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E.M.  
HAWAII ESCROW & TITLE, INC.

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

The Shearwater  
P.O. Box 3099  
Princeville, Kauai, Hawaii 96766

BY-LAWS OF THE ASSOCIATION  
OF APARTMENT OWNERS OF  
THE SHEARWATER

The following By-Laws shall apply to the above-named condominium project located on the property described in instrument recorded in the Bureau of Conveyances, as Document No. \_\_\_\_\_, herein called the "Project", as described in and created by Declaration of Condominium Property Regime (herein called the "Declaration") to be recorded or filed of record in the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants, employees of an owner and other persons using the apartments, also referred to as "apartment" and/or "unit" in the Declaration and these By-Laws, of the Project and all other persons who shall at any time use the Project. The mere acquisition or rental of any apartment or the mere act of occupancy of any apartment will signify that these By-Laws are accepted, ratified, and will be complied with.

ARTICLE I

MEMBERSHIP

Section 1. Qualification for membership. All owners of apartments of the Project shall constitute the Association of

Apartment Owners (herein called the "Association"). The apartment owner means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto and the purchaser of an apartment pursuant to a recorded agreement of sale; provided that for the purpose of the exercise of voting rights, a lessee of an apartment registered under Chapter 501 or recorded under Chapter 502, Hawaii Revised Statutes, shall be deemed to be the owner thereof. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease. Notwithstanding anything in these By-Laws to the contrary, at all times prior to the time at which the conveyance and/or apartment lease of the first apartment becomes effective to vest in the owner his rights as owner of his apartment, the Developer named in said Declaration shall act in any and all matters as the Association and the Board of Directors.

In the event that any interest in a apartment and the common interest appertaining thereto is transferred to a trustee under a land trust holding title under the Land Trust Act, Chapter 558, Hawaii Revised Statutes, as amended from time to time, or any substitute or successor statute under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any trust shall be deemed to be the owner or owners of said apartment and appurtenant common interest to the extent of their interest therein and shall have all the rights and obligations of ownership, including the right to vote. A transferee of the beneficial interest in any such trust shall have all of the rights and obligations of an apartment owner when notice of such transfer is given to the Association by the transferor. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the owner and shall have all of the rights and obligations of ownership.

Section 2. Place of Meetings. Meetings of the Association shall be held at the Project or such other suitable place convenient to the apartment owners within the State of Hawaii as determined by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held as soon as practicable after recording of the Declaration and these By-Laws; provided however, that said first annual meeting shall in no event be held more than one

hundred eighty (180) days after recordation of the first apartment conveyance; provided 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 year, an annual meeting shall be called; provided ten percent (10%) of the apartment owners so request. Thereafter the annual meetings of the Association shall be held within three (3) months after the end of each accounting year. The Board of Directors shall determine the date when each annual meeting shall occur.

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

Section 5. Notice of Meetings. The Secretary or Managing Agent shall send written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, and to every institutional holder of a mortgage on an apartment who shall have requested a copy of such notice or copies of all such notices, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and time of such meeting, the items on the agenda for such meeting and standard proxy form authorized by the Association, if any, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the Project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. The proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only and may designate any person as proxy and may be limited as the apartment owner desires and indicates. If notice is given pursuant to the provisions of this section, the failure of any apartment owner or mortgagee to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings there at. The presence of any apartment owner or mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner or mortgagee unless he shall at the opening thereof object to the holding of such meeting because of

the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum; Decisions of Association. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts (including the adoption of decisions) of a majority of the apartment owners in person or by proxy at any meeting at which a quorum is present shall be the acts of the Association and shall be deemed adopted by the Association and shall be binding on all apartment owners except as otherwise provided herein; provided that any votes allocated to any area that constitutes a common element under Section 514A-13(h), Hawaii Revised Statutes, as amended (HRS), shall not be cast at any meeting of the Association. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration, any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment. The purchaser of a apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances of the State of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall have all of the rights of a apartment owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting his security interest in the apartment as more fully set forth in Section 514A-83, Hawaii Revised Statutes, as amended. Except as otherwise provided by Chapter 514A, Hawaii Revised Statutes, as amended, voting may be cast by apartment owners by written consent in lieu of an

Association meeting and such vote shall be deemed the acts of the Association provided that more than 50% of the common interest shall have been obtained.

Section 8. Proxies and Pledges.

A. Proxies of Apartment Owners; Form. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by a writing filed with the Secretary or by the death or incapacity of such owner; provided, however, that the standard proxy form, if any, which accompanies a notice of meeting shall be valid only for the meeting to which such notice pertains and its adjournment, if any, and may designate any person as proxy and may be limited as the apartment owner desires and indicates. Proxies may be given to the Board of Directors provided that the proxy form shall contain a box wherein an apartment owner may indicate that the vote shall be shared by each Board member on an equal percentage. Proxy forms which are not marked shall be considered a choice by the Apartment Owner that the vote be made by the Majority of the Board of Directors. Notwithstanding the terms of this paragraph, voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a true copy which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner; provided that no proxy shall be irrevocable unless coupled with a financial interest in the apartment for which the proxy was given.

