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REGULAR SYSTEM

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BYLAWS OF THE ASSOCIATION
OF UNIT OWNERS OF
1100 ALA MOANA

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BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF

1100 ALA MOANA

WHEREAS, VICTORIA PLACE, LLC, a Delaware limited liability company ("**Developer**"), is the developer of the "1100 Ala Moana" condominium project (the "**Project**");

WHEREAS, that certain Declaration of Condominium Property Regime of 1100 Ala Moana and Condominium Map of even date herewith (the "**Declaration**"), and by way of such Declaration, Condominium Map No. 6022 (the "**Condominium Map**"), are recorded in the Bureau of Conveyances State of Hawaii concurrently therewith;

WHEREAS, Developer has undertaken to develop the Land and Improvements to be constructed thereon as a condominium project, as described in the Declaration and in accordance with plans referred to in the Declaration as the Condominium Map;

WHEREAS, pursuant to those certain Community Covenant for Ward Village dated September 13, 2013 and recorded in said Bureau as Document No. A-50040794, as amended (the "**Master Declaration**"), the Land is part of an urban, mixed-use master planned community called "Ward Village" in the City and County of Honolulu in the State of Hawaii; and

WHEREAS, pursuant to those certain By-Laws of Ward Village Owners Association dated September 13, 2013 and attached as Exhibit "E" to the Master Declaration, as may be amended and supplemented from time to time (the "**Master Bylaws**"), the Association of Unit Owners of 1100 Ala Moana (the "**Association**") is a member of the Ward Village Owners Association ("**Master Association**");

NOW, THEREFORE, each Owner shall be a member of the Association, and Developer declares that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of such property. These Bylaws shall constitute covenants running with the Land and the Units established thereon, and equitable servitudes and liens, and shall be binding upon all parties having or acquiring any right, title, or interest therein.

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1. **AUTHORITY FOR BYLAWS.** Developer, acting as the present Association, hereby approves and adopts these Bylaws pursuant to the Act. These Bylaws are subject to the laws of the State of Hawaii, including but not limited to, the Act and the Hawaii Administrative Rules, Title 16, Chapter 107 (the "**HAR**"), as amended from time to time.

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

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

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

these Bylaws and the Master Bylaws and/or Master Declaration, the Master Bylaws and/or Master Declaration shall control.

Section 5. **BINDING EFFECT OF BYLAWS ON OWNERS, MORTGAGEES AND LESSEES.**

All present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and Occupants of Units and their employees, business invitees, and any other Persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration, and the House Rules. The acceptance of a Unit Deed, conveyance, mortgage, Agreement of Sale, or the entering into of a lease or the act of occupancy of a Unit shall constitute an acceptance, ratification, and agreement to comply with the provisions of these Bylaws, the Declaration, and the House Rules, as the same may be amended from time to time.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. **MEMBERSHIP.** All Owners of the Project together shall constitute the Association. The

Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member until such time as his or her ownership of such Unit ceases for any reason. In the event that the Project is terminated, the Association shall consist of all former Owners who owned Units at the time of termination and who are entitled to distributions of proceeds under Section 514B-47 of the Act, or such Owners' heirs, successors or assigns. Notwithstanding anything to the contrary provided herein, during the Developer Control Period, Developer shall operate the Project in accordance with the Declaration and these Bylaws and, where necessary, take all actions on behalf of the Association upon such terms and conditions as they shall agree upon which are consistent with the terms of the Declaration and these Bylaws. For the duration of the Developer Control Period, Developer shall have the right to appoint and remove the Officers and the Directors of the Association's Board. Following termination of the Developer Control Period and the first election of a replacement Board in accordance with Section III.3 below, Developer shall be entitled to vote the interest of each Unit that it owns.

Section 2. **PURPOSE.** The Association shall be organized and operated for the purposes of physical,

administrative and fiscal management of the Project and for managing, maintaining, acquiring, constructing, and caring for the Association property, which includes the Common Elements, any real property which is not part of the Common Elements but which the Association either owns or leases, any personal or moveable property owned or leased by the Association, and any fixtures owned or leased by the Association; provided, however, that unless otherwise provided in the Declaration or these Bylaws, Limited Common Elements shall be managed and maintained by the Owner of the Unit to which such Limited Common Elements are appurtenant.

Section 3. **VOTING.** Each Owner shall be entitled to that percentage of the total vote of all of the

Owners which equals the percentage of the Common Interest appurtenant to such Unit as set forth in the Declaration. The Owners may cast votes in person or by proxy; provided voting by acclamation is permitted for items where formal voting is not necessary. The vendee of a Unit pursuant to an Agreement of Sale shall have the right to vote unless the vote is retained by the vendor as may be provided in said Agreement of Sale pursuant to Section 514B-124 of the Act. An executor, administrator, personal representative, guardian, or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any Unit owned or controlled by him or her in such capacity, provided that he or she shall first present evidence satisfactory to the Secretary that he or she owns or controls such Unit in such capacity not later than the commencement of the meeting. The vote for any Unit owned of record by two (2) or more Persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others. If more than one (1) Owner of a Unit is present, the votes allocated to that Unit may be cast only in accordance with the agreement of the majority in interest of that Unit's Owners. There is a majority agreement if any one (1) of the Owners casts the votes allocated to that Unit without protest being made by any of the other Owners of the Unit to the person presiding over the meeting before the polls are closed. If co-Owners do not agree in their vote, then the entire vote allocated to that Unit will not be counted. Corporations, general partnerships, limited partnerships, limited liability partnerships, and limited liability companies which are Owners shall designate a general partner, officer, member, or manager, as appropriate, for the purpose of exercising the vote; and such representative of an Owner which is a corporation, general partnership, limited partnership, limited liability partnership or limited liability company shall present satisfactory written evidence to the Secretary of his or her designation as representative not later than the commencement of the meeting.

Section 4. **QUORUM.** The term “*quorum*” refers to the number or percentage of Owners who must be present at a meeting to conduct business for all Owners. For all meetings of the Association with respect to all matters which may be voted on by all Owners, thirty-three percent (33%) of the Owners must be present to have a quorum unless a different number is required by law, the Declaration, or another part of these Bylaws. Members are “present” at a meeting if: (i) they attend it in person, or (ii) each of their proxy holder attends it for them, or (iii) someone else permitted by these Bylaws attends it for them.

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

Section 6. **PROXIES.** An Owner may appoint in writing a proxy to represent the Owner at meetings of the Association. An Owner may vote by mail or electronic transmission through a duly executed proxy.

A. A proxy, to be valid, must: (i) be delivered to the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed name(s) and signature(s) of the Person(s) giving the proxy, the Unit number for which the proxy is given, the name of the person to whom the proxy is given, and the date that the proxy is given; and (iii) if it is a standard proxy form authorized by the Association, then contain boxes wherein the Owner has indicated that the proxy is given: (a) for quorum purposes only; (b) to the individual whose name is printed on a line next to a box; (c) to the Board as a whole and that the vote be made on the basis of the preference of the majority of the Directors present at the meeting; or (d) to those Directors present at the meeting with the vote to be shared with each Director receiving an equal percentage. The proxy form shall also contain a box wherein the Owner may indicate that the Owner wishes to obtain a copy of the annual audit report.

B. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the Owner indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit.

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

D. Nothing in this Section shall affect the holder of any proxy under a first Mortgage of record or under an Agreement of Sale.

E. With respect to the use of Association funds to distribute proxies:

(i) If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in this Section II.6, the Board shall first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) calendar days before its distribution of proxies. If the Board receives within seven (7) calendar 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 mail to all Owners either: (a) a proxy form containing the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (b) 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, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page and indicate the Owner’s qualifications to serve on the Board or reasons for wanting to receive proxies.

(ii) The Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as an Owner under subpart (i) of this Subsection.

F. No Managing Agent or Site Manager, if any, or their employees, shall solicit, for use by the Managing Agent or the Site Manager, if any, any proxies from any Owner of the Association that retains the Managing Agent or Site Manager, nor shall the Managing Agent or the Site Manager, if any, cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

G. The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the Common Elements by Owners; provided that, subject to any applicable approval rights of Developer, the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

Section 7. **PLACE OF MEETINGS.** All meetings of the Association shall be held at such place within the Project, or elsewhere within the State of Hawaii, as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.

Section 8. **ANNUAL MEETINGS.** The first annual meeting of the Association shall be held no later than one hundred eighty (180) days after recordation of the first Unit conveyance; provided, that forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one (1) year after recordation of the first Unit conveyance, an annual meeting shall be called if ten percent (10%) of the Owners so request. The terms "recorded" and "recordation" shall mean and refer to the recordation in said Bureau of a Unit Deed transferring a Unit to an Owner. Subject to the rights of Developer to designate Directors contained in the Declaration and these Bylaws, at such meeting, the Owners shall elect a Board. Thereafter, the annual meetings of the Association shall be held on a date that is selected by the Board. If the Board does not choose a meeting date by the 15th of February of each year, then the meeting will be held at the Project at 6:30 p.m. on the third (3rd) Wednesday in March of each year, or at such other time the Board may determine from time to time. Developer may set the date and time for the first annual meeting. Owners may transact other business at such meeting as may properly come before the Association.

Section 9. **SPECIAL MEETINGS.** A special meeting of the Association may be called at any time for any one (1) or more purposes. It may be called by (a) the President, (b) a majority of the Directors, or (c) a petition signed by not less than twenty-five percent (25%) of the Owners and presented to the Secretary or to the Managing Agent. The Owners may transact only that business the general nature of which is stated in the notice of the special meeting. Upon receipt of such call or petition, the Secretary or the Managing Agent shall send written notice of the meeting to all Owners in the manner provided in Article II, Section 10, below. In the event that the Secretary or the Managing Agent shall fail to send out notices within fourteen (14) calendar days of receipt of any petition to have such meeting, or such other period as may be required by Section 514B-121 of the Act, the petitioners calling for the meeting may send the notice in accordance with the provisions for such notice contained in these Bylaws. The meeting shall be held at the time and place specified in the call, or if unspecified, at any reasonable time within forty-five (45) calendar days from the date the call was received.

Section 10. **NOTICE OF MEETINGS AND OTHER NOTICES.** The Secretary or Managing Agent shall cause written notice of all meetings, annual or special, stating the respective date, time, and place of each meeting and whether it is annual or special, together with a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these Bylaws, to be given by hand delivering such notice(s) and form, by mailing, postage prepaid to the mailing address of each Unit or any other address designated in writing by the Owner, or, at the option of the Owner, expressed in writing, by facsimile or electronic mail to the electronic mailing address designated in writing by the Owner, at least fourteen (14) calendar days before the date assigned for the meeting. The notice must state the authority for holding the meeting, the items on the agenda, including the general nature and rationale of any proposed amendment to the Declaration or these Bylaws, and any proposal to remove a Director; provided that nothing herein shall preclude an Owner from proposing an amendment to the Declaration or these Bylaws or to remove a Director at any annual meeting. Upon written request for notices delivered to the Board, the holder of any duly recorded Mortgage or deed of trust from any Owner may obtain a copy of any and all notices permitted or required to be given to the Owner, whose interest is subject to said Mortgage or deed of trust. Notice can be considered waived as follows:

A. Anyone who attends a meeting, in person or by proxy, waives any right to claim that notice was not given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

B. An Owner may waive notice of any Association meeting by signing a document that (i) waives notice, or (ii) consents to or approves the action taken at the meeting, or (iii) approves the minutes of the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

C. An Owner automatically waives notice of any Association meeting if he or she does not file a written objection with the Secretary or the Managing Agent within fifteen (15) calendar days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

Upon notice being given in accordance with the provisions hereof, the failure of any Owner to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. Each Owner shall keep the Association informed of any changes in address.

Section 11. **RECORD DATE FOR NOTICES AND VOTING.**

A. **PURPOSE OF THE RECORD DATE.** The "*Record Date*" is the date used to determine who is entitled to receive notice and to vote at Association meetings or on any action to be taken without a meeting. The Record Date is also used to determine who may object to and waive failure to receive notice and exercise other such rights for or as an Owner.

