

judgment for the unpaid amount of any such assessment; provided, that no such action shall be filed until fifteen (15) days after the date on which the unpaid amount came due. Any such action shall be brought in the name of the Association. Any judgment rendered in any such action shall include a sum for reasonable attorney's fees, costs and expenses of collection incurred by the Association in such amount as the court may adjudge against such owner in default. Upon full satisfaction of any such judgment, the Board of Directors, through the President, Secretary or Treasurer, shall execute and deliver to the judgment debtor an appropriate instrument to evidence such satisfaction.

If the Association should as provided by law foreclose its lien upon an apartment for any unpaid assessment for common expenses or for any unpaid special assessment, while the foreclosure proceeding is pending, and until title to the apartment has vested in a purchaser following the foreclosure sale of the apartment: (i) the owner of the apartment shall continue to be personally liable for the full amount of any additional special assessment or additional assessment for common expenses chargeable to the apartment; and (ii) the owner of the apartment shall be obligated to pay the Association a reasonable rental for the continued right to the use and possession of the apartment, which rentals shall be applied by the Association to discharge any accrued and unpaid assessment for common expenses, or any accrued and unpaid special assessment, which constitutes a lien upon the apartment.

17. Association's Lien Upon Apartment For Delinquent Assessments.

The Board of Directors may in their discretion cause a notice to be filed, in the name of the Association, with the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and with the Bureau of Conveyances of the State of Hawaii, that shows the existence of the Association's lien upon an apartment for any delinquent assessment. The Board of Directors shall in their discretion determine the form and content for such notice of lien to show such delinquent assessment. The Association's lien upon an apartment for common expenses, or a special assessment, shall exist and be perfected without the filing of a notice thereof with such Office of the Assistant Registrar of the Land Court or with such Bureau of Conveyances. The Board of Directors, in the name of the Association, shall, in their discretion, as provided by law, take such steps as they deem to be in the best interest of the Association, to enforce or to protect the Association's lien upon an apartment for any delinquent common expenses or special assessment (together with any accrued interest, collection costs, and reasonable attorney's fees).

18. Expenses Of Enforcement.

Every apartment owner shall pay to the Association promptly upon demand all costs and fees including reasonable attorney's fees incurred by or on behalf of the Association for: (1) collecting any delinquent assessment against the owner's apartment; (2) enforcing or protecting the Association's lien

upon the owner's apartment; (3) enforcing any provision of the Declaration, these Amended By-Laws, or the Association's administrative or house rules.

19. Certificates Of Payment:

The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not any common expense or special assessment is due and payable for a particular apartment, and, if such a delinquency exists, the amount of any such delinquent common expense or special assessment, and the date the same came due. Any such certificate signed by an officer of the Association shall be binding and conclusive upon the Association and may be relied upon by any person as an accurate statement of the facts shown therein.

20. Transfer Of Ownership Of Apartment.

The Secretary shall maintain at the Property a list of the names and addresses of the apartment owners, a list of the names and addresses of the voting owners, and a list of the names and addresses of each apartment purchaser under an agreement of sale. The Secretary shall not register any change in the ownership of an apartment until he has been furnished with a certified copy of a recorded (with the Office of the Assistant Registrar of the Land Court of the State of Hawaii and with the Bureau of Conveyances of the State of Hawaii) instrument to evidence such transfer. The Secretary shall not register any change in the designation of a voting owner until he has been furnished with an appropriate notice thereof, and, if a voting owner has been irrevocably designated, the name of such irrevocably designated voting owner shall not be removed from

such list without his written consent or release. The Association, each apartment owner and voting owner, the Board of Directors, President, Secretary, Treasurer and Manager or Managing Agent, shall have a right to rely upon such lists and shall have a right to regard any person whose name appears on such list as the owner, voting owner, or purchaser, as the case may be, of the apartment specified. The Board of Directors shall have the right to fix and collect for the Association a reasonable, uniform fee to cover the costs and expenses incurred by the Association in connection with the transfer of an apartment. Any unpaid transfer fee shall be a lien against the apartment transferred with like effect, and to the same extent, as any assessment for common expenses, and shall bear interest at the rate of twelve percent (12%) per year, or at such higher rate of interest as may be permitted by law, from and after fifteen (15) days following the date on which the same came due.