B. Restrictions on Solicitation and Use of Proxies. No resident manager or Managing Agent may solicit, for use by such manager or Managing Agent, any proxies from any apartment owner of the Association which employs him, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board of Directors or officers of the Association shall use Association funds to solicit proxies; provided that this restriction shall not prevent an officer from exercising his rights as an apartment owner under Section 514A-82(b)(4), HRS. No member of the Board who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or re-election of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of the Board Directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided further that if the

Board receives within seven (7) days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall:

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

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

C. Validity of Proxy. A proxy, to be valid, must be delivered to the secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

#### Section 9. Records of Meetings.

A. Documents for Meetings. The Board Secretary or managing agent shall permit owners to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty days following any Association meeting; provided:

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

(b) That owners pay for administrative costs in excess of eight hours per year. Proxies and ballots may be destroyed following the thirty day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for

duplicating, postage, stationery, and other administrative costs associated with handling the request.

B. Other Documents. Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

Section 10. Adjournment. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the apartment owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. ~~At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.~~

Section 11. Order of Business. The order of business at all meetings of the Association shall be as follows:

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

Section 12. Conduct of Meeting. All meetings of the Association shall be conducted in accordance with the most current edition of Roberts Rules of Order.

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) persons; provided that in the event the Project has or over the course of time does have more than 100 apartment units, the number of persons on the Board shall not be less than 9 persons. In the event the Project has more than 100 apartment units, the vote by mail ballot or at a special or regular meeting of the Association of not less than 65% of all Apartment Owners may decrease the minimum number of Directors; provided

further that in no event shall the Board have less than three (3) members. All members of the Board of Directors shall be owners, co-owners, beneficiaries under a land trust as defined herein, vendees under an agreement of sale, or an officer or employee, duly designated, of any corporate owner of an apartment. The partners in a general partnership and the general partner(s) of a limited partnership shall be deemed to be the owners of an apartment for this purpose. An officer or employee, duly designated, of a corporate general partner would qualify for membership on the Board of Directors. The resident manager of the Project, if any, may not serve on the Board even though otherwise qualified hereunder. There shall not be more than one (1) representative on the Board of Directors from any one (1) apartment; provided that nothing herein shall prevent having more than one director from any one institutional owner if such owner has more than one apartment and each individual Director is a different person.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these By-Laws directed to be exercised or done only by the apartment owners, including but not limited to the following: adopting and amending these By-Laws in accordance with the terms of the By-Laws; adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from apartment owners; hire and terminate managing agents, resident managers, and other employees, agents, and independent contractors; institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more apartment owners on matters affecting the project; make contracts, borrow money (subject to the limitations contained in subsection IV(1)(n), and incur liabilities in connection with the maintenance, repair or refurbishment of the common elements; regulate the use, maintenance, repair, replacement, and modification of common elements; cause additional improvements to be made as part of the common elements; acquire, hold encumber, and convey in its own name any right, title or interest to real or personal property; grant easements, leases, licenses, and concessions through or over the common elements; impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements of the project; impose charges for late payment of assessments; impose reasonable charges for the preparation and recordation of any amendments to the Declaration of Condominium Property Regime for the project; provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance; exercise any other powers conferred by the Declaration or By-Laws; exercise all other powers that may

be exercised in this State by legal entities of the same type as this Association; provided that the powers of the Board are limited by the and subject to the restrictions contained in the By-Laws, Declaration, and chapter 514A, HRS.

Section 3. Duty of Directors. Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities.

Section 4. Election and Term. Election of directors shall be by cumulative voting, by secret ballot at each annual meeting and any special meeting called for such purpose. Directors shall hold office for a period of three (3) years or until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one (1) year, one-third for two (2) years and one-third for three (3) years. If the total number of directors is not divisible by three (3), then the term of office is to be for two (2) years for one-half of the directors and three (3) years for the other half of the directors. The term of the directors shall thereafter be for a period of two years with this division of the Board satisfying the requirement of a one-third change annually.