B. **SETTING THE RECORD DATE.** The Board may choose the Record Date. The Record Date for a meeting may not be more than ninety (90) calendar days before the meeting date. The Record Date for action without a meeting may not be more than thirty (30) calendar days before the ballot or request for consent or approval is sent. Unless the Board chooses another date, the Record Date will be the date and time when the mailing list is prepared, or, if notice is waived, then two (2) business days before the day of the meeting. If a meeting is adjourned and a new notice must be given, then a new Record Date must be set.

C. **EFFECT OF SETTING RECORD DATE.** When a Record Date is set, only the Owners of Record (as hereinafter defined), as of that date, or someone authorized to act for them, have the right to notice and to vote at a meeting or on a ballot or other request for consent or approval. This rule applies despite any issuance or transfer of a Unit in the records of the Association after the Record Date. A Person who is the Owner of a Unit as of the Record Date is considered to be the "*Owner of Record*". A Person who becomes an Owner after the Record Date may act for the Owner of Record by obtaining a proxy from the Owner of Record. When these Bylaws refer to the "Owner" with respect to notice (including waivers of notice) and voting, it means the Owner of Record or someone authorized to act for the Owner of Record.

Section 12. **ADJOURNMENT OF MEETINGS.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than thirty (30) calendar days from the time the original meeting was called, as may be determined by majority vote of the Owners present, without notice other than the announcement at such meeting. If the meeting is adjourned for thirty (30) calendar days or more, or if the law requires a new notice, then a new notice must be given pursuant to Article II, Section 10 herein. 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 13. **CONDUCT OF MEETINGS AND ORDER OF BUSINESS.** All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

Section 14. **INSPECTORS FOR VOTING AND PROXIES.**

A. **APPOINTMENT.** At least ten (10) business days before any meeting of the Association or before any ballot is sent to the Owners, the Board may appoint inspectors of the voting at the meeting,

including voting for the election of Directors. The Board may appoint either one (1) or three (3) inspectors of voting. If the Board fails or chooses not to do so, then the Managing Agent will be the inspector of the voting.

B. **DUTIES.** The voting inspectors will: (i) determine the authenticity, validity, and effect of proxies, pledges, and other documents purporting to give any person the right to represent, act, and vote for an Owner; (ii) receive votes, ballots, and consents; (iii) hear and determine all challenges, questions, and conflicts relating in any way to the right to cast votes; (iv) count and tabulate all votes and consents; (v) decide when the polls will close; (vi) determine the results of all votes and elections; and (vii) do anything else appropriate to conduct the vote or election fairly as to all Owners. The decision, act, or certificate of a majority of inspectors, if there are three (3), or of a single inspector, if there is only one (1), will be effective. Any facts stated in any effective report or certificate is presumed to be accurate.

Section 15. **MINUTES OF ASSOCIATION MEETINGS.** Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty (60) calendar days after the meeting, if authorized by the Owners at an annual meeting. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval and unapproved final drafts of minutes shall be available within sixty (60) calendar days after the meeting. If approved by the Board, Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) calendar days after approval. An Owner shall be allowed to offer corrections to the minutes at an Association meeting.

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

ARTICLE III

BOARD OF DIRECTORS

Section 1. **NUMBER AND QUALIFICATION.** The affairs of the Association shall be governed by the Board. During the Developer Control Period, the Developer may appoint three (3) Directors from time to time. Upon the termination of the Developer Control Period, the Board shall be comprised of nine (9) Directors, who shall be elected as set forth in Article III, Section 3 below. Each Director shall be an Owner, co-Owner, a vendee under Agreement of Sale, a trustee or beneficiary of a trust that owns a Unit, or an officer of any corporate owner or a representative of any entity which owns a Unit. The partners of a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be Owners for purposes of serving on the Board. There shall not be more than one (1) Director from any one (1) Unit. No Site Manager or employee of the Association shall serve on the Board. Any Director who is an employee of a Managing Agent shall not participate in any discussions regarding the Condominium Management Agreement with such Managing Agent and shall be excluded from any executive session where such Managing Agent or Condominium Management Agreement will be discussed.

Section 2. **POWERS AND DUTIES.** The Board shall have all the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and the Declaration, and for the maintenance, upkeep, and repair of the Project in good order and condition in accordance with the Project Quality Standard, and the Association may delegate all rights, powers, and duties to the Board, except those rights, powers, and duties that cannot be delegated to the Board by law, the Declaration, or these Bylaws. The Board shall have all rights, powers, and duties to act on behalf of the Association other than those requiring the vote of the Association set forth in the Act and subject to all rights and approval requirements set forth in the Declaration and these Bylaws, including without limitation, Developer's Reserved Rights.

Section 3. **ELECTION AND TERM OF OFFICE.** During the Developer Control Period, the Board shall be appointed as set forth in Section III.1 above, and the Directors so appointed may be removed and replaced at the pleasure of the Developer without a meeting. Upon the termination of the Developer Control Period, election of Directors may be by the Owners by secret ballot at each annual meeting and each special meeting called for that purpose. Other than for the initial term set forth below, Directors shall hold office for a period not to exceed three (3) years and until their respective successors have been elected, subject to removal as permitted by these Bylaws. The

terms of office for the initial Directors shall be as follows: (a) the three (3) Directors with the highest number of votes shall serve for three (3) years; (b) the three (3) Directors with the next highest number of votes shall serve for two (2) years; (c) the two (2) Directors with the next highest number of votes shall serve for one (1) year; and (d) the Developer, so long as Developer still owns a Unit in the Project, shall automatically become a Director on the Board for and during the initial term of three (3) years. The Developer shall have the right to remove itself from the Board during the three (3) year period, or to run again for a Director seat as the Owner of a Unit in the Project. If the Developer removes itself during the initial two (2) year term, thereafter, the Developer shall be replaced on the Board with another Unit Owner in accordance with Article III, Section 5.C below and that Board seat shall have a three (3) year term. Directors shall be elected at each annual meeting to fill the vacancy in the office of Directors occurring as of the time of such meeting. An Owner shall provide notice of the Owner's intent to cumulatively vote before voting commences. The term "*cumulative voting*" as used herein means that each Owner may cast for any one (1) or more nominees to the Board a vote equivalent to the vote which such Owner is entitled to multiplied by the number of Director positions to be elected and for whom the Owner is entitled to vote, and each Owner shall be entitled to cumulate his or her votes and give all thereof to one nominee or to distribute his or her votes in such manner as he or she shall determine among any or all of the nominees for whom such Owner is entitled to vote, 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. A vote to fill Director positions may be done through a motion passed by acclamation in situations where a formal vote is not necessary (i.e., where there are four (4) vacant Director seats and there are only four (4) candidates).

Section 4. **REMOVAL OF MEMBERS OF THE BOARD.** At any annual or special meeting of the Association duly called, Directors may be removed, and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created as follows:

A. During the Developer Control Period, Developer may remove and replace the Directors in its sole discretion without a meeting.

B. After the Developer Control Period, the removal and replacement of a Director shall be by a vote of a majority of the Owners and, otherwise, in accordance with all applicable requirements and procedures in these Bylaws for the removal and replacement of Directors. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at such meeting. Any Director who shall miss three (3) consecutive meetings of the Board may be removed by vote of a majority of the remaining Directors, even though they may constitute less than a quorum. The replacement of the Director so removed shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of Directors. Any Director removed by the Board shall not be eligible for reelection to the Board for a period of one (1) year after such Director's removal.

Section 5. **VACANCIES.**

A. A Director's office shall become vacant in the event of such Director's death, incapacity, or resignation or if such Director shall cease to be an Owner or co-Owner of record of a Unit, a vendee of a Unit under an Agreement of Sale, a trustee or beneficiary of a trust which owns a Unit, or an officer, partner, member, or other Person authorized to act on behalf of any other legal entity which owns a Unit.

B. Any vacancies during the Developer Control Period shall be filled by Developer.

C. Any vacancies of a Director after the end of the Developer Control Period, other than a vacancy caused by the natural expiration of the term of such Director or the removal of such Director, shall be filled by the 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 or her successor is elected at the next annual meeting of the Association. The successor elected at such annual meeting serves until the expiration of the term of the Director whose seat is vacated.

Section 6. **ORGANIZATIONAL MEETING.** The first meeting of the Board shall be held immediately after the first annual meeting of the Association and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided that a majority of the Board shall be present thereat. At such meeting, the Board shall elect the Officers for the ensuing year.

Section 7. **REGULAR MEETINGS.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year.

Section 8. **EXECUTIVE SESSION.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in private in executive session to discuss and vote upon matters: (a) concerning personnel; (b) concerning litigation in which the Association is or may become involved; (c) necessary to protect the attorney-client privilege of the Association; or (d) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 9. **SPECIAL MEETINGS.** Special meetings of the Board may be called by the President on three (3) business days' notice to each Director, given personally or by mail, facsimile transmission, or electronic mail transmission (which notice shall state the time, place and purpose of the meeting), and on posting of notice, if practicable, as provided in Article III, Section 10; provided, however, that in the case of emergency situations, as determined by the President, a special meeting of the Board may be called by the President on eight (8) hours' notice to each Director. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice, if practicable, on the written request of at least two (2) Directors.

Section 10. **CONDUCT OF MEETING.** All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. All meetings of the Board (whether organizational, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

Section 11. **NOTICES; WAIVER OF NOTICE.** Notice of all Board meetings and other notices to the Directors shall be given to each Director by the Secretary or the person or persons calling the meeting. Notice of regular meetings of the Board shall be given to each Director personally or by first class mail, facsimile, or electronic mail at least seven (7) calendar days, if practicable, prior to the day named for such meeting. Notice of all Board meetings shall also be posted by the Managing Agent or Site Manager, if any, 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. Before or at any meeting of the Board, 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 or her 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 12. **COMPENSATION.** No Director shall receive any compensation from the Association for travel expenses, Directors' fees and *per diem* expenses; provided that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes of the meeting shall reflect in detail the items and the amounts of the reimbursements. The Directors may expend Association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for travel expenses on the island of Oahu, all reimbursement for other travel expenses shall be subject to pre-approval by the Board and shall be reflected in the minutes as discussed above.

Section 13. **QUORUM OF BOARD.** At all meetings of the Board, a majority of the total number of Directors established by these Bylaws 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 Directors present may adjourn the meeting and call an additional meeting at which a majority of the total number of Directors can attend.

Section 14. **NO PROXY VOTE; CONFLICT OF INTEREST.** A Director shall not cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a conflict of interest. In the event of a conflict of interest, the Director shall disclose the nature of such conflict prior to

a vote at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. For the purposes of this Section, "*conflict of interest*" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. Ownership and use of a Unit by a Director for the purposes permitted by the Declaration and these Bylaws do not, by themselves, create a conflict of interest. If abstentions for such a reason would result in less than a majority being able to vote, the Directors who do not abstain shall appoint one or more persons as temporary Directors to vote on the matter in question.

Section 15. **EMPLOYEES; BACKGROUND CHECK.** Upon written authorization of an applicant for employment as a security guard, Site Manager, or a position that would allow the employee access to the keys of or entry into Units or access to Association funds, the Board and the Managing Agent are empowered to conduct a background check or direct another responsible party to conduct the check as provided in Section 514B-133 of the Act. This information shall be used only for the purpose of conducting the criminal history check authorized by this Section and the Act. The failure of the Association, the Board, and the Managing Agent to conduct or verify a background check shall not give rise to a private cause of action against the Board or the Managing Agent for acts and omissions of the employee or vendor hired.

Section 16. **MINUTES OF BOARD MEETINGS.** The minutes of the meetings of the Board shall: (a) include the recorded vote of each Director on all motions except motions voted on in executive session; (b) be approved no later than the second succeeding regular meeting; (c) be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) calendar days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

Section 17. **ACTION BY DIRECTORS WITHOUT MEETING.** Any action required or permitted to be taken at any meeting of the Board or of a committee of the Board may be taken without a meeting if all of the Directors authorized to vote on such matter or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consent shall be filed with the minutes of the Board meetings or committee meetings as the case may be and shall have the same effect as a unanimous vote.