21. Collection Of Rent From Tenants.

If an owner shall at any time rent or lease his apartment and shall thereafter be in default in the payment of any common expense, special assessment, or any other payment due the Association, for which his apartment is liable, the Board of Directors may, at its option, and so long as such default shall continue, demand and receive from such tenant of the owner up to an amount sufficient to pay all of such unpaid common expense, special assessment, or other payment due the Association, including interest, and any such payment of rent to the Board of Directors by the tenant shall be a sufficient discharge of such tenant, as between such tenant and the owner

to the extent of the amount so paid; such demand for, or the acceptance of, such rent from any tenant shall not be deemed to be a release or discharge of any of the obligations or duties owed by the owner. If the Board of Directors shall make such demand upon any tenant as aforesaid, such tenant shall not have the right to question the right of the Board of Directors to make such demand, but such tenant shall be obliged to make such payments to the Board of Directors, with the effect as aforesaid. If and when a mortgagee of such an apartment obtains the appointment by a court of a receiver (or a similar court officer) to collect any of such rent, then and thereafter the right of the Association to collect such rent from a tenant of the apartment owner shall be subordinate and subject to the duty of such receiver to collect such rent and to apply the same in satisfaction of the indebtedness secured by the mortgage of such apartment.

22. Failure To Determine Common Expenses.

Any failure by the Board of Directors to determine the common expenses for any ensuing fiscal year, or the failure of the Board of Directors to notify any or all of the apartment owners of the amount of such common expenses, shall not be deemed to be a waiver or release of any apartment or of any apartment owner of any obligation or liability for such common expenses. In such event, the last determination of the Board of Directors as to the total amount of such common expenses shall continue, from year to year, and until the Board of Directors make such determination, and each apartment and apartment owner shall continue to be liable for the share of such common expenses

charged to each apartment.

23. Waivers.

The failure of the Board of Directors to require, in any one or more instances, a strict performance of or compliance with any of the limitations, restrictions, covenants or conditions herein contained by any apartment owner, or to exercise any right or option herein contained, or to serve or receive any notice, or to institute any action, shall not be construed as a waiver or relinquishment of such limitation, restriction, covenant, condition, right, option or right to serve or receive notice, but the same shall continue and remain in full force and effect. Nor shall the receipt by the Board of Directors, or any of its agents, of any payment from any apartment owner be construed as such a waiver.

24.1. Adoption Of Administrative Rules And Regulations.

The voting owners, by the vote of a majority of them present at any meeting of the Association for which the notice of meeting shall have stated that the adoption or amendment of administrative rules and regulations will be considered, shall have the power to adopt, and from time to time amend, administrative rules and regulations governing the details of the operation and use of the common elements, and such rules and regulations with respect to the use of the apartments as may be deemed reasonable and necessary for the common welfare.

24.2. Sanctions For Violation Of Administrative Rules/Regulations.

The Board of Directors shall have the power to impose the following sanctions for the violation of any Administrative Rule/Regulation:

(a) The power to order an apartment owner to stop violating an Administrative Rule/Regulation (a "Performance Order").

(b) The power to suspend the right of an Apartment Owner, and all persons who claim under him, to use those parts of the common elements which are not required for access to his apartment for a period not to exceed thirty (30) days.

(c) The power to impose a fine payable to the Association which shall not exceed the amount of FIFTY and 00/100 DOLLARS (\$50.00) for each violation. If after the issuance of a Performance Order an apartment owner willfully fails or refuses to stop violating the Administrative Rule/Regulation, or fails to correct the condition which caused such violation of the Administrative Rule/Regulation, each day thereafter during which the apartment owner continues to violate such Administrative Rule/Regulation shall be the basis for the imposition of a fine which shall not exceed the amount of FIFTY and 00/100 DOLLARS (\$50.00), provided, that the aggregate amount of all

finer for any such continuing violation shall not exceed the sum of ONE THOUSAND and 00/100 DOLLARS (\$1,000.00). The Board of Directors shall from time to time adopt and publish a "Schedule Of Maximum Fines For Administrative Rule/Regulation Violations" which shall prescribe the maximum fine that may be imposed for the violation of each particular Administrative Rule/Regulation.