Section 5. Vacancies. Vacancies in the Board of Directors caused by any reason other than a vacancy caused by the natural expiration of the term of a director or the removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than twelve (12) months or his ceasing to qualify for the office of director as set forth above, shall cause his office to become vacant.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by a majority vote of the owners present (in person or by proxy) at such meeting a quorum exists and a successor may then and there be elected to fill the vacancy thus created. If such removal and replacement is to occur at a special meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent of the apartment owners; and provided further that if the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall

have the authority to set the time, date and place of the special meeting and shall send out the notices for the special meeting in accordance with these By-Laws. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

Section 7. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order to validly constitute such meeting, provided that a majority of the whole Board of Directors shall be present. The Board (with the presence of a quorum) shall meet at least once each year. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone, messenger service, or in any reasonable manner, at least fourteen (14) days, if practicable, prior to the date of such meeting. For purposes of this and the following paragraphs, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail or twelve (12) hours after communicated to a messenger service.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight (8) hours notice to each director, given personally or by telephone or messenger service, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

Section 10. Notice of Meeting; Waiver of Notice. Whenever practicable, notice of all Board meetings shall be posted by the resident manager, managing agent, or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with the notice to the Board members. Before or at any meeting of the Board of Directors any Director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice to him of such meeting. If all the

directors are present at any meeting of the Board of Directors, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 11. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of Directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board of Directors. If less than a quorum shall be present at any meeting of the Board of Directors, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be ~~transacted without further notice. Any action which may be taken~~ by a majority of the directors, may be taken by unanimous written consent of all directors.

Section 12. Fidelity Bonds. The Board of Directors shall require that all directors, officers, employees and agents of the Association handling or responsible for funds belonging to or administered by the Association furnish adequate fidelity bonds in favor of the Association. The premiums on such bonds shall be paid by the Association as a common expense. Every such bond shall:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board of Directors, the mortgagees and every other person in interest who shall have requested such notice; and

(b) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 13. Use of Proxy; Conflict of Interest. No member of the Board of Directors shall cast any proxy vote at a board meeting, nor shall a director vote at any board meeting on any issue in which such member has a conflict of interest. The Director shall also disclose the nature of the conflict of interest prior to a vote at the meeting and the minutes of the meeting shall record the fact that the disclosure was made.

Section 14. Procedures at Board Meetings.

A. Association Members. All meetings other than executive session of the Board of Directors shall be open to all members of the Association. Association members who are not on the Board of

Directors may participate in any deliberation or discussion unless a majority of a quorum of the Board votes otherwise.

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

Section 15. Meeting Minutes. Minutes of meetings of the Board of Directors and Association of Apartment Owners and the Association's financial statements shall be available for examination by apartment owners at convenient hours at a place designated by the board, shall be mailed to any owner upon the owner's request, and shall include the recorded vote of each Board member on all motions except motions voted on in executive session. The Association may charge a reasonable fee for the duplication and mailing of such information.

Section 16. Directors Compensation; Fees and Expenses. The directors shall serve without any compensation unless a majority of the owners of the Association are informed and approve of the compensation, per diem, or expenses, which approval, may be made prior to the expenditure being made. Absent the approval of a majority of the Association, Directors may not spend Association funds for travel, fees or per diem.

Section 17. Conduct of Board Meetings. All meetings of the Board of Directors shall be conducted in accordance with the most current edition of Robert Rules of Order.

Section 18. Disposal of Records. The Managing Agent, if any, retained or employed by the Association may dispose of records that are more than 5 years old without liability if the Agent first provides written notice to the Board of such intent. The notice shall contain an itemized list of the documents to be disposed of. Failure of the Board or any one Board member to retrieve the documents within 60 days from the receipt of the notice shall be deemed to be the Board's consent to such disposal.

## ARTICLE III

### OFFICERS

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

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

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

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

Section 5. Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to do so on an interim basis. He shall also have such other powers and duties as may be assigned to him from time to time by the Board of Directors.

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

The Managing Agent, to the extent permitted by the Board of Directors, may be delegated the function of physically taking the minutes at all meetings.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all of its funds and securities; provided that the Board may delegate some of the duties and responsibilities to a Managing Agent.

Section 8. Annual Audit; Auditor.

~~A. Annual Audit. The Association shall require an annual~~ audit of the Association financial records and accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant, who shall not be an officer of the Association nor own any interest in any apartment. The requirement of the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an Association meeting if the Association is comprised of less than 20 apartment owners. Any institutional holder of a mortgage on an apartment may request and the Association shall provide said mortgagee with a copy of the annual audited financial statement within ninety (90) days following the end of any fiscal year of the Association.

B. Distribution of Audit. The Board shall make available a copy of the annual audit to each apartment owner at least 30 days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by the date of the annual meeting, the Board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each apartment owner at least 30 days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs first.