Section 18. **REMOTE MEETINGS.** Subject to the notice requirements contained in these Bylaws, members of the Board or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment through which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the Board, any Owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the Owner pay for the costs associated with the participation.

Section 19. **DUTY OF DIRECTORS.** In the performance of their duties, each Director shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of a director of a nonprofit corporation organized under Chapter 414D of the Hawaii Revised Statutes, as amended.

Section 20. **COPIES OF DOCUMENTS.** The Association at its expense shall provide all Directors with a current copy of the Declaration, Bylaws, House Rules and, annually, a copy of the Act, with amendments, and the HAR.

ARTICLE IV

OFFICERS

Section 1. **DESIGNATION.** The principal Officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board. The Board 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 Board. Except as specifically authorized by the Association at an annual or special meeting, no Officer shall receive any compensation from the Association for acting as such but may be reimbursed for actual expenses

incurred in the course of acting as such Officer. An Owner shall not act as both an Officer of the Association and an employee of the Managing Agent.

Section 2. **ELECTION AND TERM.** The Officers of the Association shall be elected annually by the Board at its organizational meeting or any special meeting called for such purpose and shall hold office at the pleasure of the Board.

Section 3. **DUTY OF OFFICERS.** In the performance of their duties, each Officer of the Association shall owe to the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer of a corporation organized under Chapter 414D of the Hawaii Revised Statutes.

Section 4. **REMOVAL.** Any Officer may be removed either with or without cause by vote of a majority of the members of the Board, and his or her successor shall be elected at any regular meeting of the Board or any special meeting called for such purpose.

Section 5. **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. He or she shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He or she shall also have such other powers and duties as may be provided by these Bylaws or assigned to him or her from time to time by the Board.

Section 6. **VICE PRESIDENT.** The Vice President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise during the absence or disability of the President, or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

Section 7. **SECRETARY.** The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all Units, maintain and keep the minute book wherein resolutions shall be recorded, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary and all other duties assigned by the Board.

Section 8. **TREASURER.** The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer shall, in general, perform all of the duties incident to the office of Treasurer and all other duties assigned by the Board.

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

Section 10. **LIABILITY AND INDEMNITY OF THE BOARD AND OFFICERS.** The Directors and Officers shall not be liable to the Association for any mistake of judgment or otherwise except for their own individual gross negligence or willful misconduct. The Association shall obtain and maintain at the Association's expense a policy of Directors' and Officers' liability insurance covering the Directors and Officers as provided in Article V, Section 1.N.

The Association shall defend and indemnify each Director and Officer against all costs, expenses, and liabilities, including the amount of judgments, amounts paid in compromise settlements, and amounts paid for reasonable attorneys' fees, and other related expenses which may be incurred by or imposed on the Directors and Officers in connection with any claim, action, suit, proceeding, investigation, or inquiry hereafter made, instituted, or threatened in which he or she may be involved as a party or otherwise by reason of his or her being or having been a Director or Officer, or by reason of any past or future action taken or authorized or approved by him or her, or any omission to act as a Director or Officer, whether or not he or she continues to be a Director or Officer at the time of

the incurring or imposition of such costs, expenses, or liabilities. The Association shall not defend and indemnify the Directors or Officers for such costs, expenses, or liabilities as shall relate to matters as to which he or she is liable by reason of his or her gross negligence or willful misconduct toward the Association in the performance of his or her duties as a Director or Officer. As to whether or not a Director or Officer was liable by reason of gross negligence or willful misconduct toward the Association in the performance of his or her duties as a Director or Officer, in the absence of final adjudication of the existence of such liability, each Director and Officer may conclusively rely upon an opinion obtained by the Association's attorney. The foregoing right of indemnification shall not be exclusive of other rights to which a Director or Officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators, and assigns of each Director or Officer.

ARTICLE V

MANAGEMENT

Section 1. **MANAGEMENT AND OPERATION OF THE PROJECT.** Subject to the limits described in Article III, Section 2, the Board shall manage and operate the Project, and shall have delegated to it by the Association the powers and duties to do so, which include, but are not limited to, the following:

A. OPERATION AND MAINTENANCE OF THE COMMON ELEMENTS.

Subject to limitations in the Declaration and these Bylaws, the Board will operate, maintain, repair, replace, and make Improvements to the Common Elements.

B. MAINTENANCE AND REPAIR OF UNITS.

The Board may perform maintenance and repairs on any Unit or Limited Common Element in the Project if:

1) It is necessary to protect the Common Elements or any other Unit, and

2) The Owner of the Unit fails or refuses to perform the maintenance or repair within a reasonable time after the Board delivers written notice to Owner describing the maintenance and repairs needed.

The Board will charge a special assessment to that Unit for the cost of the maintenance or repair and any attorneys' fees and other expenses incurred in charging and collecting the special assessment.

C. RESTORATION OF PROJECT.

The Board will rebuild, repair, and restore the Project in accordance with the provisions of the Declaration and these Bylaws after it is damaged or destroyed by a fire or other casualty or as a result of a condemnation.

D. EMPLOYMENT OF PERSONNEL.

The Board may hire employees, including a Site Manager and operational and maintenance staff, and may designate, employ, train, supervise, and dismiss any personnel necessary or useful to maintain, repair, replace, rebuild, or restore the Common Elements or to operate the Project.

E. DELEGATION OF POWERS.

The Board may delegate its powers to committees, agents, officers, representatives, and employees at the Board's discretion.

F. ENFORCEMENT OF CONDOMINIUM DOCUMENTS; LAW.

The Board will enforce the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project.

G. PENALTIES AND FINES.

The Board may set penalties and fines, and charge interest on them if they are not paid, as it deems appropriate to enforce the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project. This includes, for example, penalties and fines, and any interest on them, for failure or refusal to pay to the Association on demand all costs, expenses, Common Expenses and Assessments (special or otherwise) required to be paid by law or under the Condominium Documents. Any penalties and fines must not be inconsistent with law or the Condominium Documents. The Board may, to the

extent permitted by Article VI, Section 8.B.5 and applicable law, also terminate an Owner's access to the Common Elements and stop supplying such Unit with any and all services normally supplied or paid for by the Association.

1) **MONETARY FINE.** A monetary fine or other penalty may be charged for any violation of the Condominium Documents, the Act, the HAR, and any other laws applicable to the operation of the Project. Notice of the fine or penalty shall be given in writing delivered to the Owner at the Owner's address of record. The fine will be deducted from the payment made towards an Owner's assessment in accordance with the priority of payment set forth in Article VI, Section 7.C herein. The Board shall provide an Owner with notice of the fine, which shall state the basis of said fine and allow an Owner to appeal such fine or other penalty to the Board, pursuant to the procedures set forth below. The appeal shall provide the Owner with an opportunity to be heard before the Board; provided, however, that the Owner must pay the fine, and any appeal taken by an Owner will not serve to stay the payment of the fine. This provision, with respect to an appeal, does not apply when an Owner is fined or penalized for failing to pay any Assessment on time.

An Owner must submit an appeal to the Board within twenty (20) business days after the date of delivery or mailing to the Owner of the written notice. The delivery of notice to appeal shall not stop the accrual of any ongoing fine imposed for the violation, which is the subject of the appeal. The Board may waive or rescind all or any part of such fine for good cause at any time after the hearing.

All appeals shall be reviewed by the Board either by electronic mail, conference call, or at a physical meeting of the Board within ninety (90) calendar days after the notice of appeal has been delivered to the Board. A statement of facts upon which the fine and/or penalty was based should be delivered or mailed to the Owner at least ten (10) business days before the meeting. The Owner has the right to appear and to explain why the fine or penalty should not be imposed or why access and services should not be terminated. The Board and Owner may ask other persons to attend and present testimony at the hearing. A majority of the Directors present will decide whether to sustain the imposition of the fine or penalty or to terminate access and services, if permitted pursuant to Article V, Section 1.G above. The Directors, however, cannot act unless a quorum is present and the meeting is held as provided in these Bylaws.

In the event that an Owner prevails on appeal, the Board shall promptly reimburse the Owner for any fines or penalties imposed on said Owner which were previously paid.

2) **WHEN THE FINE OR SUSPENSION TAKES EFFECT.** The Board must give the Owner written notice of any disciplinary action taken and the reasons for such action. Any disciplinary action will take effect within twenty (20) business days of the date that the notice is delivered to the Owner.

3) **WHEN SERVICES WILL BE RESTORED.** The Board will restore an Owner's access and services when the Owner pays all amounts due.

4) **THE MANAGING AGENT'S ROLE.** The Board may delegate to the Managing Agent the power to carry out any disciplinary actions imposed by the Board.

H. **BUDGET.** Each year, the Board must prepare and adopt a budget of Common Expenses of the Association and determine the amounts of Assessments.

I. **ASSESSMENTS.** The Board must charge and collect Assessments of the Common Expenses and other charges payable by the Owners.

J. **BANK ACCOUNTS.** The Board must open bank accounts on behalf of the Association; it must also designate who must sign checks and other documents relating to the accounts.

K. **ASSOCIATION FUNDS.** The Board has custody and control of all funds of the Association. It must keep full and accurate books of account and records of the Association's funds. It must also prepare regular financial reports.

L. **BORROWING MONEY.** Subject to the notice and Owner approval requirements of Section 514B-105 of the Act and any approval requirements and spending limitations contained in these Bylaws or in the Declaration, the Association may authorize the Board to borrow money to be used for the repair, replacement, maintenance, operation, or administration of the Common Elements of the Project, or to make any additions, alterations, and Improvements to them. The cost of borrowing including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to this borrowing, with respect to the Common Elements will be a Common Expense. The Association may also borrow money for the purchase of the Site Manager Unit and/or any Guest Unit or other Unit; provided that any loan for such purchase is approved by a Majority of the Owners. To the extent permitted by law, such loan payment shall be a responsibility of the Owners and a Common Expense.

M. **PAYMENT OF COMMON EXPENSES.** As agent of the Owners, the Board will pay all Common Expenses authorized by the Board.

N. **INSURANCE AND BONDS.** The Board will buy and keep in effect any insurance and bonds required or permitted by the Declaration or these Bylaws.

O. **SERVICES.** The Board will obtain any legal, accounting, and consulting services necessary or proper for the administration and operation of the Project or to interpret, enforce, or implement the Act, the HAR, the Condominium Documents, and any other material documents or decisions affecting the Project.

P. **PURCHASE OF GOODS.** Subject to any limitations contained within the Condominium Documents or by law, and if required by the Condominium Documents or by law, or if it is necessary or proper, in the Board's opinion, to operate the Project or to enforce the Condominium Documents, the Board may:

- 1) Buy, lease, or otherwise procure any other materials, equipment, supplies, furniture, labor and services,
- 2) Make repairs and structural alterations, and
- 3) Pay taxes and assessments and other Common Expenses.

If any materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes, or assessments are required because of the acts, misuse, or negligence of the Owners or Occupants of a particular Unit, the Board will charge the costs of it as a special assessment to that Unit to the extent permitted by Section VI.3.B herein.

Q. **MASTER ASSOCIATION.** Subject to any limitations in the Declaration, the Bylaws, or law, the Board may vote on all matters for and on behalf of the Association and the Owners set forth in the Master Declaration and Master Bylaws, unless otherwise prohibited by law or set forth in the Master Declaration or Master Bylaws.

R. **DISCHARGE OF LIENS.** The Board may pay any amount necessary to discharge, directly or by bond, any item or encumbrance levied against the entire Project or any part of it that may, in the Board's opinion, constitute a lien against the Project or against the Common Elements rather than merely against the interest of particular Owners. If one (1) or more Owners is/are responsible for the existence of any such lien, they will be jointly and severally liable for the cost of discharging it or bonding against it, and for the costs incurred by the Board by reason of such lien.