(d) The power to suspend, or to condition, the imposition of a fine for a violation of an Administrative Rule/Regulation.

(e) After the second willful violation of a particular Administrative Rule/Regulation by any occupant of an apartment in any calendar year, the power to require that the owner of such apartment give a bond, naming the Association as obligee, with a corporate surety licensed to do a surety business in the State of Hawaii as surety, to continue for a term not to exceed twenty-four (24) months, in a principal amount, to be determined by the Board of Directors, approximately equal to a judgment for damages, costs and expenses that the Association and any aggrieved apartment owner might reasonably expect to obtain against such apartment owner in an action for damages or injunctive relief, or both, brought under HAW. REV. STAT. Section 514A-88, for any past violations and the next violation of such



Administrative Rule/Regulation. The Board of Directors shall give such apartment owner notice of the amount of the bond required, and such bond shall be delivered to the Treasurer by such apartment owner within thirty (30) days after the delivery of such notice. If such apartment owner should fail to give such bond, then there shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses, in the principal amount of the required bond after the failure of such apartment owner to give such bond. The right of the Association to foreclose such lien shall be conditioned upon the entry of a judgment in favor of the Association and an aggrieved apartment owner under HAW. REV. STAT. Section 514A-88. In the event of the foreclosure of such a lien, the proceeds received in satisfaction of such lien shall be distributed or applied in accordance with the judgment entered under HAW. REV. STAT. Section 514A-88.

(f) If an Administrative Rule/Regulation has been violated by a tenant of an owner, and such tenant willfully fails or refuses to stop such violation, the power to enter into the apartment in which, or as to which, such violation exists, and to evict such tenant therefrom, as the irrevocably appointed agent

of the owner; if the Association shall incur any expense in such eviction, the full amount of such expense shall be a lien against such apartment with like effect, and to the same extent, as any assessment for common expenses.

24.3. Imposition Of Sanctions For Violation Of Administrative Rules/Regulations.

Any officer of the Association or any apartment owner may by a written complaint filed with the Board of Directors request the Board of Directors to impose sanctions upon an apartment owner for an alleged violation of an Administrative Rule/Regulation. The complaint shall describe the nature of the alleged violation of a particular Administrative Rule/Regulation. Upon the filing of a complaint the Secretary shall immediately fix a date, time and place for the hearing thereof by the Board of Directors (which date shall not be less than five days after the delivery of notice of the hearing upon the apartment owner alleged to be in default) and shall forthwith deliver a copy of the complaint and the notice of hearing to the apartment owner alleged to be in default.

At the hearing the Board of Directors shall hear the apartment owner alleged to be in default, and all others interested, and shall hear and consider such testimony and evidence as it deems pertinent. The Board of Directors may exclude and refuse to hear irrelevant, immaterial or unduly repetitious testimony or evidence. The Board of Directors shall make a written decision of its findings and conclusions in the matter after the hearing, and shall file the same with the Secretary. If the Board of Directors concludes that the

apartment owner alleged to be in default has violated an Administrative Rule/Regulation, the written decision shall specify the sanctions to be imposed upon that apartment owner. The written decision entered by the Board of Directors after such a hearing shall be final and binding among the apartment owners and the Association and the same shall not be subject to judicial review or appeal. The Secretary shall forthwith deliver a certified copy of the written decision entered by the Board of Directors in the matter to the apartment owner alleged to be in default.

25. Addition To And Alteration Of Apartment.

An owner shall not undertake any addition to, or the alteration of, the structural parts of his apartment without first obtaining the written consent of the Board of Directors or, failing to obtain such consent, the consent of a majority of the voting owners present at any Association meeting. An owner who seeks such consent shall first file with the Board of Directors a copy of the plans for the proposed alteration or addition which shall have been prepared by an architect or engineer licensed by the State of Hawaii. Such consent shall not be required for the redecoration, repainting or any aesthetic change made within any apartment. The cost of any such addition to, or the alteration or repainting of, an apartment shall not be charged to the Association. The Board of Directors shall have the right to require that any addition to, or the alteration of, an apartment shall not be commenced until after the contractor performing the work obtains a construction performance and payment bond for the work as provided under section 39.

