, subject to the approval of the Merchants' Association.

(d) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all applicable laws, ordinances, rules and

regulations now or hereafter made by any governmental authority, the Association or the Merchants' Association.

(e) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the project nor alter or remove any furniture, furnishings or equipment of the common elements.

(f) Except in those cases where construction or alterations are permitted by the Declaration, no apartment owner or occupant shall erect or place in the project any building or structure including fences and walls, nor make any additions or alterations to any common elements or limited common elements of the project, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect and approved by (i) a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected, and (ii) the Lessor and the Fee Owner.

(g) No owner of a residential unit shall decorate or landscape any entrance, hallway, planting area or lanai appurtenant to his apartment except in accordance with standards therefor established by the Board of Directors and approved by the Fee Owner, in accordance with specific plans approved in writing by the Board and the Fee Owner; and no owner of a commercial unit shall perform any such decorating or landscaping except in accordance with standards therefor established by the Merchants' Association, and approved by the Fee Owner in the case of any major permanent installations or alterations.

(h) All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.

(i) No garments, rugs or other objects shall be hung from the windows or facades of the project.

(j) No rugs or other objects shall be dusted or shaken from the windows of the project or cleaned by beating or sweeping on any hallway or exterior part of the project.

(k) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the project outside of the disposal facilities provided for such purpose.

(l) No livestock, poultry, or other animals whatsoever shall be allowed or kept in any part of the project except that dogs, cats and other usual household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purposes nor allowed on any common elements except in transit when physically carried, provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently and promptly removed therefrom upon notice given by the Board of Directors or Managing Agent.

(m) No owner or occupant of a residential unit shall without the written approval of the Board of Directors and the Fee Owner install any wiring for electrical or telephone installations, television antenna, machines or air conditioning units, or install anything which is visible from the outside of any building in the project or which changes the appearance of any building in the project. No owner or occupant of a commercial unit shall do any of the things set forth in this subparagraph (m) without the

written approval of the Merchants' Association (and the Fee Owner in the case of any major permanent installation or alteration).

(n) Nothing shall be allowed, done or kept in any apartments or common elements of the project which would overload or impair the floors (including without limitation waterbeds), walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association or Merchants' Association.

(o) Right to rent, lease or occupy pursuant to time-sharing plans. The respective condominiums shall not be rented or leased for transient purposes, which shall be defined as: rental for any period less than ninety (90) days. Without limiting the foregoing, occupancy for a period of less than ninety (90) days pursuant to any time-sharing plan or any other similar arrangement is also expressly prohibited. Subject to the foregoing restriction, the owners of the respective condominiums shall have the absolute right to lease same provided that such lease is made subject to the covenants, conditions, restrictions, limitations and uses contained in the Declaration of Condominium³³ Property Regime, By-Laws, and House Rules of this Association, as well as the terms, covenants, and conditions contained in the leases of the respective units.³⁴

(p) Handicapped occupants shall be permitted to make reasonable modifications to their apartments and/or the common elements, at their expense, if such modifications are necessary to enable them to use and enjoy their apartments and/or the common elements, as the case may be, with the prior written consent of the Board and subject to such reasonable terms and conditions as the Board may establish from time to time.³⁵

(q) Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the House Rules, handicapped occupants shall be permitted to keep certified guide dogs, signal dogs, or other animals upon which they depend for assistance. This exception shall also apply to certified guide dogs, signal dogs, or other animals depended upon by handicapped guests of occupants. If such an animal causes a nuisance or unreasonable disturbance, the handicapped owner thereof will be given a reasonable opportunity to rectify the problem by measures which fall short of the ejection of the animal from the Project. Ejection of such an animal will be required only if the Board reasonably determines that less drastic alternatives have been unsuccessful. If the Board determines that such an animal must be ejected, the handicapped owner thereof will be allowed a reasonable period of time to attempt to obtain a suitable substitute animal, provided that the problem is controlled to a sufficient degree that the continued presence of the animal during that time does not constitute an unreasonable imposition upon other occupants.³⁶

Section 4. House Rules. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements (not including commercial elements) and residential elements not inconsistent with any provision of law, the Declaration or these By-Laws. Rules and regulations governing details of the operation and use of commercial elements may be adopted, amended or repealed only by the Merchants' Association, upon the giving of reasonable notice and opportunity to be heard

to all the owners of the commercial units, including Additional Units.