S. **PURCHASING UNITS.** Except as otherwise caused by the exercise of a Developer's reserved right to transfer Units to the Association, with the affirmative vote of sixty seven percent (67%) of the Association, the Board may buy, lease, or otherwise acquire any Unit on behalf of the Association, the cost of which shall be a Common Expense; provided that the purchase of a Unit for the Site Manager may be done by the

Board without the vote of the Association pursuant to the Act. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title on behalf of the Association.

T. **LEGAL PROCEEDINGS.** The Board may begin, defend, settle, or intervene on behalf of the Association in litigation, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair them; (iii) damage to any part of any Unit to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Units which arises out of, or is integrally related to, damage to any of the Common Elements or to any part of any Unit to the extent that the Association is obligated to maintain and repair them (collectively, "*Association Claims*"). Association Claims shall not include (a) claims for construction defects governed by the Contractor Repair Act, Chapter 672E of the Hawaii Revised Statutes, as amended; (b) incidences of threats to property or to the health or safety Owners or any other Person; (c) assessments; (d) personal injury claims; or (e) matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of the Association. Except as otherwise provided in Section 514B-161(b) of the Act, if the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one (1) party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees. Notwithstanding the foregoing, all claims regarding the design or construction of any part of the Project shall be resolved pursuant to Article XL of the Declaration, and in no event may the Association begin, defend, settle, or intervene on behalf of any one (1) or more Owners in litigation, arbitration, mediation, or administrative proceedings in matters for which only the Owner(s) has (have) standing to assert.

Section 2. **MANAGING AGENT; MANAGEMENT AGREEMENT.**

A. **MANAGING AGENT.** No later than after the termination of the Developer Control Period, the Association shall hire and at all times have a Managing Agent to perform the physical, fiscal and administrative management of the Project and the Common Elements the cost of which shall be a Common Expense.

B. **QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii and meet all of the requirements specified in Section 514B-132 of the Act. The Managing Agent may be the Developer or a Developer Affiliate.

C. **SELECTION.** Developer shall have the right to select and employ the first Managing Agent for the Project. Upon the expiration of the Developer Control Period, the Board may retain the Managing Agent or choose a replacement Managing Agent in accordance with the management agreement. The Board must use its best efforts to hire and keep a reputable, qualified, corporate company as the Managing Agent.

D. **MANAGEMENT AGREEMENTS.** The Managing Agent must enter into a Condominium Management Agreement with the Association. Subject to the requirements of the Act:

1) **POWERS AND DUTIES.** The Condominium Management Agreement may delegate to the Managing Agent, any of the Board's powers and/or Officers' duties, except those that, by law or under the Condominium Documents, cannot be delegated. In all cases, the Managing Agent will be subject to the direction of the Board.

2) **TERM.** The Condominium Management Agreement:

(a) Shall provide for an initial term of not more than one (1) year from the date on which the Managing Agent must begin its performance.

(b) Shall provide that the contract will be renewed automatically unless a written notice canceling the Condominium Management Agreement is sent by either party to the contract at least sixty (60) calendar days before its expiration.

E. CANCELLATION OF THE CONDOMINIUM MANAGEMENT AGREEMENT BY THE ASSOCIATION. If applicable, the Condominium Management Agreement must give the Association the right to cancel in each of the following situations:

1) **FOR CAUSE.** The Association must have the right to cancel the Condominium Management Agreement whenever the Managing Agent breaches or fails to observe or perform a material part of the Condominium Management Agreement and fails to cure its breach or default within the time permitted by the Condominium Management Agreement;

2) **WITHOUT CAUSE.** The Association must have the right to cancel the Condominium Management Agreement without cause on not more than sixty (60) calendar days' written notice;

3) **STATUTORY RIGHT.** The Association must have the right to cancel as provided in Section 514B-135(a) of the Act;

F. CANCELLATION BY THE MANAGING AGENT. The Condominium Management Agreement must provide that the Managing Agent has the right to cancel the Condominium Management Agreement on not more than sixty (60) calendar days' written notice.

G. BOND. From time to time, the Managing Agent must provide evidence satisfactory to the Board that they are bonded under a fidelity bond in the minimum amount required by the Act or any higher amount as the Board may reasonably require.

H. PROJECT QUALITY STANDARD. The Condominium Management Agreement shall contain a requirement that the Managing Agent operate the Project at a Project Quality Standard and further provide for the right of the Board to terminate the Condominium Management Agreement if the Project is not operated or maintained at such standard by the Managing Agent.

Section 3. **EMPLOYMENT OF SITE MANAGER.** The Board may also contract with or employ a Site Manager who may or may not be the Managing Agent. The Board will set the compensation of any Site Manager. The Board may delegate to the Site Manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. The Site Manager shall be held to the same standard as the Managing Agent and shall operate the Project at the Project Quality Standard and further provide for the right of the Board to terminate any agreement with the Site Manager if the Project is not operated or maintained at such standard by the Site Manager. The cost of the Site Manager and any employees which may be hired by such Site Manager shall be a Common Expense.

Section 4. **LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS.** Neither the Association nor the Managing Agent may enter into a contract to furnish goods or services for the Common Elements or to the Association for a period longer than one (1) year unless authorized by the vote or written consent of a Majority of the Owners. This rule does not apply, however, to:

A. The Condominium Management Agreement.

B. A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.

C. Prepaid casualty and/or liability insurance policies not lasting more than three (3) years, provided that the policy permits "short-rate cancellation" by the insured.

D. Agreements for cable or satellite television, internet, elevator and refuse services and equipment for ten (10) years or less provided that neither Developer nor Managing Agent owns, directly or indirectly, ten percent (10%) or more of the provider or supplier.

E. Agreements for sale or lease of burglar alarm and fire alarm equipment. Installation, and services for ten (10) years or less provided that neither Developer nor Managing Agent owns, directly or indirectly, ten percent (10%) or more of the supplier.

F. Any other contract for three (3) years or less so long as the Association can cancel it after no more than one (1) year without cause, penalty or other obligation upon not more than ninety (90) calendar days' written notice of termination to the other party.

Section 5. **LIMITS ON ASSOCIATION AUTHORITY.** The Association shall not:

A. Incur expenditures for Capital Upgrades (discussed in Article VIII, Section C of the Declaration) without following the requirements set forth in Article VIII, Sections C and D of the Declaration; or

B. Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

C. Take any action which is inconsistent with any and all limitations imposed upon the Association by the Condominium Documents.

Section 6. **RESTRICTIONS ON RENTING OR SELLING UNITS BY ASSOCIATION EMPLOYEES.** An employee of the Association may not engage in renting or selling Units in the Project except for Units owned by the Association, unless such activity is approved by vote of the Owners as required by the Act.

Section 7. **HOUSE RULES.** The Board may adopt, publish, and enforce fair and reasonable House Rules governing the operation and use of the Common Elements, Limited Common Elements and the Units. Developer may adopt the initial House Rules. The Board may revise the House Rules from time to time; provided the House Rules must be consistent with the Declaration, these Bylaws, the Act, and the HAR. The Board shall enforce the House Rules in accordance with the Declaration and these Bylaws.

Section 8. **STOPPING VIOLATIONS BY OWNERS.**

A. **THE BOARD MAY STOP CERTAIN ACTIVITIES.** In addition to any other rights they may have, the Board and the Managing Agent may take action to stop any activity or condition that violates the law or the Condominium Documents or which poses an "emergency", as defined in Article IV, Section E of the Declaration.

B. **THE BOARD MAY ENTER A UNIT.** The rights of the Board and the Managing Agent under Section V.8.A above include the right and power, with reasonable notice, to enter any Unit at any time and to use any reasonable means under the circumstances in an "emergency", as defined in Article IV, Section E of the Declaration, and neither the Board nor the Managing Agent will be liable to the Owner for trespass for such entry.

C. **THE BOARD MAY FILE A LAWSUIT.** The rights of the Board and the Managing Agents under Article, Section 8.A above also include the right and power to file a lawsuit or other legal proceedings. For example, the Board may obtain a court order ordering the Owner to stop its activity or to abate any unsafe condition. The Owner must pay to the Association on demand all costs of any such lawsuit or other legal proceedings, including attorneys' fees.

D. **ABANDONED PROPERTY.** If anyone abandons any personal property in or on the Common Elements of the Project, the Board may sell it in a commercially reasonable manner, store it at the expense of its Owner, donate it to a charitable organization, or otherwise dispose of it as the Board chooses. However, the Board must do so in keeping with any legal requirements in the Act. The Association may keep any money from sale of the personal property except as otherwise provided by law.

ARTICLE VI

COMMON EXPENSES

Section 1. **DESIGNATION OF COMMON EXPENSES.** “*Common Expenses*” means all charges, costs and expenses as described in Article XI, Section A of the Declaration.

Section 2. **BUDGET AND RESERVES.** The Board must prepare and adopt an annual operating budget and provide copies of such budget to the Owners. The budget must contain any information required by the Act and the HAR.

A. **BUDGET.** The annual operating budget shall be prepared in accordance with the requirements set forth in Section 514B-148 of the Act and the HAR.

B. **RESERVE FUNDS.**

1) **REPLACEMENT RESERVES.** The Association must establish replacement reserve funds for capital upgrades, as required by law. The Association may set up any additional replacement reserve funds that the Board determines to be necessary or prudent. As required by the Act and the HAR, the Board shall calculate the Association’s estimated replacement reserves based on a reserve study developed in compliance with the Act. The term, “*Association Property*” as used in the HAR governing the reserve study shall refer to all Common Elements. The Association must compute the estimated replacement reserves in the manner required by the Act and the HAR and shall set up separate replacement reserves. The annual operating budget must include all sums required to fund the replacement reserves funds in accordance with the Declaration, the Act, and the HAR. It may also include any greater amounts that the Board chooses in the exercise of its reasonable business judgment. Reserves may be used for those purposes required by the Act and the HAR. Neither the Association, nor any Owner, Director, Officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association will be liable if that estimate later proves incorrect. Replacement reserves for the Common Elements shall be assessed as a Common Expense. As permitted by Section 514B-148 of the Act, the requirements of Section 514B-148 of the Act shall override any requirements in the Declaration or these Bylaws with the exception of: (a) any provision in the Declaration, these Bylaws, or any other Condominium Documents that requires the Association to collect more reserves than are required under Section 514B-148 of the Act; or (b) any provisions in the Declaration, these Bylaws, or any other Association documents that relate to upgrading the Common Elements, such as additions, Improvements, and alterations to the Common Elements.

2) **BUDGET LIMITATION.** The Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations, as set forth in Section 514B-148(e) of the Act or with the approval of a Majority of the Owners. Prior to the imposition or collection of an assessment under this Section that has not been approved by a Majority of the Owners, the Board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of assessment.

3) **OPERATING RESERVES.** Subject to Section VI.4.B.4 of these Bylaws, the Board may establish and maintain an operating reserve by monthly assessment against (and payment by) all Owners for operating expenses in proportion to their respective Common Interests, or as may be required by sub-metering pursuant to Article XI, Section C of the Declaration. Neither the Association, nor any Owner, Director, Officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated operating reserves for the Association will be liable if that estimate later proves incorrect. The reserves shall be set forth in the Association budget.

4) **OTHER RESERVES.** The Association may establish working capital reserve Improvement funds and other reserve funds that the Board deems necessary.

5) **OWNERS' INTEREST IN RESERVES.** Except upon termination of the condominium property regime created by the Declaration, the interest of any Owner in the reserves of the Association:

(a) Cannot be withdrawn or assigned separately, and

(b) Will be transferred automatically with each transfer of the Unit, whether or not the deed or other transfer document expressly says so.

Section 3. **ALLOCATION OF COMMON EXPENSES.**

A. **COMMON EXPENSES.** All Common Expenses shall be set forth in the Association budget in accordance with the Declaration.