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

#### ARTICLE IV

##### ADMINISTRATION

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

- (a) Supervision of its immediate management and operation;
- (b) Maintenance, repair, replacement and restoration of the limited common elements, common elements and any additions and alterations thereto; provided that prior Association approval shall be obtained for any expenditure over \$20,000;
- (c) Purchase, maintenance and replacement of any equipment and provision of all water, sewer, electricity and such other utility services and utilities required for the limited common elements and common elements;
- (d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;
- (e) Employment, designation, supervision and dismissal of such personnel as may be necessary for the maintenance, repair, replacement, and operation of the common elements and the Project;
- (f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year in accordance with the requirements of Section 7, Article IV;
- (g) Collection of all installments of assessments levied, determination of all common expenses and payment of all common expenses authorized by the Board;
- (h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the

Declaration, the By-Laws and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

(i) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

(j) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;

(k) Notification in writing of all institutional holders of mortgages on apartments, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to, or taking of, the common elements of the Project if such loss or taking exceeds TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) and such loss is not covered by insurance;

(l) Notification in writing to the institutional holder of the mortgage on apartments, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to such apartment which exceeds TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00);

(m) Establishment of such penalties and fines chargeable against persons as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By-Laws and the building rules adopted pursuant to Article V, Section 4, of these By-Laws, the method of determination of violations and the manner of enforcing such penalties and fines; provided such penalties and fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such penalties and fines against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors, or Managing Agent in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the said lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record;

(n) To borrow money in an amount not exceeding \$5,000.00 to be used for the repair, maintenance, replacement, or alteration of a common element. Any loan larger than \$5,000.00 shall require the approval of the owners holding 50% or more of the common interest in accordance with Section 514A-82.3, HRS.

Section 2. Real Estate Activities by Employees of Association. An employee of the Association shall not engage in selling or renting apartments in the Project unless the activity is approved by an affirmative vote of 65% of the Apartment Owners. Any such approval shall be effective for a minimum period of one year then shall be subject to the re-approval of the Association. The foregoing restrictions shall not apply to any Association owned apartments.

Section 3. Managing Agent. The Board of Directors shall at all times employ a responsible Managing Agent to manage and control the Project subject at all times to direction by the Board of Directors, with all of the administrative functions specifically set forth in the preceding Section 1 and with such other powers and duties and at such compensation as the Board of Directors may establish from time to time, subject to prior approval of every such employment contract by a majority of owners of all apartment owners. The Board, with the approval of a majority of the apartment owners, may elect to be "self-managed" in which event the board shall manage and control the Project. Any Managing Agent employed by the Board of Directors shall provide evidence to them of a fidelity bond meeting the requirements of Section 514A-84 Hawaii Revised Statutes, as amended. An owner that is an employee of the Managing Agent shall not be permitted to act as an officer or director of the Association.

Section 4. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 5. Execution of Instrument. All checks, drafts, notes, acceptances, conveyances, contracts, any amendments to Declaration, By-Laws, buildings rules and other instruments and any amendments to the Declaration, By-Laws and/or building rules shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution applicable to such instrument, or by the President or Vice President and by the Treasurer or Secretary.

Section 6. Falsification of Records. No person shall knowingly make any false certificate, entry or memorandum upon any of the books or records of the Association, Board, resident manager, if any, or Managing Agent, if any, nor shall any person knowingly alter, destroy, mutilate, or conceal any such books or records.

Section 7. Budgets and Reserves.

A. Annual Budget. The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the apartment owners. The budget shall include the following:

(1) The estimated revenues and operating expenses of the Association;

(2) Information as to whether the budget has been prepared on a cash or accrual basis;

(3) The total cash reserves of the Association as of the date of the budget;

(4) The estimated cash reserves the Association will require to maintain the Project based on a study performed by the Association or any independent contractor or agent hired by the Association through the Board of Directors;

(5) A general explanation of how the estimated cash reserves are computed; and

(6) The amount the Association must collect for the fiscal year to fund the estimated cash reserves.

B. Assessment for Cash Reserves. The Association shall assess the apartment owners to fund the full amount required to fund the estimated cash reserves for that fiscal year unless a lesser sum is permitted by Chapter 514A, HRS, or the Real Estate Commission, State of Hawaii.

C. Good Faith Estimate. No the Association or apartment owner, Director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated cash reserves for the Association shall be liable if the estimate subsequently proves incorrect.

D. Exceeding Operating Budget. The Board may not exceed its adopted annual operating budget by more than 20% in a fiscal year

except in emergency situations. Emergencies shall include but not be limited to major replacements or repairs, emergency repairs, litigation involving the Project or Association, and increases in insurance premiums for the policies required by the Declaration, Bylaws or State law. Prior to the imposition or collection of an assessment under this Paragraph D, the Board shall pass 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 apartment owners with the notice of assessment.

Section 8. Insurance.

~~A. Insurance for Project and Improvements. The Association shall purchase and at all times maintain insurance which covers the common elements and all exterior and interior walls, floors, and ceilings of the Project in accordance with the "as-built" plans filed as the Condominium Map and specifications and any other parts of the Project required by the Declaration, against loss or damage by fire and flood (if in a flood zone designated by any Federal or State agency), sufficient to repair or replace up to 100% of the Project including any common element glass, doors, and the frames thereof. Any such policy shall name the Association as the named insured. This paragraph A shall not prejudice or limit the right of each owner to purchase or insure his own apartment for his own benefit.~~

B. Directors' and Officers' Liability Insurance. The Association may purchase and maintain directors' and officers' liability insurance in such an amount that is determined to be reasonable by the Board of Directors. The cost of any premiums shall be a common expense of the Association.