26. Liability Insurance.

The Board of Directors shall obtain and pay the premium for a policy or policies of general liability insurance in which the limits of liability shall be not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for injury to any one person, ONE MILLION DOLLARS (\$1,000,000.00) for injury to more than one person in any one accident or occurrence, and ONE HUNDRED THOUSAND DOLLARD (\$100,000.00) against claims for property damage. Such policy or policies shall cover liability incurred in respect of the common elements of the Property and any sidewalks and sidewalk areas adjacent to the Property. Such policy or policies shall insure each apartment owner, any apartment mortgagee, any occupant of every apartment, each member of the Board of Directors, their agents and the agents of the Association, the Manager or Managing Agent employed by the Board of Directors, and the agents of such Manager or Managing Agent. The premiums for such insurance shall be a common expense.

27. Casualty Insurance.

The Board of Directors shall obtain and pay the premiums for a policy or policies of insurance against the loss or damage of the Property by fire, and such other insurable perils as the Board of Directors shall deem to be reasonably necessary, for the full replacement value of the Property. Unless the voting owners provide otherwise, such insurance shall be issued in the name of the Board of Directors, as trustees for the apartment owners, and their respective mortgagees, if any, as their respective interest shall appear, in proportion to the common interests appurtenant to the apartments owned by each of them. The premiums for such

insurance shall be a common expense. The voting owners, by the vote of a majority of them present, shall have the power to designate any bank or trust company licensed to do business within the State of Hawaii, and the power to revoke any such designation previously made, as the insurance trustee (the "INSURANCE TRUSTEE") to receive any proceeds of insurance. Any such designation, or revocation, shall be effective upon the acceptance thereof by the issuing insurer.

The insurer shall fairly apportion any such insurance proceeds between the common elements and each apartment damaged or destroyed in proportion to the relative loss suffered by the common elements and each apartment. The Insurance Trustee shall permit the Board of Directors to use that portion of such insurance proceeds paid for the loss suffered by the common elements for the repair and reconstruction of the common elements. The Insurance Trustee shall permit the Board of Directors to use that portion of such insurance proceeds paid for the loss suffered by any apartment for the repair and reconstruction of such apartment.

All such policy or policies of insurance (the "POLICY") shall:

- (a) Contain no provision limiting or prohibiting an apartment owner from obtaining other like insurance, but shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration,

or contribution, by reason of any such other insurance;

(b) Contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the Property, whether or not within the control of the Board of Directors, and, if obtainable, shall not relieve the insurer from liability by reason of any breach of warranty or condition caused by the Board of Directors or any owner of an apartment, or any occupant of an apartment, or by reason of any act or neglect of the Board of Directors, any owner of an apartment, or any occupant of an apartment;

(c) Contain a waiver by the insurer of any right or subrogation for any loss paid by the insurer under the policy against any member of the Board of Directors, any apartment owner, or the occupant of any apartment;

(d) Shall provide that the policy cannot be cancelled or substantially modified by the insurer except by giving the Board of Directors, each apartment owner, and each mortgagee of an apartment who has requested such notice from the insurer, not less than thirty (30) days prior written notice of such cancellation or modification;

(e) Contain a provision waiving any right of the insurer to repair, rehabilitate or reconstruct the Property, if after a loss the voting owners vote not to repair, rehabilitate or reconstruct the Property.