B. **LIMITED COMMON ELEMENT EXPENSES.** All charges, costs, and expenses incurred by the Association directly attributable to one (1) or more designated Units or any Limited Common Elements appurtenant thereto, including but not limited to, utility costs, all costs of maintenance, repair, replacement, additions, and Improvements to the Unit(s) or the Limited Common Elements appurtenant thereto and reserves therefore, shall constitute Limited Common Element Expenses of the Project for which only the Owner(s) of the designated Unit or Units shall be liable. If the Limited Common Element is appurtenant to more than one (1) Unit, the share of Limited Common Element expenses attributable to each designated Unit will be in proportion to each Unit's relative Common Interest set forth in the Declaration. The Board may arrange to handle the maintenance and upkeep of any Limited Common Element and may require the owner(s) of the affected Unit(s) pay for such cost.

C. **SPECIAL ASSESSMENTS AGAINST OWNERS AT FAULT.** The Association will charge a special assessment to a Unit to pay for all charges, costs, and expenses incurred by the Association due to the negligence, misuse, or neglect of the Owner or his or her tenants, guests, invitees, or licensees. The Association will not charge a special assessment if the cost and expense is reimbursed or paid by insurance proceeds but may charge as a special assessment the deductible amount, subject to the notice and hearing requirements of Section 514B-143 of the Act. Any special assessment charged under this Section will be secured by the lien of the Association described in Article VI, Section 8.A. Special assessments may be included in Common Expenses if the special assessment is for the purchase or lease of any Unit by the Association, as permitted under the Act or the Bylaws.

Section 4. **ASSESSMENTS.**

A. **WHEN ASSESSMENTS BEGIN.** Assessments for Common Expenses shall be made based on a budget initially prepared by Developer and adopted by the Board during the Developer Control Period. The budget shall be distributed or made available to each Owner at least annually by the Board. Each Owner, including Developer, shall become obligated for the payment of the share of Common Expenses allocated to the Owner's Unit from and after a specified date to be set forth in a written notice from Developer as permitted by Section 514B-41(b) of the Act. Developer shall mail the written notice to the Owners, the Association, and the Managing Agent, if any, at least thirty (30) calendar days before the specified date. After the specified date, Assessments will be payable in advance in monthly installments on the first day of each month, or at any other time that the Board chooses. Prior to the specified date, Developer shall assume all the actual expenses in the Project pursuant to the provisions of Section 514B-41(b) of the Act. Developer may also state in Developer's public report for the Project that the Owners shall be obligated for the payment of the Common Expenses assessable against the Units upon closing on the Unit.

B. AMOUNT OF ASSESSMENTS.

1) **REGULAR ASSESSMENTS.** Each year the Board will set the amount of the “*Regular Assessments*” based on the Common Expenses for each Unit based on the budget and the requirements of the Condominium Documents. The Board may increase the amount of the Regular Assessments during the year. The Regular Assessments shall include the Master Assessments.

2) **SPECIAL ASSESSMENTS.** If for any reason the Regular Assessments are or will be inadequate to pay the expenses for which such Regular Assessments are designated, the Board must estimate the shortfall. The Board must then (i) increase the next year’s budget, or (ii) charge a “**special assessment**”. The Board may also charge a special assessment in any other circumstances permitted by law or by these Bylaws or the Declaration.

3) **NOTICE OF ASSESSMENTS.** Any time that the Board increases the Regular Assessments or charges a special assessment, it must give written notice of the increase or special assessment to each Owner. The notice must state the amount of the increase or of the special assessment for the Owner or the Owner’s Unit. The Board must send the notice at least thirty (30) calendar days before the increase or special assessment takes effect.

4) **LIMITS ON ASSESSMENTS.**

(i) Assessments are limited by the budget limitation set forth in Section VI.2.B.2 herein.

(ii) Assessments related to capital upgrades are governed by Article VII, Sections B and C of the Declaration and Assessments related to “*Extraordinary Actions*” are governed by Article VII, Section D of the Declaration.

C. **TREATMENT OF ASSESSMENTS.** Any part of Assessments used or to be used by the Association for any capital expense or major repairs or remodeling, including, but not limited to replacement of the roof, exterior painting of the building, and resurfacing of parking areas, will be treated as a capital contribution by the Owner that was assessed and paid. It will be credited by the Association on its books as paid in surplus. It will not be treated as income to the Association or to the Owners.

Section 5. **HANDLING AND PAYMENT OF ASSOCIATION FUNDS.**

A. The funds in the general operating account of the Association must not be commingled with funds of other activities such as lease rent collections and rental operations (except to the extent permitted by Section 514B-149 of the Act). The Managing Agent must not commingle any Association funds with the Managing Agent’s own funds.

B. All funds collected by the Association or by the Managing Agent must be deposited, held, transferred, invested, and paid out in accordance with the requirements of the Act.

Section 6. **PAYMENT AS AGENT.** Each Owner, as principal, is liable for and must pay his or her share of the Common Expenses. The amount an Owner must pay will be set in accordance with the Declaration and these Bylaws. Except as otherwise provided in these Bylaws or in the Declaration, on behalf of the Owners the Board may pay all Common Expenses or cause them to be paid. The Board may require the Managing Agent to assist in these duties. The Board and the Managing Agent will transmit the payments made by the Owners to third persons to whom the payments must be made by the Owners. Neither the Board nor the Managing Agent, however, is liable for payment of the Common Expenses of any Owner.

Section 7. **DUTY TO PAY; INTEREST AND LATE CHARGES.**

A. **PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay, on time, all applicable Assessments charged to the Owner or to his or her Unit. If a Unit is owned by more than one Person, each of them will be jointly and severally liable for the Assessments. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. By acquiring a Unit, an Owner promises to pay all applicable Assessments charged to him or her, or to his or her Unit.

B. **INTEREST AND LATE CHARGES.** All sums not paid within fifteen (15) calendar days after the due date may be subject to (i) interest at a rate set by the Board or, if no rate is set, then at one percent (1%) per month from the due date until paid; and (ii) a late charge equal to the greater of Fifty Dollars (\$50.00) or ten percent (10%) of the amount due, as may be determined by the Board in its reasonable discretion. An Owner must also pay all costs of collection, including reasonable attorneys' fees.

C. **HOW PAYMENTS WILL BE APPLIED.** Payments will be applied first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment.

Section 8. **ENFORCEMENT.**

A. **ASSOCIATION LIEN.** The Association has a lien on each Unit for nonpayment of all Assessments charged to that Unit or to its Owner, including late charges, interest, costs of collection and reasonable attorneys' fees. If the Owner fails to pay these amounts, the Association may foreclose its lien in accordance with applicable law and the Condominium Documents. The Association's lien is prior to all other liens, except only:

1) Liens for taxes and assessments lawfully imposed by governmental authorities against the Unit and which, by law, have priority over the Association's lien, and

2) The lien for sums unpaid (plus costs and expenses including attorneys' fees provided in the Mortgage) on any Mortgage that is recorded before the Association records a Notice of Lien.

B. **ASSOCIATION REMEDIES.** If an Owner fails to pay any amount assessed to him or her, or to his or her Unit, then in addition to any other remedies the Board may have, the Board may enforce the obligation to pay those amounts as follows:

1) **NOTICE OF LIEN.** At any time after an Owner defaults, the Board or the Managing Agent may give a notice to the defaulting Owner. The notice must state the amount owed and the date when it became due. If this amount is not paid within ten (10) business days after the notice is delivered, the Board or the Managing Agent may record a "Notice of Lien" against the Owner's Unit. The Notice of Lien must be signed and acknowledged by any two (2) or more Directors or Officers of the Association, the attorney for the Association, or the Managing Agent. Whether or not a Notice of Lien is recorded, the Board will have all remedies provided in these Bylaws, the Declaration and the Act on account of the default. Each default will be a separate basis for a Notice of Lien, but a single Notice of Lien may cover more than one default and may include defaults between the date of the Notice of Lien and the date of the foreclosure sale described in Article VI, Section 8.B.2.

2) **FORECLOSURE OF LIEN.** The Board or the Managing Agent, acting on behalf of the Association, may foreclose the Association's lien in a manner like a Mortgage foreclosure. They may do so by filing a lawsuit for foreclosure. They may also foreclose using the non-judicial or power of sale foreclosure procedures authorized by law. The Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The Board or the Managing Agent must give to an Owner at least ten (10) business days' prior written notice of the Association's intent to foreclose. It must send this notice by registered mail. The Managing Agent, acting on behalf of the Association and as directed by the Board, may bid on the Unit at the foreclosure sale and may acquire, hold, lease, mortgage, and convey the Unit. The Association may offset the Owner's debt against the amount bid at the sale. The Association may also accept a deed of the Unit to the Association (or to a trustee holding title for the Association) in place of foreclosure.

3) **LAWSUIT.** The Association may file one or more lawsuits to enforce an Owner's obligation to pay Assessments. The Association may file a lawsuit to recover a money judgment for the unpaid Common Expenses without foreclosing or waiving its lien for those expenses. The Association may not file a lawsuit unless a majority of the Board authorizes it at a regular or special Board meeting. The Board may file the suit on behalf of the Association. The Managing Agent may file the suit on behalf of the Association if the Board authorizes it to do so in writing.

4) **CANCELLATION OF NOTICE OF LIEN.** On behalf of the Board, any two (2) Directors or Officers of the Association, or the Managing Agent, will sign, acknowledge, and deliver to the Owner a document canceling a Notice of Lien if the Board receives payment in full of the amount claimed to be due and owing (including interest, late fees, and any costs of enforcement and attorneys' fees) and the Owner asks for the cancellation document and pays a reasonable fee, including any recording fees, if applicable, for such document.

5) **TERMINATION OF RIGHT TO USE COMMON ELEMENTS.** Pursuant to the procedures, requirements and rights specified in Sections 514B-146(e) and (f) of the Act, the Association may terminate a defaulting Owner's right of access to and use of the Common Elements other than as may be strictly required for access to the Unit and may also stop supplying any defaulting Owner with any and all services normally supplied or paid for by the Association.

Section 9. **WAIVER.** In one or more cases, the Board may not insist on strict performance of or compliance with the covenants of an Owner under the Condominium Documents or may not use some or all of the rights and powers that the Board has to enforce compliance. This does not mean, however, that the Board has waived the right to do so. Instead, the covenants of each Owner will remain in full force and effect and the Board will continue to have all of its rights and powers to enforce them despite any failure to do so in the past. Whether or not the Board knows that an Owner has violated the Condominium Documents, it may receive and accept any money paid by the Owner without waiving the Owner's breach. The Board will not be deemed to have waived any provision of the Condominium Documents, expressly or by implication, unless the Board expressly states the same in a document that is signed by an Officer pursuant to authority contained in a resolution of the Board.

Section 10. **ASSESSMENT DISPUTES.**

A. **STATEMENT OF UNPAID AMOUNTS.** No Owner may withhold any Assessment claimed by the Association. An Owner who disputes the amount of an Assessment may request a written statement clearly indicating (1) the amount of Common Expenses included in the Assessment, including the due date of each amount claimed; (2) the amount of any penalty, late fee, lien filing fee, and any other charge included in the Assessment; (3) the amount of attorneys' fees and costs, if any, included in the Assessment; and (4) other such matters as provided in Section 514B-146(c) of the Act. Upon receipt of such a request, the Association, or the Managing Agent on behalf of the Association, must provide a written statement disclosing this information and anything else required by the Act or the HAR.

B. **ASSESSMENT DISPUTES.** An Owner who pays the Association the full amount claimed by the Association may still contest the Assessment in the manner provided in the Act.

Section 11. **LIABILITY OF ANYONE WHO ACQUIRES TITLE THROUGH FORECLOSURE.** In this Section, "**New Owner**" means a Lender or anyone else who obtains title to a Unit as a result of the foreclosure of a Mortgage. To the extent permitted by the Act, a New Owner and its successors and assigns are not liable for the share of the Common Expenses or Assessments charged to the Unit and which became due before the New Owner took title. Instead, those unpaid amounts will be Common Expenses collectible from the Owners, including the New Owner and his or her successors and assigns, and will be allocated in accordance with Article XI, Section F of the Declaration. A New Owner will be deemed to have acquired title and be required to pay the Unit's share of Common Expenses and Assessments beginning at the time stated in the Act or, if not stated, then, the earlier of: (1) thirty-six (36) calendar days after the order confirming the sale to the purchaser has been filed with the court; (2) sixty (60) calendar days after the hearing at which the court grants the motion to confirm the sale to the purchaser; (3) thirty (30) calendar days after the public sale in a nonjudicial power of sale foreclosure, pursuant to Chapter 667 of the Hawaii Revised Statutes, as amended; or (4) the date when the deed is recorded.