C. Requirements for Policy. All insurance policies obtained by the Association shall contain a provision whereby the underwriter or agent shall provide to the Board of Directors upon commencement of the coverage and every renewal date thereafter, with a written summary of such policy(s), in plain language, which shall be distributed to the owners. At the election of the Board of Directors, the summary may be distributed on an annual basis to the owners in connection with the annual Association meeting. The summary shall include the type of policy, a description of the coverage, the limits of the coverage and any applicable deductible, the annual premium for such coverage, and the renewal dates.

ARTICLE V

OBLIGATION OF UNIT OWNERS

Section 1. Assessments. All apartment owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expense of the project in accordance with the Declaration unless such sums are required to be paid to and accumulated by the mortgagee under any subsisting mortgage of any apartment and notice of such requirement is filed with the Board. The assessments shall be based on actual and projected operating costs and estimates for reserves and sinking funds. ~~No owner may exempt himself from liability for contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of an apartment.~~

Section 2. Maintenance of Units. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment and the limited common elements appurtenant thereto, including without limitation all internal installations therein such as water, electricity, telephone, sewer, sanitation, lights and all other fixtures and accessories belonging to such apartment and the interior and exterior decorated or finished surfaces of all walls, floors, beams, foundation, ceilings and roofs and walls of such apartment that are not deemed a common element, with all necessary reparations and amendments and in the event the Association shall be required to undertake any such repairs, whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors, or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the limited common elements, common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

Section 3. Restrictions on Use of Project. The following restrictions shall apply to the use of all apartments and/or the common and limited common elements of the Project:

(a) The apartments of the Project shall be used only for their respective purposes as set forth in the Declaration and these By-Laws and for no other purpose.

(b) All limited common elements and common elements of the Project shall be used only for their respective purposes as designed.

(c) It is intended that the exterior of the buildings shall present a clean appearance, and to effect that end, the owners of the apartments hereby agree that the Board of Directors may require the painting or repair of the exterior portions of the buildings, including the lanais, if any.

(d) No apartment owner or occupant shall place, store or maintain on walkways, corridors, grounds, parking areas or other limited common elements and common elements, any furniture, packages or object of any kind or otherwise do anything that would obstruct transit through such limited common elements and common elements.

(e) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the period during which the same are applicable to the use of the project.

(f) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the Project nor alter, build or construct improvements, or remove any furniture, furnishings or equipment from the limited common elements and/or common elements.

(g) No apartment owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any additions or alterations to any apartment of the project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with the Declaration.

(h) All owners and occupants shall exercise extreme care to avoid making unreasonable noises that may disturb other occupants.

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

(j) Nothing shall be allowed, done or kept in any apartment or limited common element of the Project which would cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association, unless the owner of said apartment shall agree to pay any such increase or obtain substitute insurance.

(k) No unlawful use shall be made of the Project or any part thereof, and all valid laws, orders, rules and regulations of all governmental agencies having jurisdiction thereof (collectively "Legal Requirements") shall be strictly complied with. Compliance with any Legal Requirements shall be accomplished by and at the sole expense of the apartment owner or owners, or the Board, as the case may be, ~~whichever shall have the obligation under the By-Laws to maintain and repair the portion of the Project affected by any such Legal Requirement.~~ Each apartment owner shall give prompt notice to the Board of any written notice it receives of the violation of any Legal Requirement affecting his apartment or the Project. Notwithstanding the foregoing provisions, any apartment owner may, at his expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement affecting any portion of the Project which such apartment owner is obligated to maintain and repair, and the Board shall cooperate with such apartment owner in such proceedings, provided that:

(i) such apartment owner shall pay and shall defend, save harmless, and indemnify the Board, the Association, and each other apartment owner against all liability, loss or damage which any of them respectively shall suffer by reason of such contest and any noncompliance with such Legal Requirement, including reasonable attorneys' fees and other expenses reasonably incurred; and

(ii) Such apartment owner shall keep the Board advised as to the status of such proceedings.

Such apartment owner need not comply with any Legal Requirement so long as it shall be so contesting the validity or applicability thereof, provided that noncompliance shall not create a dangerous condition or constitute a crime or an offense punishable by fine or imprisonment, and that no part of the Project shall be subject to being condemned or vacated by reason of noncompliance or otherwise by reason of such contest. The Board may also contest any Legal Requirement without being subject to the foregoing condition as to contest and may also defer compliance with any Legal Requirement, but only subject to the foregoing

conditions as to deferral of compliance. The costs and expenses of any contest by the Board shall be a Common Expense. The amount due to the Board, the Association under the foregoing obligation of an apartment owner to defend, save harmless and indemnify the Board, and the Association shall be secured by lien created in the same manner as provided in the Condominium Property Act for common expenses.