Section 5. Compliance with the Declaration, By-Laws, and House Rules. All present or future owners, tenants, occupants, or any other person who may use the facilities of the project in any way, shall comply strictly with the Declaration, these By-Laws, and House Rules, as the same may be amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or Board on behalf of the Association.³⁷

Section 6. Expenses of Enforcement. Every apartment owner shall pay to the Association or the Merchants' Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association or the Merchants' Association in collecting any delinquent assessments made by the respective organization against such apartment, foreclosing its lien therefor or enforcing any provisions of the Declaration or these By-Laws against such owner or any occupant of such apartment. Any sum assessed to a commercial unit by the Merchants' Association which becomes delinquent shall, at the request of the Merchants' Association for the purpose of enforcement, be deemed to be a sum assessed by the Association and the Association (or the Board of Directors or Managing Agent) shall enforce the lien against the defaulting unit under Hawaii Revised Statutes Section 514A-90³⁸ on behalf of the owners of commercial units and at the expense of the defaulting unit.

Section 7. Record of Ownership. Every apartment owner shall promptly cause to be duly recorded or filed of record the deed, lease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file such lease with and present such other evidence of his title to the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association. The owner of each commercial unit shall give to the Merchants' Association such information as to his ownership or use of his unit as the Merchants' Association shall require.

Section 8. Mortgages. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any apartment or interest therein shall report to such person the amount of any assessments against such apartment then due and unpaid.

ARTICLE VI

MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote or written consent³⁹ of sixty-five percent (65%)⁴⁰ of the apartment owners, effective only upon the recording of an instrument setting forth such amendment of these By-Laws. For purposes of this paragraph only, the term "apartment owners" means only the persons, corporations or other entities holding the voting power to amend the By-Laws, and nothing herein shall be deemed to alter, impair or supersede any reservation of such voting power by the Lessor under the terms of any Apartment Lease.

Any proposed By-Laws, with the rationale for the proposal, may be submitted by the Board or by a volunteer owners' committee. If submitted by such a committee, the proposed By-Law shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the owners, as shown in the Association's record of ownership. By-Laws proposed by a volunteer owners' committee, together with the rationale and ballots for voting thereon, shall be mailed by the Board to the owners at the expense of the Association for vote or written consent, without change, within thirty days of the receipt of the petition by the Board. The vote or written consent required to adopt such proposed By-Laws shall be at least sixty-five percent (65%) of all owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that any such By-Law is duly adopted, then the Board shall cause the By-Law amendment to be filed in the Land Court. The volunteer owners' committee shall be precluded from submitting a petition for a proposed By-Law which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the Board; provided, however, that this paragraph shall not preclude any owner or voluntary owners' committee from proposing any By-Law amendment at any annual Association meeting."

Section 2. Insurance.

(i) Fire and Extended Coverage Insurance. The Board of Directors and the Merchants' Association shall jointly procure and maintain from a company or companies qualified to do business in Hawaii a policy or policies (herein called the "Policy") of fire insurance, with extended coverage endorsement and during time of war, to the extent that the same is reasonably obtainable, against war risks (from any source) for as nearly as practicable to 100% of the replacement cost, without deduction for depreciation, covering the apartments and fixtures therein (including carpets, drapes and appliances which were purchased from the Developer and included in the original price of each apartment, or their replacements) and all buildings and their fixtures and building service equipment (excluding those parts of the building normally excluded from such policies). All premiums on the policy fairly allocable to that portion of the policy which pertains to insuring the commercial elements and commercial units shall be borne only by the owners of commercial units, and assessed to them by the Merchants' Association. All premiums on the policy which are fairly allocable to that portion of the policy which pertains to insuring the residential elements and residential units shall be borne only by the owners of residential units and shall be assessed to them by the Board of Directors. The remainder of all premiums on the policy shall be borne by all apartment owners in proportion to their respective common interests, and shall be assessed to them by the Board of Directors. The policy shall name the Merchants' Association as insured as trustee for each of the owners of commercial units for all insurance proceeds pertaining directly to damage to the commercial elements and commercial units. The policy shall name the Board of Directors as insured as (a) trustee for each of the owners of residential units of all insurance proceeds pertaining directly to damage to the residential elements and residential units and (b) trustee for each apartment owned in the project for all other insurance proceeds. The policy (unless unobtainable):

(a) shall contain no provision limiting or prohibiting other insurance by the owner of any apartment, such right being provided by statute, but if obtainable, shall provide that the

liability of the insurer shall not be affected by, nor shall the insurer claim any right of 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 building, whether or not within the control or knowledge of the Board or the Merchants' Association; and if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Board or the owner or tenant of any apartment, or by reason of any act or neglect of the Board or the owner or tenant of any apartment;

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

(d) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board or the Merchants' Association against the owner or lessee of any apartment;

(e) shall contain a provision waiving any right of the insurer to repair, rebuild or replace, if a decision is made pursuant to this Section 2 not to repair, reinstate, rebuild or restore the damage or destruction;

(f) shall provide that any loss shall be adjusted with the Board or the Merchants' Association and the mortgagee of any apartment directly affected by the loss;

(g) shall contain a standard mortgagee clause which:

(1) shall name as an additional assured the holder of any mortgage affecting any apartment whose name shall have been furnished to the Board;

(2) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board, the Merchants' Association, or the owner or tenant of any apartment.