Section 12. **LIABILITY FOR UNPAID COMMON EXPENSES.**

A. In this Section, “*Existing Owner*” means the Owner who transfers a Unit, and “*New Owner*” means the Person to whom the Unit is transferred. If a Unit is transferred voluntarily and not as a result of foreclosure, the New Owner will be jointly and severally liable with the Existing Owner for all unpaid Assessments against the Existing Owner for his or her share of the Common Expenses up to the time of the transfer subject to any limitations in and to the extent permitted under Section 514B-146(h) of the Act. This does not limit the New Owner’s right to recover from the Existing Owner the amounts paid by the New Owner for these unpaid Assessments.

B. Both the Existing Owner and the New Owner have the right to ask the Managing Agent or the Board for a letter listing any unpaid Assessments against the Existing Owner or his or her Unit. Within twenty (20) business days after receiving the request, the Board or the Managing Agent must provide the letter. The letter will state the amount of the unpaid Assessments against the Existing Owner. The New Owner is not liable for, and the Unit will not be transferred subject to a lien for, any unpaid Assessments against the Existing Owner in excess of the amount stated in the letter except for the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the thirty (30) day period immediately preceding the date of the letter.

Section 13. **ABANDONMENT OF UNIT; DEED TO BOARD.** An Owner cannot avoid liability for Assessments by not using or by abandoning his or her Unit or by waiving his or her rights to use or enjoy the Common Elements. With the unanimous consent of the Board, any Owner may deed his or her Unit and its Common Interest to the Association on behalf of all other Owners. The Owner will not be liable for any Common Expenses charged after the deed is accepted by the Association and is recorded.

Section 14. **TAXES AND ASSESSMENTS.**

A. Each Owner (i) must take reasonable steps to see that the government assesses any taxes on his or her Unit and its Common Interest and on any personal property or any other interest of the Owner separately from taxes on other Units or other Owners, and (ii) must pay those taxes.

B. If, in the opinion of the Board, any taxes or assessments may be a lien on all or any part of the Common Elements, the Board may pay those taxes or assessments as part of the Common Expenses. Any such taxes or assessments which a is on the Common Elements shall be a Common Expense. Each Owner must pay to the Board his or her proportionate share of any Assessment by the Board for any such taxes or assessments paid by the Board. The Owners must make these payments at the time and in the manner that the Board directs. Any Assessments charged by the Board under this Section will be secured by the Association’s lien under Article VI, Section 8.A and the non-paying Owner shall be required to reimburse the Board for any amount paid by the Board in connection therewith, including, without limitation, attorneys’ fees and other expenses incurred in charging and collecting the amount owed.

Each Owner must sign any documents and take any action that the Board reasonably requires to facilitate dealing with the proper governmental authority regarding taxes and assessments.

Section 15. **UTILITY EXPENSES.** The cost of utility services for the Common Elements is a Common Expense unless separately metered or provided, or as otherwise set forth in the Declaration.

A. The cost of utility services to any Unit or Limited Common Elements that are separately metered, sub-metered or check metered shall be calculated based upon actual usage and shall be payable by the Owner of such Unit or the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant, payable directly to the service provider if a separate bill is rendered (in which case the amounts owed and payable to the service provider shall not be or be deemed to be Common Expenses), or otherwise payable to the Association on demand (in which case the amounts owed and payable to the Association shall be and be deemed to be Common Expenses). If utility services are separately metered, sub-metered or check metered to a group of Units, the share of the costs and expenses allocated to and payable by each Unit in the metered group shall be based upon each Unit’s actual usage of the group metered utilities; provided, however, that if it is not reasonably possible to determine accurately each Unit’s actual usage of the metered utilities relative to the other Units in the group, then each Unit’s

share of the group metered utility costs and expenses shall be calculated in proportion to each Unit's relative Common Interest. Unless otherwise permitted or required by the utility service provider(s), the Owners of Units that are separately metered, sub-metered or check metered shall be responsible for all costs and expenses of the maintenance, repair, and replacement of all metering equipment installed in or for their Units.

B. If utility or other services (including, by way of example but not limitation, television cable, internet, and digital telephone service) are purchased by the Association as a bundled utility package at a negotiated but adjustable flat rate and provided to some or all of the Units, each Unit that is designated to receive such utilities or services shall be assessed separately, an equal share of the flat rate charged by the provider to the Association.

C. For all utility and other service expenses billed to the Association not separately metered, sub-metered or check metered, or not provided as part of a bundled utility package for which the Association pays a flat rate, the Board shall allocate a share of such utility or service expenses as provided in the Declaration.

D. If any Owner fails to pay his or her share of all such costs and expenses that are payable to the Association, the Association shall have all of the rights and remedies against the Owner available to the Association for an Owner's failure to pay his or her share of Common Expenses.

Section 16. **COLLECTION FROM TENANT.** An Owner may rent or lease his or her Unit. If an Owner does so and if the Owner is in default for thirty (30) calendar days or more in paying the Unit's share of the Common Expenses, then for so long as the default continues, the Board may demand in writing and receive from the Owner's tenant any rent due up to the full amount owed by the Owner to the Association, including interest, if any. Any such demand or acceptance of rent from any tenant 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 under the Condominium Documents, or an acknowledgement or surrender of any rights or duties under the Condominium Documents. If the Board makes such a demand upon the tenant, the tenant shall be obligated to make the payments to the Board as demanded; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the Unit pending a Mortgage foreclosure, if a mortgagee is in possession pending a Mortgage foreclosure, or if Developer is the Owner. The Association may not demand that the tenant pay more than the amount of rent due from the tenant to the Owner under the lease or rental arrangement. Any amount paid by the tenant under this Section will discharge that amount of payment from the tenant's rent obligation. Even if the Board demands and receives any rent from a tenant, this will not release or discharge (i) any obligations of the Owner remaining unpaid or unperformed, (ii) any other duties of the Owner, or (iii) any rights of the Association under the Condominium Documents. The Board must comply with the requirements of the Act when exercising its rights under this Section.

Section 17. **AUDITS.** Except as otherwise permitted by the Act, each year the Association must have a public accountant or accounting firm conduct an audit of the Association's financial accounts and at least one (1) unannounced verification of the Association's cash balance. The Association will furnish to the Owners copies of the audit and any other financial statements at the times and in the manner stated in the Act.

Section 18. **FINANCIAL REPORTS.**

A. **FINANCIAL STATEMENTS.** The Association must prepare and send the following statements to each Owner:

1) **THE BUDGET.** At least thirty (30) calendar days before the fiscal year starts the Association must send to the Owners the approved budget for that year.

2) **THE ANNUAL REPORT.** The Association must send an annual report to each owner within ninety (90) days after the end of each fiscal year. The annual report must include:

(a) A balance sheet showing the assets, liabilities and net worth of the Association at the end of the fiscal year;

- (b) An operating (income) statement for the fiscal year;
- (c) A statement of the net changes in the financial condition of the Association for the fiscal year; and
- (d) Any other information required by the law of any jurisdiction (for example, another state) where the Project is registered for public sale.

B. **REPORTS.** The Association will provide information and reports as required by Section 514B-154 of the Act and may utilize an internet site as permitted by such law.

ARTICLE VII

MAINTENANCE AND REPAIR AND USE

Section 1. **MAINTENANCE AND REPAIR OF UNITS.** Except as otherwise provided by law or in these Bylaws or in the Declaration:

A. **OWNERS' RESPONSIBILITIES.** At his or her own expense, the Owner must maintain and repair his or her Unit, and the Limited Common Elements appurtenant thereto, and keep them in good order and condition at all times.

1) This duty includes, for example, the obligation to repair and maintain and keep in good order and condition:

(a) The interior decorated or finished surfaces of all walls, floors, and ceilings of a Unit and any lanai and Improvements thereon;

(b) All installations for water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, cable and all other fixtures and accessories. This applies only to installations, fixtures and accessories that are part of the Owner's Unit.

(c) All mechanical, electrical, and plumbing components of his or her Unit and the Improvements therein in strict accordance with all applicable maintenance requirements, operating standards and guidelines (i) of or promulgated by any governmental agency, (ii) set forth in any manufacturer's or supplier's operating manuals or maintenance and care documents for said fixtures and equipment, and (iii) as may be set forth from time to time in the Condominium Documents.

2) Each Owner shall be responsible for performing the following with respect to the Unit and any Limited Common Elements appurtenant thereto in order to prevent or eliminate the occurrence of mold growth in the Unit and at the Project:

(a) Maintain and properly service the Owner's air conditioning system and keep it in full working condition.

(b) Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let pools of water sit in the Unit. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.

(c) Inspect for leaks on a regular basis. Look for discoloration or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditions) for mold growth. Take notice of musty odors and any visible signs of mold.

(d) Should mold develop, thoroughly clean the affected area with a mild solution of bleach or another appropriate mold-killing agent. Discard affected porous materials, such as fabric, upholstery or carpet. Should the mold growth be severe, call on the services of a qualified professional cleaner.

e) Each Owner is liable for all loss or damage caused by his or her failure to perform any such work diligently. If the Owner fails to perform such work after reasonable notice from the Association, the Association may undertake and charge the cost of performing such work to the Owner pursuant to the Declaration.

3) Each Owner will take such steps as may be required to prevent excessive oil spills upon the parking stall that is a Limited Common Element appurtenant to such Owner's Unit.

4) Each Owner will take such steps as may be required to prevent pests, such as roaches and ants, from infesting such Owner's Unit.

B. DAMAGE TO COMMON PROPERTY. Every Owner:

1) Must reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the Common Elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or other Occupant, or by any person under either of them, to the extent permitted under Article XIV, Section C of the Declaration, and

2) Must give to the Managing Agent, as appropriate, notice of any such loss or damage or other defect in the Project promptly after discovering it.

Section 2. **COMMON ELEMENTS.** Subject to any approvals required under the Declaration, the Board may arrange for painting or repair of the Limited Common Elements, including but not limited to, any outside doors, windows, trim, walls, railings, and other parts of the Limited Common Elements and may also choose the type and color of paint to be used. The Board shall assess each Owner for his or her proportionate share of the painting and repairs or the Board may pay for it using the reserve funds designated for such purpose. However, the cost of painting and repairs due to negligence, misuse, or neglect of an Owner or other Occupant, or someone under either of them, may be charged as a special assessment pursuant to the Declaration.

Section 3. **MOLD PREVENTION.** The Board shall be responsible for doing the following with respect to the Common Elements in order to prevent or eliminate the occurrence of mold growth at the Project: the Association shall regularly clean and repair roof gutters and correct any grading which does not slope away from the building foundation; maintain and properly service Common Element air conditioning systems, if any, and keep them in proper working condition; promptly clean up spills, condensation and other sources of moisture; thoroughly dry any wet surfaces or material and replace any materials that cannot be thoroughly dried, such as drywall or insulation; inspect for leaks on a regular basis; repair any leaks promptly; inspect condensation pans (refrigerators and air conditions) for mold growth; should mold develop, thoroughly clean the affected area with a mild solution of bleach or other appropriate mold-killing agent; discard affected porous materials, such as fabric, upholstery or carpet, and; should the mold growth be severe, call on the services of a qualified professional cleaner. The Board and the Association, however, shall not be liable for mold growth at the Project or any efforts to clean and repair areas of the Project to reduce or eliminate mold or moisture.

Section 4. **ALTERATIONS AND ADDITIONS BY OWNERS.**

A. **PERMITTED ALTERATIONS.** A Unit Owner may make additions, alterations or Improvements solely within the Owner's Unit or within the Limited Common Element appurtenant to and for the exclusive use of the Owner's Unit as set forth in Article X, Section B of the Declaration.

B. **PROHIBITED ALTERATIONS.** Subject to the provisions of the Declaration and the Act, no Owner may make any alteration or addition to the Unit that adversely affects the Common Elements.