(1) No apartment owner or occupant shall keep any animals as pets in their apartment or on the common or limited common elements of the Project without the prior written approval of the Board of Directors and if permitted by the House Rules; provided that the following restrictions shall always be applicable:

(i) Owners shall at all times be responsible for any excessive noise made by any permitted pets including those of any tenant;

(ii) Animals or pests described in Sections 141-2, 150A-2, 150A-5 or 150A-6, HRS, are strictly prohibited;

(iii) No more than two domestic animals will be allowed per apartment;

(iv) Tenants of an owner may only keep the same type of pets as the owner of such an apartment but only with the written permission of the owner;

(v) Any subsequent House Rule or By-Law amendment which serves to restrict or prohibit pets that were previously permitted and if such pet was in existence, then such amendment shall not be applicable to such pet and upon the death of such pet, it may be replaced.

Section 4. House Rules; Penalties and Fees. The Board, upon giving notice to the apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal supplemental rules and regulations governing details of the operation and use of the Project not inconsistent with any provision of law, the Declaration or these By-Laws. The Board through the rules, may establish penalties, fines, interest charges and charges for the violation of any covenants or provisions in the Declaration, the Bylaws or any house rules provided that in no event shall a fine exceed the sum of \$100.00 (except for accrued interest charges); provided further that in determining a fine, the cost of repairs, damages to common elements, or reasonable legal fees and costs shall not be taken into consideration.

Section 5. Common Expenses; Manner of Collecting Common Expenses; Attorney's Fees and Expenses of Enforcement; and Association Accounts.

A. Determination of Common Expenses. The common expenses for the Project shall be determined in the following manner: Expenses determined for the group with respect to the common elements and Limited Common Element of the Project are common expenses and shall be allocated based on a units percentage common interest. Each of the unit owners shall maintain their own respective apartment unit. Any utilities that are provided on a common meter basis and any other expenses that are taken on a group basis are to be prorated in accordance with their common interest. The cost of utilities that are metered on a per unit basis shall be paid by the respective unit owner thereof. The maintenance fees shall be collected from the owners then the common expenses of the Project shall be paid for by the Association or Managing Agent.

B. Notice of Assessments; Liens. The Managing Agent or Association shall give notice of the monthly assessment which shall indicate the date after which any interest on the delinquent amount shall accrue, and any like charges, and any penalties recoverable by the Association. After such notice is given and the owner fails to pay, then the Association or Managing Agent shall give further notice that such costs and expenses are due to the Association and the owner shall pay all costs and expenses as set forth hereafter. All sums assessed that remain unpaid shall constitute a lien on the owners' apartment prior and superior to all liens except for liens imposed by the government for taxes and other assessments; all sums unpaid on any mortgages of record which were recorded prior in time to the recordation by the Association of the notice of lien. The Association's lien may be foreclosed by an action by the Managing Agent or Board of Directors acting on behalf of the Association. The Association may also maintain a action for the recovery of any unpaid common expenses against any owner without foreclosing or waiving its right to place a lien on the apartment and foreclose the same. The purchaser at any foreclosure sale shall not be responsible to pay the common expenses attributable to the apartment prior to obtaining title to such apartment which shortage or deficiency, if any, shall be deemed to be a common expense of the entire Project.

C. Collection Costs. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- (1) Collecting any delinquent assessments against any owners's apartment;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the Declaration, Bylaws, building rules, and the Condominium Property Act;
- (4) The rules and regulations of the Real Estate Commission; or
- (5) Collecting any Association funds or losses attributable or arising from a violation of Section 514A-97(f), HRS.

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against any owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.

D. Assessment Disputes. No owner may withhold any assessment claimed or imposed by the Association or Managing Agent. If an owner disputes an assessment, the owner may send a written notice to the Managing Agent or Board of Directors that he is disputing the assessment. The Managing Agent or Board shall send a statement in response to the notice within a reasonable amount of time indicating the following:

(1) The amount of common expenses included in the assessment and the respective due dates of each assessment;

(2) The amount of late fees, penalties and any other charges or expenses included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, no owner may withhold an assessment for any reason;

(5) That the owner has the right to demand mediation or arbitration to resolve the disputes about the assessments provided that the assessments have been and continue to be paid in full; and

(6) That full payment of the assessment does not prevent the owner from contesting the assessment or receiving any refund of amounts previously paid.

The owner may file a claim in small claims court or require the Association to mediate the dispute. If the dispute cannot be resolved by mediation, the owner or Association may file for arbitration under Part VII, Chapter 514A, HRS. The terms of this section 5(D) shall be subject to the requirements set forth in Section 514A-90, HRS.