(f) Contain a standard mortgagee clause which:

(i) Shall name the mortgagee (the "MORTGAGEE") of any mortgage affecting any apartment whose name shall have been given to the Association and to the insurer;

(ii) Shall provide that the policy, as to the interest of the Mortgagee, shall not be invalidated by any act or neglect of the Board of Directors, an apartment owner, or the occupant of any apartment;

(iii) Shall waive (A) any provision invalidating such mortgagee clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or vacancy, (B) any requirement that the Mortgagee pay any premium for the policy (provided, that if the Board of Directors fails to pay any premium due or to become due under the policy, the Mortgagee may pay the same prior to termination of the policy by reason of nonpayment of such premium), (C) any contribution clause, and (D) any right to be subrogated to the right of any mortgagee against an apartment owner, the occupant of an apartment, or the Board of Directors, or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to

the extent of insurance proceeds received by and retained by the Mortgagee if the insurer shall claim no liability against the mortgagor or apartment owner, but without impairing the Mortgagee's right to sue any person for any loss or deficiency not covered by the insurance proceeds;

(iv) Shall provide that, without affecting the protection afforded to the Mortgagee by such mortgagee clause, any insurance proceeds payable under such clause, if in excess of ten thousand dollars (\$10,000.00), shall be payable to the Insurance Trustee.

(v) Shall provide that any reference to a mortgagee in the policy shall include all mortgagees of any apartment in the priority of their respective liens upon the apartment.

(g) Provide that at the inception of the policy, and on each anniversary date thereof, the insurer shall furnish the Board of Directors with a written summary (the "INSURANCE SUMMARY") of the policy in layman's terms, including without limitation a description of the policy, the coverage provided by the policy and the limits thereof, the amount of the annual premium, and the renewal dates.

The policy shall be delivered to the Board of Directors with a certificate signed by a licensed insurance broker or licensed agent certifying that the policy includes all of the provisions herein set forth and complies with



and satisfies all of the requirements herein set forth (the "INSURANCE CERTIFICATE"). Upon the receipt of each Insurance Summary and Insurance Certificate the Board of Directors shall forthwith deliver copies of the same to each apartment owner.

Any proceeds of insurance paid for any damage or destruction suffered by the Property, or any part thereof, shall be held by the Board of Directors or by the Insurance Trustee free of any claim by any apartment owner, or his creditors, the holder of any lien upon any apartment, or the creditors of the Board of Directors or of the Association, or of any receiver, assignee or trustee in bankruptcy for any such creditor, and the same shall be held free of any action by any such creditor or on behalf of any such creditor and free of any writ of execution, attachment or garnishment obtained by any such creditor or on behalf of any such creditor, and free of any action to foreclose any lien upon any apartment, until the portions of the Property so damaged or destroyed be reconstructed (and such proceeds of insurance may be used to pay for such reconstruction), or the voting owners determine that the same should not be reconstructed, as the case may be.

28. Repair And Reconstruction Of Common Elements.

The Board of Directors shall be responsible for the repair, rehabilitation and reconstruction of the common elements. The Board of Directors shall have the power to expend from the funds of the Association set aside for such purpose and from any proceeds of insurance available to the Board of Directors for the repair and reconstruction of the common elements such amounts as may be necessary for the

repair or rehabilitation of the common elements. Any such repair or rehabilitation of the common elements shall be in accordance with the original plans and specifications therefor, to the extent practicable.

If any of the common elements should suffer substantial damage or destruction as the result of any casualty, the Board of Directors shall call and hold a special meeting of the Association within ninety (90) days after such damage or destruction shall have occurred. The Board of Directors shall, before the assembly of such special meeting, obtain not less than two (2) firm bids from two or more responsible building contractors for the reconstruction of the common elements so damaged or destroyed, in accordance with the original plans and specifications therefor, to the extent practicable. At such special meeting the voting owners shall determine whether the common elements so damaged or destroyed should be reconstructed. The Board of Directors shall proceed with the reconstruction of such damaged or destroyed common elements unless at such special meeting of the voting owners a seventy-five percent (75%) majority of the voting owners of all the apartments vote in favor of a resolution instructing the Board of Directors not to proceed with such reconstruction. If the aggregate amount of the proceeds of insurance available to the Board of Directors for the repair and reconstruction of the common elements and any other funds of the Association set aside for such purpose should be less than the aggregate estimated cost for the reconstruction of such common elements (the "DEFICIENCY"), then, unless at such special meeting of the .. voting owners a seventy-five percent (75%) majority of the voting

owners of all the apartments vote in favor of a resolution instructing the Board of Directors not to proceed with such reconstruction, a special assessment shall be levied and shall exist upon the apartments (without any further vote or action on the part of the voting owners) in the amount of the Deficiency, which shall be apportioned among the apartments in proportion to the common interest appurtenant to each apartment, with the same effect (except as herein otherwise provided) set forth in section 14. Such special assessment for the Deficiency shall be due and payable at such time or times as the Board of Directors shall provide.