C. **BOARD APPROVAL.** An Owner of a Unit must not begin work on any alterations, additions, or Improvements that require Board approval as set forth in Article X, Section D of the Declaration until such approval has been obtained.

Section 5. **ALTERATION OF THE PROJECT.** Except for Limited Common Elements to be maintained by the Owners of Units to which they are appurtenant, whenever in the judgment of the Board, the Common Elements need additions or alterations, the Board can make the additions or alterations, provided that any consents required by Article X, Section D of the Declaration are obtained, in writing, in advance. The cost will be a Common Expense, except that the cost of any such work performed on any Limited Common Elements will be charged to the Owner(s) of the Unit(s) to which the Limited Common Elements are appurtenant. Notwithstanding anything to the contrary herein, but subject to the provisions of Article X, Section D of the Declaration, the Board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the Common Elements; provided that the same shall not be installed upon any Limited Common Element without the consent of the Owner(s) for the use of which the Limited Common Element is reserved. The installation of antennas, conduits, chases, cables, wires, and other television and telecommunications equipment upon the Common Elements by the Board shall not be deemed to alter, impair, or diminish the Common Interest and Common Elements appurtenant to each Unit or be a structural alteration or addition to any building different in any material respect from the Condominium Map; provided that no such installation shall directly affect any non-consenting Owner. Further, the Board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence (which determination shall be within the Board's sole discretion) or to provide an equivalent function by different means or methods; and the abandonment or change of use of any television signal distribution or telecommunications equipment by the Board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to each Unit or to be a structural alteration to any building different in any material respect from the Condominium Map. For the purposes of this Section: (a) "**directly affects**" means the installation of television signal distribution and telecommunications equipment in a manner which would specifically, personally, and adversely affect an Owner in a manner not common to the Owners as a whole, and (b) "**television signal distribution**" and "**telecommunications equipment**" shall include all present and future forms of communications technology.

Section 6. **OWNER APPROVAL.** Maintenance, repair or replacement of any portion of the Project for which the Association is responsible costing in excess of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) in any one instance may be made by the Board only after obtaining approval of a majority of the Unit Owners. This rule does not apply to Capital Upgrades which are governed by Article VIII, Sections B and C of the Declaration and shall not apply to maintenance, repairs or replacements:

- A. Required by law or by the Declaration or these Bylaws;
- B. Required due to an emergency threatening immediate and substantial damage to person or property;
- C. Required to maintain or repair the Project as originally designed or constructed, or in accordance with any duly authorized changes to the Project or required by law;
- D. For which replacement reserve funds have been established and substantially funded to cover at least ninety percent (90%) of the cost; or
- E. Made by Developer when exercising Developer's Reserved Rights.

ARTICLE VIII

ASSOCIATION RECORDS

Section 1. **CONDOMINIUM DOCUMENTS.** The Association must keep at the Site Manager's or Managing Agent's office an accurate copy of the Declaration, these Bylaws, the House Rules, a sample original Unit

Deed, and all public reports and any amendments to them. The Managing Agent must provide copies of those documents to Owners, tenants, 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.

Section 2. **MEMBERSHIP LIST.**

A. **THE ASSOCIATION MUST KEEP A LIST.** The Site Manager or Managing Agent or Board must keep an accurate and current list of names, addresses, mobile phone numbers, and email addresses of the Owners and of any other party or person that has managerial control of the Unit, or who serves as the point of contact for such Unit. The list must include, among others, anyone who is buying a Unit under any Agreement of Sale. It must also include the names and addresses of each Lender whose name and address is furnished to the Association. The list will be maintained at a place designated by the Board. The Managing Agent or Site Manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the Board. All membership lists are the property of the Association and any membership lists contained in the Managing Agent's or Site Manager's records are subject to this Section. The Managing Agent, Site Manager, or the Board may not use the information contained in the membership lists to create any separate list for the purpose of evading this Section.

B. **RELEASE OF LIST.** The Association will make the list of Owners available, at cost, to any Owner who asks for it; provided that despite anything else stated in the Condominium Documents, the Association will not furnish the list of Owners or any copy of it, or any other documents from which a membership list may be compiled, nor allow anyone to inspect or make copies or extracts of the list or any other documents from which a list may be compiled, until after each of these conditions is satisfied:

1) The Owner requesting the list must furnish to the Site Manager or Managing Agent or Board a duly executed and acknowledged affidavit stating that (i) the list will be used by that Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters, and (ii) the list will not be used by that Owner or furnished to anyone else for any other purpose.

2) The Owner requesting the list satisfies any other conditions to obtaining the list contained in the Act.

3) All other lawful conditions adopted by the Board pursuant to Section VIII.7.F herein have been fully satisfied.

Section 3. **NOTICE TO BOARD OF DIRECTORS/LENDERS.** An Owner who mortgages his or her interest in a Unit shall notify the Board of the name and address of his or her Lender and, within ten (10) business days after the recordation of the Mortgage, shall provide the Board with a true copy of the Mortgage as recorded in the Bureau. The Board shall maintain such documents in a file entitled "Mortgages of Units." All notices permitted or required to be given to an Owner pursuant to these Bylaws or the Declaration shall also be given to the Lender of such Unit if such Lender has delivered to the Board written request for such notices.

Section 4. **LENDER PROTECTION.** Notwithstanding any provisions to the contrary contained herein:

A. At all times, all taxes, assessments, and charges which may become liens under the laws of the State of Hawaii shall relate only to the individual Units and their appurtenant Common Interest in and to the Common Elements and the rights of the individual Units to the exclusive use of appurtenant Limited Common Elements, but not to the Common Elements in themselves as a whole.

B. The Declaration and these Bylaws shall not give any Owner or any other party priority over any rights of Lenders pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards.

C. No amendment to this Section shall affect the rights of any Lender whose Mortgage is recorded prior to the recordation of such amendment and who does not consent thereto.

D. Any holder, insurer, or guarantor of the Mortgage on any Unit in the Project shall be provided with written notice of the following: (i) any proposed termination of the Project; (ii) any actual or threatened condemnation or eminent domain proceeding or any casualty loss affecting a material portion of the Project or any portion thereof; (iii) any delinquency of sixty (60) calendar days in the payment of assessments or charges owned by Owner whose Unit is subject to such Mortgage; (iv) any significant damage or destruction to the Common Elements or to a Unit covered by the first Mortgage held or insured by such party; (v) other than in connection with the express rights reserved in the Declaration, any proposal to subdivide, encumber, sell, or transfer the Common Elements or any part thereof; provided, however, that the granting of easements for public or private utilities or for public purposes consistent with the intended use of the Common Elements of the Project and the relocation of any easements appurtenant to the Project over other lands, pursuant to the exercise of any right to relocate such easements by the owner of such other lands, shall not be deemed a transfer within the meaning of this clause; (vi) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (vii) any proposed action that requires the consent of a specified percentage of Lenders.

E. Upon written request to the Association, any holder, insurer or guarantor of a duly recorded first Mortgage of a Unit, whose request states the requesting party's name and address and the number of the mortgaged Unit, shall also be entitled to a copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Project or any portion thereof, at such party's expense for reproduction costs.

Section 5. **RELEASE OF INFORMATION.** The Board may provide any information available to it pertaining to a Unit or the Project to the Lender of a first Mortgage of such Unit and such Lender may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan, without liability to the Owner of the mortgaged Unit. During the Development Period, the Board must provide to Developer a clear and readable copy of all documents and information that it receives pursuant to Article VIII above within seven (7) calendar days after the Board receives it.

Section 6. **UNIT DEEDS.** Each Owner shall promptly record the Unit Deed or other conveyance to him or her of his or her Unit, and any Mortgage of his or her interest in his or her Unit, and file with the Board, through the Managing Agent, a recorded copy of the Unit Deed or other conveyance document. Each vendor of a Unit under an Agreement of Sale shall promptly record the Agreement of Sale or a memorandum thereof and file a copy of such document with the Board. Each Owner, vendor, vendee and Unit mortgagee shall promptly notify the Board of any changes to his or her or its address.

Section 7. **MINUTES AND RECORDS; EXAMINATION.**

A. **CURRENT FINANCIALS AND BOARD MINUTES.** The Association's most current financial statements and minutes of the Board meetings, once approved, will be available to any Owner at no cost on twenty-four (24) hour loan, at a convenient location designated by the Board.

B. **MINUTES.** Minutes of all meetings will be available within seven (7) calendar days after approval by the Board, and unapproved final drafts of the minutes of a meeting will be available within sixty (60) calendar days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. Minutes of meetings of the Board and the Association for the current and prior year will be available for examination by Owners at convenient hours at a place designated by the Board. Minutes of Board meetings must include the recorded vote of each Director on all motions except motions voted on in executive session. If notice of a Board meeting was properly given but a Director is absent, the minutes must say so. Copies of meeting minutes will be provided to any Owner upon the Owner's request provided that the Owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

C. **FINANCIAL RECORDS.** Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers (or other comparable lists or schedules), insurance policies, contracts, and invoices of the Association for the current and prior years and delinquencies of ninety (90) calendar

days or more will be available for examination by Owners at convenient hours at a place designated by the Board; provided that:

1) The Board must 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 or Owners or both; and

2) Owners pay for administrative costs in excess of eight (8) hours per year. Copies of these items will be provided to any Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

D. VOTING RECORDS. Owners have the right to view proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election for a period of thirty (30) calendar days following any meeting of the Association; provided that:

1) The Board must require Owners to furnish the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or Owners or both; and

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

Proxies and ballots may be destroyed following the thirty (30) calendar day period. Copies of tally sheets, Owners' check-in lists, and the certificate of election from the most recent meeting of the Association will be provided to any Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

E. OTHER RECORDS. Owners may file a written request with the Board to examine other documents. The Board must give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

F. PROTECTION OF ASSOCIATION INFORMATION. To the extent permitted by law, the Board may establish reasonable additional requirements and conditions to the inspection by Owners (including Directors) of the list of Owners or to furnishing information from the register or other books, papers or records of the Association especially when that information might be used to compile a list of Owners. For example, the Board may set rules governing (1) when notice must be given to the Association or Managing Agent by the person desiring to inspect the Association's records, (2) hours and days of the week when an inspection may be made, (3) payment of the cost of reproducing copies requested by the party making the inspection, to the extent not specified elsewhere in these Bylaws, and (4) the posting of a bond.

Section 8. **RECORDS; EXAMINATION; DISPOSAL.**

A. RECEIPTS, EXPENDITURES, AND DELINQUENCIES. The Managing Agent or Board must keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. The Managing Agent or Board must also keep monthly statements indicating the total current delinquent dollar amount of any unpaid Assessments for Common Expenses.

B. LOCATION OF RECORDS. All records and the vouchers authorizing the payments and statements will be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as the Board chooses. The records may be kept and maintained on paper or in electronic, magnetic, or other form accessible using electronic data processing equipment.

C. DISPOSAL OF RECORDS. The Managing Agent may dispose of records of the Association at the times and under the conditions stated in the Act or, if it does not address it, then at the times and under the conditions that the Board chooses.

ARTICLE IX

GENERAL PROVISIONS

Section 1. **WHO CAN SIGN CHECKS.** All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Association must be signed or endorsed as stated in a resolution adopted by the Board. If no resolution is adopted, the Board may authorize any Officer or Officers, agent or agents, to sign or endorse the same. The same rule applies to signing and delivering other documents authorized by the Condominium Documents or by action of the Board or the Association.

Section 2. **WHO CAN SIGN CONTRACTS AND OTHER DOCUMENTS.** Except as otherwise provided in these Bylaws, the Board may authorize any Officer or Officers, agent or agents, to enter into any contract or sign any document for the Association. This authority may be general, or it may be limited to specific things. Unless authorized by the Board, no Officer, agent, or employee has any power or authority to bind the Association or to pledge its credit or to make it liable for any purpose or for any amount.