E. Accounts. All accounts of the Association and Managing Agent shall be held in a financial institution whose deposits are ~~insured by an agency of the United States, or a company authorized to do business in Hawaii pursuant to Chapter 406, HRS, or invested in obligations of the United States government.~~ The Association operating funds shall not be commingled with any other activities which shall include funds for lease rent and rental operations. No account may permit the transfer of funds by telephone communication. All accounts held by the Managing Agent shall comply with the terms of the management agreement, Chapters 467 and 514A, HRS and all rules promulgated thereunder.

F. Claim by Owners. If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, By-Laws, building rules, or the Condominium Property Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

- (1) The owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or,
- (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

G. Initial Maintenance Budget. The Declarant or initial Managing Agent shall have the right to charge or assess an initial start up fee to the original purchaser of each apartment unit for the purpose of providing necessary funds for the Association. The start up fee to be valid must be set forth and described in a purchase agreement signed by the owner and shall be consistently

imposed on all initial purchasers of each apartment unit in the Project.

H. Phased Development. The Declarant shall not be liable or responsible for the payment of any maintenance fees that may be allocated to any apartment units within a particular Increment as described in the Declaration until the later of the improvements within such Increment have been constructed and an "as-built" certificate has been recorded in connection with the construction of such improvement or the conveyance of at least 25% of the apartment units within such Increment. Notwithstanding the foregoing, the Declarant will be responsible for any maintenance charges and utilities that may be actually utilized in connection with the development and construction of the subject Increment and such other cost that may be associated or attributable to such Increment and shall pay such charges to the Association or managing agent when billed. Declarant shall further be responsible for the maintenance and upkeep of the apartment units until such time as the function has been passed over to the Association and Managing Agent. This paragraph shall not serve to limit an apartment owners responsibility for the payment of any maintenance fees allocable to a specific apartment unit.

Section 6. Membership List. The Resident Manager or Managing Agent or Board of Directors shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the Board of Directors and a copy shall be available, at a reasonable cost, to any member of the Association as provided in the Declaration or By-Laws or rules and regulations or, in any case, to any member who furnishes to the resident manager or Managing Agent or Board of Directors a duly executed and acknowledged affidavit stating that the list (A) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters and (B) shall not be used by such owner or furnished to anyone else for any other purpose.

Section 7. Mortgages.

(a) Notice to Board of Directors. A apartment owner who mortgages any interest in his apartment shall notify the Association through the Managing Agent or Secretary of the name and address of his mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of such mortgage with the Association; the Association shall maintain such information in a book entitled "Mortgages of Units".

(b) Notice of Unpaid Common Expenses. The Association whenever so requested in writing by a apartment owner or any mortgagee of any interest in a apartment shall promptly report to such person any then unpaid assessments for common expense due from the apartment owner involved.

(c) Notice of Default. The Board when giving notice to a apartment owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such apartment or interest therein whose name and address has theretofore been furnished to the Association. In each and every case where the mortgagee has made a request, the Association shall notify the mortgagee of any unpaid assessment that is thirty (30) or more days delinquent.

(d) Examination of Books. Each apartment owner and each mortgagee shall be permitted to examine the books and records of the Association or the Project at reasonable times on business days, and each mortgagee shall have the right to require the submission of annual reports and other financial data.

(e) Mortgage Protection. Notwithstanding any provision to the contrary in these By-Laws:

(1) any mortgagee who obtains title to a apartment pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage or conveyance in lieu of foreclosure will not be liable for such unit's unpaid dues or charges which accrued prior to the acquisition of title to such apartment by the mortgagee.

(2) All taxes, assessments and charges which may become liens prior to the mortgage under the laws of the State of Hawaii shall relate only to the individual apartments and not to the condominium project as a whole.

(3) The Declaration and By-Laws shall not give a apartment owner or any other party priority over any rights of mortgagees of apartments pursuant to their mortgages in the case of a distribution to apartment owners of insurance proceeds or condemnation awards for losses to or a taking of the apartments, limited common elements or common elements.

(4) Notwithstanding any other provision of these By-Laws, no amendment of this Section 7(e) shall affect the rights of the holder of any mortgage who has notified the Association of its interest unless such mortgagee consents to the filing of such amendment.

Section 8. Right of Access. The apartment owners shall have the irrevocable right, to be exercised by the Board, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to the common elements or limited common elements or to another apartment or apartments.

Section 9. Voluntary Conveyances. In the case of a voluntary conveyance of an apartment by one owner to another, the grantor and grantee of such apartment shall be jointly and severally liable for all unpaid assessments against the grantor for grantor's share of any unpaid assessments. Upon receiving a written request from any owner or prospective grantee, the Association or Managing Agent shall provide a statement of any unpaid assessments affecting a particular apartment and such statement shall bind the Association except to the extent of any unpaid assessments arising from a subsequently dishonored check received up to the period 30 days prior the statement date.