29. Repair And Reconstruction Of Apartments.

Each apartment owner shall be responsible for the repair, rehabilitation and reconstruction of the parts of his apartment (exclusive of the common elements that enclose each apartment). Any such repair, rehabilitation or reconstruction shall be in accordance with the original plans and specifications therefor, to the extent practicable, and shall be subject to the approval of the Board of Directors.

If an apartment should suffer any damage or destruction as the result of any casualty, the apartment owner shall immediately cause the part of his apartment so damaged or destroyed to be reconstructed in accordance with the original plans and specifications therefor, to the extent practicable, and, in such event, if any common element has been damaged or destroyed by the same casualty, the Board of Directors shall arrange for and coordinate such repair and reconstruction of such apartment, in conjunction with the reconstruction of the

damaged or destroyed common element, for and on behalf of such apartment owner. The Board of Directors shall have the power to, and shall, expend from that portion of any proceeds of insurance held by the Board of Directors, or by the Insurance Trustee, which has been allocated by the insurer for the loss suffered by such apartment, for the repair and reconstruction of such apartment. If in such event such proceeds of insurance should not be sufficient to complete the reconstruction of such apartment, the apartment owner shall be obliged to pay the Board of Directors the full amount of such deficiency upon the completion of such reconstruction. If such apartment owner should fail to pay the amount of such deficiency, then there shall be a lien against the apartment of such owner with like effect, and to the same extent, as any assessment for common expenses, and such lien may be foreclosed, as provided by law, at any time after the failure of such apartment owner to make such payment.

If any apartment should suffer any damage or destruction as the result of any casualty, and if, in such event, any common element has been damaged or destroyed by the same casualty, and if the Board of Directors should be instructed by the voting owners not to proceed with the reconstruction of such damaged or destroyed common element, and if the Board of Directors should therefor lack the power to reconstruct such damaged or destroyed common element, then, and in such event, such apartment owner shall not be obliged to cause his apartment so damaged or destroyed to be reconstructed.

30. Performance And Payment Bond.

Before undertaking or permitting the repair, rehabilitation or reconstruction of any common element, or any part of any apartment, and if the total cost thereof exceeds FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00), the Board of Directors shall cause the contractor performing the work to obtain a bond, with a surety company licensed to do business in the State of Hawaii as surety, in a principal amount equal to one hundred percent (100%) of the cost of such construction, guaranteeing the full and faithful performance of such construction contract and the full payment of all subcontractors, laborers, and materialmen, engaged in the work, and naming each apartment owner, their respective mortgagees, if any, and the Association, as obligees.

31. Abatement Of Common Expenses.

If, as a result of the damage or destruction of some portion of the common elements by fire or other casualty, an apartment be rendered uninhabitable, then the common expense for which such apartment be liable shall abate from the time such damage or destruction of the common elements shall have occurred until such damage or destruction of the common elements be repaired or reconstructed, or the voting owners determine that such damage or destruction of the common elements shall not be reconstructed, as the case may be; and the common expense for which such apartment would normally be liable shall be deemed to be common expenses for which all of the other apartments shall be liable in accordance with their relative common interests. The liability of such apartment for special assessments shall not abate; nor shall the liability of such apartment, or the owner thereof, to pay real property taxes assessed against the apartment by the State of Hawaii or the County of Maui abate.