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

(4) shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate

trustee selected by the mutual agreement of the Board and the Merchants' Association who shall be a bank or trust company doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000), herein referred to as the "Insurance Trustee" or "Trustee";

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

(h) shall name the Fee Owner, the Lessor, and all apartment owners as insureds;

(i) shall provide for payment of the proceeds to the Insurance Trustee, except in the case of damage to a single apartment (but not to any appurtenant limited common element or any common element) in which case the proceeds shall be paid to the owner and mortgagee, if any, of such apartment, as their respective interests may appear; and

(j) shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the policy. The summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The Board shall provide this information to each owner."

(ii) Comprehensive Liability Insurance. The Board, with the consent of the Merchants' Association, 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 Fee Owner, Lessor, each apartment owner, the Association of Apartment Owners, its employees, (but not including the Managing Agent and its employees and agents), the Merchants' Association and its employees, against claims for bodily injury, personal injury, death and property damage (including, without limitation, non-owned automobile coverage, contractual liability and independent contractors liability) arising out of the condition of the common elements, the residential elements and the commercial elements or activities thereon or elevators therein or contractors of construction work under a Comprehensive General Liability form. The limits of said Policy shall be not less than those required by any Apartment Lease of any unit. The premiums shall be fairly allocated by the insurer between the Board and the Merchants' Association based on the extent to which the premiums are attributable to coverage of those areas in the project within the respective management jurisdiction of each. In the event that the Board and the Merchants' Association are unable to reach agreement on material matters involving said Policy or Policies, the Merchants' Association may at its option separately obtain insurance covering the condition of the commercial elements or activities thereon or elevators therein or contractors or construction work thereon, subject to the terms of this paragraph, and said coverage shall not be included in the Policy obtained by the Board. Each Policy (unless unobtainable):

(a) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in any building, whether or not within the control or knowledge of the Board or the Merchants' Association, 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 (whether or not requested by the Board or Merchants' Association) except by giving to the Board or Merchants' Association 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.

(iii) Insurance Against Additional Risks. The Board and Merchants' Association may also procure insurance against such additional risks as the Board may deem advisable for the protection of the apartment owners of a character normally carried with respect to properties of comparable character and use in the City of Honolulu.

(iv) Miscellaneous Insurance Provisions. The Board and Merchants' Association shall review not less frequently than annually the adequacy of their respective insurance programs and shall report in writing their conclusions and action taken on such review to the owner of each apartment (or to the owners of commercial units, in the case of the Merchants' Association) and to the holder of any mortgage on any apartment who shall have requested a copy of such report. At the request of any mortgagee of any apartment, the Board or Merchants' Association shall furnish to such mortgagee a copy of the Policy described in paragraph (i) of this Section 2 and of any other policy to which a mortgagee endorsement shall have been attached. Copies of each policy of insurance procured by the Board or Merchants' Association respectively shall be available for inspection by any apartment owner (or purchaser holding a contract to purchase an interest in an apartment) at the office of the Managing Agent or Merchants' Association, as the case may be. Any coverage procured by the Board or Merchants' Association 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 3. 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 residential unit or commercial unit (and does not extend to any common element or appurtenant limited common element), the insurance proceeds shall be used by the owner and mortgagee, if any, of such apartment to pay the contractor employed by the Board (if a residential unit) or the Merchants' Association (if a commercial unit), as the case may be, to rebuild or repair such apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If such damage extends to two or more apartments or extends to any limited common element or to the common elements, the Board (or the Merchants' Association) shall thereupon contract to repair or rebuild the damaged portions of the project, including all apartments so damaged, as well as the common elements or limited common elements, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board (or the Merchants' Association in the case of commercial damage), the Fee Owner, the Lessor and the mortgagee of record of any interest in any apartment directly affected thereby; provided that in the event said modified plan eliminates any apartment that may have been damaged or destroyed and such apartment is not reconstructed the Insurance Trustee shall pay to the owner of said apartment that portion of the total