Section 3. **AMENDMENT.**

A. **AMENDMENT BY VOTE OR WRITTEN CONSENT.** These Bylaws may be amended at any time by the vote or written consent of sixty-seven percent (67%) of all Owners, provided that:

1) Each item required by the Act to be set forth in these Bylaws must always be included in these Bylaws; and

2) Such amendment shall be subject to all limitations and requirements regarding amendments to the Condominium Documents contained in the Declaration.

B. **DEVELOPER'S RESERVED RIGHTS TO AMEND.** Notwithstanding anything set forth in this Section to the contrary, Developer (pursuant to its Developer's Reserved Rights) has the right to amend these Bylaws to the extent set forth in the Declaration.

C. **RECORDING.** A duly authorized amendment to these Bylaws will take effect only after it is signed by the proper Officers of the Association and recorded at the Bureau.

D. **PROPOSAL OF AMENDMENTS.** Any proposed amendment to these Bylaws with the rationale for such proposal may be submitted by the Board or by a volunteer Owners' committee. If submitted by the volunteer Owners' committee, it must be accompanied by a petition signed by not less than twenty-five percent (25%) of the Owners as shown in the Association's records of ownership maintained by the Board as provided in Article VIII, Section 2.A above. The proposed amendment, the rationale, and the ballots for voting on the amendment must be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within thirty (30) calendar days after the Board receives the petition. The vote or written consent required to adopt the proposed amendment to these Bylaws will be as set forth in Article IX, Section 3.A above; provided that the vote or written consent must be obtained within three hundred sixty-five (365) calendar days after mailing for a proposed amendment submitted by either the Board or a volunteer Owners' committee. If the proposed amendment is duly adopted, then the Board must record the amendment. The volunteer Owners' committee cannot submit a petition for a proposed amendment to these Bylaws that is substantially similar to the amendment previously mailed to the Owners within one (1) year after the original petition was submitted to the Board. This Section does not preclude any Owner or voluntary Owners' committee from proposing any amendment to these Bylaws at any annual meeting of the Association.

E. **RESTATEMENT OF BYLAWS.** Notwithstanding anything set forth in the Condominium Documents to the contrary, the Association has the authority under the Act:

1) To restate these Bylaws to set forth all amendments to them; and

2) To amend these Bylaws as required to conform to the provisions of the Act or any other law or regulation adopted by a governmental authority.

The Association may amend or restate these Bylaws if the Board adopts a resolution authorizing it. No restated or amended Bylaws will be effective unless they are recorded at the Bureau.

Section 4. **NOTICE.** Except as otherwise expressly provided in these Bylaws, all notices must be given as follows:

A. Notice to the Association must be given to each Director. The notice may be given personally or by mail or messenger service. The notice must be mailed or delivered to the Board members at their addresses as shown on the membership list, or to any other address that the Board designates by notice to all Owners and Lenders.

B. Notice to an Owner may be given by delivering such notice in person, by messenger service or by mail to his or her address as it is shown on the membership list or by electronic mail or facsimile if such Owner has authorized transmission to the electronic mail address or facsimile number designated by the Owner for delivery of notices of meetings pursuant to Section II.10 of these Bylaws.

C. Notice to an Eligible Mortgage Holder or Lender may be given by delivering such notice in person or by mail or messenger service. The notice must be mailed or delivered to the Eligible Mortgage Holder's or Lender's address as it is shown on the membership list, or to any other addresses that the Eligible Mortgage Holder or Lender designates by notice to the Board.

D. All notices must be in writing. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If sent by electronic mail or facsimile to the electronic mail address or facsimile number designated by the Owner for notices of meetings pursuant to Section II.10 of these Bylaws the notice will be deemed given upon electronic confirmation of delivery. Notwithstanding the prior sentence to the contrary, notices of addresses and changes of addresses will be deemed given only when they are actually received.

Section 5. **WARD VILLAGE MASTER PLANNED COMMUNITY.** The Project is one of multiple high-rise condominium projects anticipated to be developed as part of a master planned community called "**Ward Village.**" The Project will be part of this urban, mixed-use master development located in central Kaka'ako, Honolulu. Capitalized terms used in this Section not otherwise defined in these Bylaws or the Declaration shall be defined as set forth in the Master Declaration and Master Bylaws.

Being a part of Ward Village, the Project is subject to the Master Declaration and Master Bylaws and the Ward Village Rules ("**Master Rules**"), as the same may be amended and/or supplemented from time to time, and all rules and regulations promulgated thereunder, including, without limitation, any assessments, voting rights, design restrictions, and the design review process set forth therein, if applicable. By acquiring an interest in the Project, each Owner agrees to carefully review, observe and comply with all covenants, conditions, restrictions, and other requirements to which the Project is subject under the Master Declaration and Master Bylaws, including memberships in the Master Association and the payment of such sums as may be assessed pursuant to such Master Declaration or Master Bylaws ("**Master Assessments**") for the Project's share of common expenses for Ward Village. Further, Developer shall have the reserved right, without the consent of any Owners or such Owners' mortgagees, to amend these Bylaws and to enter into any agreements and to grant easements and to do all things necessary and convenient to effect and implement the purposes of the Master Declaration, Master Bylaws, and Master Rules, and to execute, file and deliver any and all documents necessary to effect the same, including, but not limited to, any amendments to these Bylaws, the Declaration, and the Condominium Map.

Owners will not become members of the Master Association. The Association will be the member of the Master Association for the Project and will have voting rights, as well as be responsible for certain shared costs for the maintenance and upkeep of any master development common areas and other services shared among the parcels and projects in Ward Village. The Project and each Unit will be allocated the number or weight of votes assigned in

accordance with the formula set forth in the Master Declaration, subject to any limitations set forth in the Master Declaration and Master Bylaws. On any Master Association matter calling for a vote, the Board shall cast votes as a block for the Owners of each Land Use Classification within the Project. Such block vote shall be cast in accordance with process and procedure for casting Association votes, as set forth in the Declaration and these Bylaws.

When a vote is called for concerning the assignment, use, repair, reconstruction, or continued operation of the Limited Benefit Area, if the Limited Benefit Area is assigned to less than all of the Units within the Project, then the vote for such Project shall be cast by the Owners of the Units within the Project to which the Limited Benefit Area is assigned. In such case, the votes shall be tallied individually for each Unit and not as a block vote for the Project.

The Master Association has the right to lien a Unit in the event of nonpayment of any Master Assessments. The Master Declaration sets forth a "Declarant Control Period," during which the Master Declarant may appoint a majority of the members of the Master Association's board of directors, and a "Development and Sale Period," during which the Master Declarant may exercise additional rights relating to the development and sale of properties comprising or to comprise Ward Village.

In addition to any design restrictions and/or rules and regulations in the Condominium Documents, Owners will be subject to the additional design restrictions and/or rules and regulations promulgated by the Master Declarant or the Master Association pertaining to use of Ward Village. The Master Declaration and Master Bylaws set forth sanctions for noncompliance within the provisions in the master documents.

Section 6. **CAPTIONS.** The captions describing each Section herein are for convenience only and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

Section 7. **PRONOUNS.** Pronouns (for example, "his" or "her") used in these Bylaws include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

Section 8. **INTERPRETATION.** The provisions of these Bylaws will be interpreted to carry out the purpose of creating a condominium association in accordance with the Declaration and the Act.

Section 9. **EFFECT OF INVALID PROVISIONS.** The provisions of these Bylaws are severable. Invalidation of any part of these Bylaws by judgment, decree, or order shall in no way affect any other provisions of these Bylaws, each of which shall remain in full force and effect.

(The remainder of this page is intentionally left blank. Signature page to follow.)

IN WITNESS WHEREOF, Developer, acting as the initial Association, hereby adopts the foregoing Bylaws as the Bylaws of the Association of Unit Owners of 1100 Ala Moana on behalf of the Association this 2nd day of OCTOBER, 2019.

Developer:

VICTORIA PLACE, LLC,
a Delaware limited liability company

By



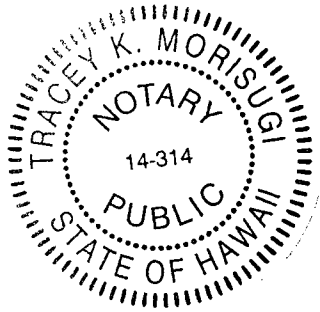
Its VICE PRESIDENT

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 2nd day of October, 2019, before me appeared Doug Johnston, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Tracey K. Morisugi
Print Name: Tracey K. Morisugi
Notary Public, in and for said State of Hawaii

My commission expires: 9/14/2022

NOTARY CERTIFICATION STATEMENT

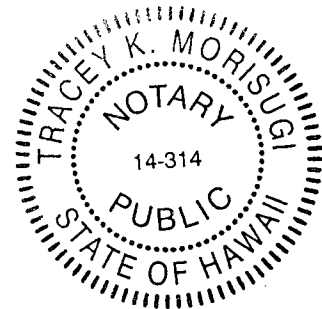
Document Identification or Description: **BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF 1100 ALA MOANA**

Document Date: _____ or Undated at time of notarization.

No. of Pages: 34 Jurisdiction: First Circuit
(in which notarial act is performed)

Tracey K. Morisugi 10.2.19
Signature of Notary Date of Notarization and Certification Statement

Tracey K. Morisugi
Printed Name of Notary



(Official Stamp or Seal)

FEE OWNER JOINDER

Victoria Ward, Limited, a Delaware corporation, as owner of the fee simple interest of a portion of the Land described in Exhibit A to the Declaration ("Landowner"), hereby joins in these Bylaws.

Landowner has not reviewed the Bylaws for adequacy or compliance with law, and expressly disclaims any responsibility for these Bylaws, the matters set forth herein, and/or any other documents or agreements relating to the Project, including, but not limited to, the Declaration and any developer's public report with an effective date issued by the Commission under the Act relating to the Project. Developer, the Association, all Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and Occupants of Units and their employees, business invitees, and any other Persons who may use any part of the Project do so with the understanding that Landowner has no liability hereunder, and each and every one of the foregoing shall be deemed to the fullest extent permitted by law to have waived as against Landowner, and to have released Landowner as to, any claim relating to the Project. No action taken by Developer, the Association or any other Person pursuant to these Bylaws shall be deemed to be the act of Landowner. Notwithstanding anything provided to the contrary, under no circumstances will Landowner have any liability for expenses under these Bylaws except to the extent that Landowner is an Owner of a Unit in the Project and a member of the Association. No officer, director or employee of Landowner shall, by reason of being an officer, director or employee of Landowner, have any personal liability under the terms of this Bylaws.

VICTORIA WARD, LIMITED, a Delaware corporation

By  _____
Its VICE PRESIDENT

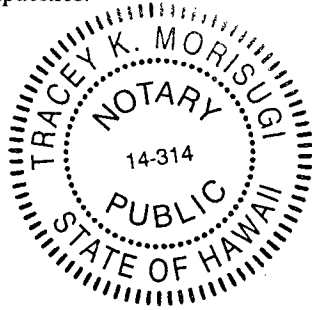
"Landowner"

STATE OF HAWAII

SS:

CITY AND COUNTY OF HONOLULU

On this 2nd day of October, 2019, before me appeared Doug Johnstone and _____ each to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Tracey K. Morisugi
Print Name: Tracey K. Morisugi
Notary Public, in and for said State of Hawaii
My commission expires: 9/14/2022

NOTARY CERTIFICATION STATEMENT

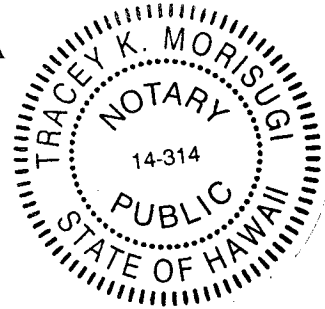
Document Identification or Description:
BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF 1100 ALA MOANA

Document Date: _____ or Undated at time of notarization.

No. of Pages: 2 Jurisdiction: First Circuit
(in which notarial act is performed)

Tracey K. Morisugi 10.2.19
Signature of Notary Date of Notarization and
Certification Statement

Tracey K. Morisugi
Printed Name of Notary



(Official Stamp or Seal)