32. Clearing Debris.

After the common elements have suffered substantial damage or destruction and after the voting owners have determined that the common elements so damaged or destroyed should not be reconstructed, but either before or after the initiation of an action to partition the Property, the Board of Directors shall be entitled to expend from the proceeds of any insurance received as a result of such damage or destruction such amount as may be necessary to effect the removal from the Land of any building, structure or improvement damaged or destroyed which is not economically reparable, the removal of all debris resulting from such damage or destruction, and the restoration of the Property to a good and orderly condition and even grade. The Board of Directors shall have the power to contract for the removal of such damaged or destroyed building and debris and the restoration of the Property. If, in such event, such proceeds of insurance should not be sufficient to pay for such removal and the restoration of the Property, the voting owners shall have the power to levy a special assessment to make up such deficiency.

33. Eminent Domain.

If any authority exercising the power of eminent domain should condemn the Property, some part or parts thereof, or any right, easement, privilege, or appurtenance belonging or appertaining thereto; then the entire award attributable to the condemnation of the Property (whether for land, buildings, improvements, a right, easement, privilege or appurtenance), any money paid by the condemning authority for the interruption of any business conducted on the Property, and any money paid for any damage resulting from such condemnation, or any money paid by any condemning authority to settle any such threatened condemnation (collectively referred to as the "CONDEMNATION

PROCEEDS"), shall be paid to the Board of Directors and shall be divided and distributed as follows: (1) any of such condemnation proceeds fairly attributable to an apartment shall be distributed to the owner thereof; (2) any of such condemnation proceeds which cannot be fairly attributed to an apartment, and any of such condemnation proceeds attributable to the common elements of the horizontal property regime, shall be divided and distributed to the owners of apartments affected by such condemnation in proportion to the common interest appertaining to the apartments owned by each of them.

The Board of Directors, for the Association and for and on behalf of each apartment owner, shall have the right to contest any issue involved in such condemnation proceeding. Each apartment owner hereby irrevocably appoints the Board of Directors of the Association as his attorney-in-fact to represent him in the negotiation of any settlement of a threatened condemnation action, and to appear for him in any such condemnation proceeding. The apartment owners understand that it would be impracticable, and not in their best collective interest, to permit any of them to individually negotiate a separate settlement of a threatened condemnation action or to appear individually in any such condemnation proceeding. The apartment owners therefore irrevocably surrender to the Board of Directors of the Association any right which they may individually hold to negotiate a separate settlement of any threatened condemnation action or to appear individually in any such condemnation action. The Board of Directors shall approve a proposed settlement of a threatened condemnation action upon obtaining an affirmative vote in favor of the proposed settlement by a majority of all the voting owners

at a meeting of the Association.

34. Apartment Purchased By Board Of Directors.

The voting owners shall have the power to levy a special assessment to fund the purchase of an apartment authorized by the voting owners. The Board of Directors shall have the power to borrow money from an established financial institution, on the credit of the Association, to fund the purchase of an apartment authorized by the voting owners, and, if such funds should be borrowed, the Board of Directors shall have the power to mortgage such apartment to secure such loan. Any apartment purchased by the Board of Directors shall be held in the name of the Board of Directors, as trustees for the apartment owners in accordance with the relative common interests of their respective apartments.

35. Association Books Of Receipts And Expenditures; Examination.

The Board of Directors shall keep at the Property detailed, accurate records, in chronological order, of the receipts and expenditures of the Association, specifying and itemizing the expenses incurred for the maintenance and repair of the common elements and all other expenses incurred by the Association. The Board of Directors shall keep at the Property (or elsewhere within the State of Hawaii as determined by the Board of Directors) all records and vouchers that support or authorize the disbursement of any Association funds. Any apartment owner, or voting owner, may at any convenient hour during a business day examine, or at his expense have his agents inspect or audit, all of such Association records and vouchers and all other records and books of account and financial statements maintained by or prepared for the Association. At the request



of an apartment owner, the Treasurer shall mail copies of the Association's financial statements to such owner.

36. Rules For Construction.

The headings and marginal notations of this document are for convenience only, and, if there be any conflict, the text shall control. The use of any gender shall include all genders. Whenever any words are used herein in the singular, they shall be construed as though they were also used in the plural in all cases where they would so apply, and vice versa.