insurance proceeds equal to the ratio which the original sales price of said apartment (or the total development cost in the case of a commercial unit) bears to the total original sales prices (plus total development costs of all commercial units) of all apartments in the Project (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; and provided further that if all the apartment owners elect to surrender their apartment leases as provided therein, the insurance proceeds shall be first used to remove any remaining improvements and the balance, if any, shall be divided among the apartment owners (and their mortgagees, if any, as their interests shall appear) in proportions equal to the ratio which the original sales price of each apartment (or the total development cost in the case of a commercial unit) bears to the total original sales prices (plus said development costs) of all apartments. If no such surrender occurs and if the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding the damaged structure, the Board (or the Merchants' Association, in the case of commercial damage) is expressly authorized to pay such costs in excess of the insurance proceeds from its maintenance fund, and if the maintenance fund is insufficient for this purpose, the Board (or Merchants' Association) shall levy a special assessment on the owners (or only the owners of commercial units, in the case of commercial damage) in accordance with the Declaration. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any apartment shall be specially assessed against such apartment. The term "original sales price" of a unit as used in this Section 3 and in Section 4 of this Article VI means the price of a residential unit paid by the first purchaser to the Developer upon the original sale of the unit by the Developer. The term "total development cost" of a unit as used in this Section 3 and in Section 4 of this Article VI means that portion of Developer's total development cost of the project which is properly allocable to the commercial unit in accordance with generally accepted methods of allocation.

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

(a) The work shall be in charge of an architect or engineer (who may be an employee of the Board or Merchants' Association) previously approved by the Fee Owner and Lessor.

(b) 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 Board or Merchants' Association for payments by the Board or Merchants' Association 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.

(c) 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.

(d) 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.

(e) The fees and expenses of the Trustee as determined by the Board (or Merchants' Association in the case of destruction of affecting only commercial units or commercial elements) shall be paid by the Association or the Merchants' Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

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

Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board, the Merchants' Association or the Trustee shall be paid or credited to the owners of the apartments (or to the owners of commercial units only, in the case of commercial damage) or to the holder of any mortgage on an apartment if there be a mortgage) in proportions equal to the ratio which the original sales price of each apartment (or the total development cost in the case of a commercial unit) bears to the total original sales prices (plus said development costs) of all apartments. To the extent that any loss, damage or destruction to the building or other property is covered by insurance procured by the Board or Merchants' Association, the Board or Merchants' Association 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, Merchants' Association, the Managing Agent, any other apartment owner, or the Association. All policies of insurance referred to in this paragraph shall contain appropriate waivers of subrogation.

Section 4. Condemnation. In the event of a taking by eminent domain of part or all of the common elements, all compensation payable for or on account of the taking of any land shall be payable to the Fee Owner, and all portions of any such award payable on account of the taking of any building or improvements on the land shall be payable to each apartment owner affected, and his mortgagee, if any, in the manner set forth in the apartment leases⁴³ after (in case of a partial taking) deducting the cost of removing the building or improvement and restoring the remaining land to a clean and orderly condition and even grade; provided that in the event of a partial taking of an apartment or apartments and improvements which shall be capable of being restored, then the award payable on account of such apartment or apartments and improvements shall be payable to a condemnation trustee, which shall be a bank or trust company designated by the mutual agreement of the Board and the Merchants' Association doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000). The Board of Directors (or, if the condemnation affects only commercial units, commercial elements or both, the Merchants' Association) shall arrange for the repair and restoration of such apartment or apartments and improvements as nearly as possible in accordance with the design thereof

immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plans as shall be previously approved by the Board (or Merchants' Association in the case where the condemnation affects only commercial elements or commercial units), Fee Owner and the mortgagee of record of any interest in an apartment directly affected thereby. The condemnation trustee shall disburse the proceeds of such award received by such trustee to the contractor engaged in such repair and restoration in the same way funds are disbursed for repair and restoration work under Section 3 hereinabove, and in the event such proceeds are insufficient to pay the costs thereof the Board or Merchants' Association is expressly authorized to pay such excess costs from its maintenance fund and if the maintenance fund is insufficient for this purpose the Board or the Merchants' Association shall levy a special assessment on each remaining apartment owner in accordance with the Declaration.

Section 5. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

Section 6. Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Condominium Property Act⁴⁴ (Chapter 514A,⁴⁵ Hawaii Revised Statutes, as amended), which shall control in case of conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act.⁴⁶

Section 7. Interpretation. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the apartment owners.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 25th day of July, 1990.

ASSOCIATION OF APARTMENT OWNERS
OF THE VILLA ON EATON SQUARE

By: William M. Bledsoe

Print

Name: William M. Bledsoe

Its: President, Board of Directors

By: Patricia A. Seward

Print

Name: Patricia A. Seward

Its: Secretary

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS:

On this 25th day of July, 1990, before me appeared William M. Blodgett 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 The Villa on Eaton Square; that the foregoing instrument was signed on behalf of said Association by authority of its Board of Directors, and acknowledged that he executed the same as the free act and deed of said Association. Said Association has no seal.

102711 Neupert
Notary Public, State of Hawaii

My Commission Expires: 7-21-93

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS:

On this 25th day of July, 1990, before me appeared Patricia A. Seward to me personally known, who being by me duly sworn, did say that she is the Secretary of the Board of Directors of the Association of Apartment Owners of The Villa on Eaton Square; that the foregoing instrument was signed on behalf of said Association by authority of its Board of Directors, and acknowledged that _____ executed the same as the free act and deed of said Association. Said Association has no seal.

102711 Neupert
Notary Public, State of Hawaii

My Commission Expires: 7-21-93

ENDNOTES

The following endnotes correspond to provisions in the By-Laws which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the By-Laws. These Restated By-Laws correctly set forth without change the corresponding provisions of the original By-Laws, as amended, and supersede the original By-Laws and all prior amendments thereto. This Restatement was made solely for purposes of information and convenience. In the event of a conflict, the Restated By-Laws shall be subordinate to the cited statute.

1. To conform to Section 514A-82(a)(17), Hawaii Revised Statutes (hereinafter "HRS").
2. To conform to Section 514A-82(b)(3), HRS.
3. To conform to Section 514A-82(b)(3), HRS.
4. To conform to Section 514A-83.2(a), HRS.
5. To conform to Section 514A-83.2(c), HRS.
6. To conform to Section 514A-83.2(b), HRS.
7. To conform to Section 514A-83.2(e), HRS.
8. To conform to Section 514A-83.2(d), HRS.
9. To conform to Section 514A-82(b)(4), HRS.
10. To conform to Section 514A-82(a)(16), HRS.
11. To conform to Section 514A-83.4, HRS.
12. To conform to Section 514A-82(b)(8), HRS.
13. To conform to Section 514A-82(a)(12), HRS.
14. To conform to Section 514A-82(a)(12), HRS.
15. To conform to Section 514A-82(b)(1), HRS.
16. To conform to Section 514A-82(b)(1), HRS.
17. To conform to Section 514A-95.1(a)(1), HRS.
18. To conform to Section 514A-95.1(a)(1), HRS.
19. To conform to Section 514A-83.1(a), HRS.
20. To conform to Section 514A-83.1(b), HRS.
21. To conform to Section 514A-82(b)(9), HRS.
22. To conform to Section 514A-82(b)(5), HRS.
23. To conform to Section 514A-82(b)(11), HRS.
24. To conform to Section 514A-82(b)(10), HRS.
25. To conform to Section 514A-83.3, HRS.

26. To conform to Section 514A-84.5, HRS.
27. To conform to Section 514A-83.5, HRS.
28. To conform to Section 514A-13(f), HRS.
29. To conform to Section 514A-93.5, HRS.
30. To conform to Section 514A-94, HRS.
31. To conform to the Federal Fair Housing Act, as amended.
32. To conform to Section 514A-92.2, HRS.
33. To reflect the 1988 redesignation of the Horizontal Property Act as the Condominium Property Act.
34. To integrate the January 2, 1980 Amendment filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on January 16, 1980 as Document No. 991826.
35. To conform to the Federal Fair Housing Act, as amended (42 U.S.C. Section 3601 et seq.).
36. To conform to the Federal Fair Housing Act, as amended.
37. To conform to Section 514A-88, HRS.
38. To reflect the redesignation of Section 514-24, HRS, as Section 514A-90, HRS.
39. To conform to Section 514A-82(b)(2), HRS.
40. To conform to Section 514A-82(b)(2), HRS.
41. To conform to Section 514A-82(b)(2), HRS.
42. To conform to Section 514A-86(c), HRS.
43. To integrate the October 25, 1973 Amendment filed as aforesaid on October 29, 1973 as Document No. 655530.
44. To reflect the 1988 redesignation of the Horizontal Property Act as the Condominium Property Act.
45. To reflect the redesignation of Chapter 514, HRS, as Chapter 514A, HRS.
46. To reflect the 1988 redesignation of the Horizontal Property Act as the Condominium Property Act.