37. Interpretation.

The provisions of this document shall be basically construed to effect the creation of a uniform plan for the development and operation of a horizontal property regime, and shall be construed with reference to HAW. REV. STAT. Chapter 514A, and as the same may from time to time be amended or reenacted, any decision of the Supreme Court of Hawaii interpreting such statute, and any published decision of any court interpreting a similar statute, and with reference to the Declaration.

38. Amendment.

The provisions of this document, other than this paragraph, which shall not be subject to amendment, may be amended by the affirmative vote of not less than sixty-five percent (65%) of all the voting owners; provided, that each of the particulars required to be set forth in these By-Laws by the Hawaii Horizontal Property Act shall always be embodied in these By-Laws.

November 7, 1983

R-396

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

MAY 02, 1997 08:15 AM

Doc No(s) 97-057435

/s/CARL T. WATANABE  
ACTING  
REGISTRAR OF CONVEYANCES

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**TITLE OF DOCUMENT:**

AMENDMENT OF THE BY-LAWS  
OF THE ASSOCIATION OF APARTMENT OWNERS OF  
MAUI SANDS

**PARTIES TO DOCUMENT:**

ASSOCIATION: ASSOCIATION OF APARTMENT OWNERS OF MAUI SANDS

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CONDOMINIUM MAP NO. 35

AMENDMENT OF THE BY-LAWS  
OF THE ASSOCIATION OF APARTMENT OWNERS OF  
MAUI SANDS  
CONDOMINIUM MAP NO. 35

THIS AMENDMENT OF THE BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF MAUI SANDS is made this 26 day of APRIL, 1997, by the ASSOCIATION OF APARTMENT OWNERS OF MAUI SANDS (hereinafter referred to as "ASSOCIATION"),

WITNESSETH:

WHEREAS, by Declaration of Horizontal Property Regime dated November 16, 1964, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5076, Page 212 (hereinafter referred to as the "Declaration"), as amended, the property described therein was submitted to a Horizontal Property Regime, established pursuant to that certain Horizontal Property Act, Chapter 170-A, Revised Statutes of Hawaii 1955, as amended (now known as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes);

WHEREAS, said Declaration provided for the organization of the ASSOCIATION and established By-Laws therefore, which said By-Laws were attached to said Declaration and incorporated therein by reference (hereinafter referred to as the "By-Laws");

WHEREAS, Section 514A-82 (b) (2), Hawaii Revised Statutes, provides that the by-laws of condominium associations may be amended by the affirmative vote or written consent of sixty-five percent (65%) of the apartment owners;

WHEREAS, at least sixty-five percent (65%) of the apartment owners have given their written consent to amend the By-Laws as hereinafter set forth;

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

**AMENDMENT**

The By-Laws are hereby amended by adding the following:

**Section 24.4.** No animals whatsoever shall be allowed or kept in any part of the Project, except as otherwise provided by Law.

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

The undersigned officers of the ASSOCIATION hereby certify that the foregoing By-Law amendment was adopted by the written consent of sixty-five percent (65%) or more of the Maui Sands apartment owners.

IN WITNESS WHEREOF, the ASSOCIATION has executed this amendment the day and year first above written.

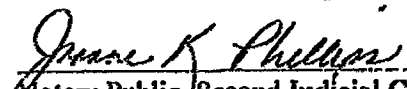

ASSOCIATION OF APARTMENT OWNERS  
OF MAUI SANDS

By: Walter B. Brown  
Its President

By: Arthur C. Madsen  
Its Treasurer

STATE OF HAWAII            )  
  ) S.S.  
COUNTY OF MAUI            )

On this 26<sup>th</sup> day of April, 1997, before me appeared Walter B. Von Kleinsmid and Albert C. Maslin, to me personally known, who, being by me duly sworn, did say that they are the President and Treasurer respectively, of the Board of Directors of the Association of Apartment Owners of Maui Sands; that the instrument was signed in behalf of the Association by authority of its Board of Directors, and they acknowledged the instrument to be the free act and deed of the Association.

  
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Notary Public, Second Judicial Circuit  
State of Hawaii 

My commission expires: 2/16/98