## ARTICLE VI

### MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration at any meeting of the Association duly called for such purpose, by vote of sixty-five percent (65%) of the apartment owners or by written consent of sixty-five percent (65%) of the apartment owners, and shall be effective only upon the recording of an amendment to these By-Laws. Any proposed By-laws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owner's committee. If submitted by such a committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners. The proposed By-laws, rationale, and ballots for voting on the proposed By-laws shall be mailed to the owners for approval without change within thirty (30) days of the receipt of the petition by the Board of Directors at the expense of the Association. The vote or written consent must be obtained within one hundred twenty (120) days after mailing to be valid. Any volunteer apartment owner's committee shall be precluded from submitting a petition for a proposed By-law which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board of Directors. This section shall not be interpreted to

preclude any apartment owner or voluntary committee from proposing a bylaw amendment at any Association meeting.

Section 2. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceedings to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. ~~The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.~~

Section 3. Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended) which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act.

Section 4. Interpretation. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

Section 5. Books of Receipts and Expenditures and Other Financial Records. The Managing Agent or Board of Directors shall keep detailed, accurate records in chronological order, of the current year and prior year common expense receipts and expenditures affecting the limited common elements and common elements, specifying and itemizing the maintenance and repair expenses of the limited common elements, the common elements and any other expenses incurred and monthly statements indicating the total current delinquent dollar amount of any unpaid assessment for common expenses. The delinquencies shall be categorized by apartment number and shall set forth at a minimum all apartments that are 90 or more days delinquent in the payment of assessments or other charges. All records financial statements, insurance policies, check ledgers, receivables, ledgers, contracts, invoices and the vouchers authorizing the payments shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the Board of Directors, and shall be available for examination by the apartment owners at convenient

hours of week days. The Board may require an owner to furnish the Association with an affidavit stating that the information requested is in good faith and for the protection of the interest of the Association or its members prior to release of the information. Additionally, the Association may charge a reasonable fee for duplication, postage and handling of such request; provided that an administrative fee may be charged if more than 8 hours of time is used to process such requests each year.

Section 6. Minutes and Financial Statements. The Association's most current financial statement, most current and approved Director's meeting minutes and the most current and prior year minutes of the Association shall be available to any apartment owner at no cost or on a 24 hour loan basis at a convenient location designated by the Board. The Board may require a reasonable deposit to assure the return of any records loaned to an apartment owner. The Board minutes shall include the recorded vote of each member on all motions except motions voted in executive session. Copies of minutes for meetings other than the most recent meetings of the Association or Board held in the current year, will be provided to an Owner upon request provided that the Association may charge a reasonable fee for the duplication and other administrative cost.

Section 7. Project and Condominium Documents. An accurate copy of the Declaration, By-Laws, and any amendments thereof, house or building rules, if any, master lease, if any, a sample of the original conveyance document, all public reports, shall be kept at the Association's office or Managing Agent's office and shall be available to owners and prospective purchasers and/or agents during normal business hours, upon payment of a reasonable fee to the Managing Agent. If there is no Managing Agent, then the foregoing requirements shall be undertaken by a person who is delegated such function by the Board. The Association shall at its own cost, provide all Board members with a current copy of the Project Declaration, Bylaws, house rules, together with any amendments and on an annual basis, a copy of the Condominium Property Act, and any rules promulgated thereunder.

Section 8. Alteration of Records; Other Illegal Acts. No owner or person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of the Managing Agent or the Association nor knowingly alter, destroy, mutilate, or conceal any books or records of the Managing Agent or Association. Any person who embezzles or misapplies Association funds, shall be guilty of a class C felony. It is a misdemeanor for any Association, officer, or Board member to file with the Real Estate

Commission any statement or document which is false, untrue, or which contains any material misstatement of fact.

Section 9. Association Annual Registration. If the Project contains six or more apartments, the Association shall register with the Department of Commerce and Consumer Affairs, State of Hawaii, on a form prescribed by such Department and shall be presented together with any documents and materials required to be submitted in connection with such registration. Failure of the Association to register shall cause it to not have standing to maintain any action or proceeding in the Hawaii State Courts provided this shall not affect or impair the validity of any contract or act of the Association.

Section 10. Gender. The term "owner" herein or any other pronoun used in place thereof shall mean and include the masculine, feminine or neuter, the singular or plural number and jointly and severally individuals, firms or corporations and their respective heirs, executors, administrators, successors, and assigns according to the context hereof.

CERTIFICATE OF ADOPTION

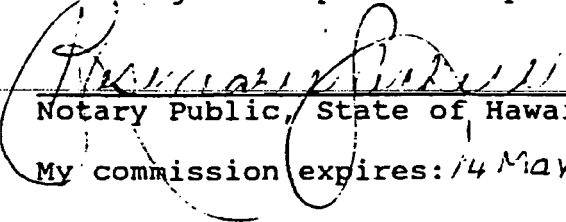
The undersigned owners of all units of the Project hereby adopt the foregoing as the By-Laws of the Association of Apartment Owners of The Shearwater this 16th day of June, 19 93.

THE SHEARWATER

By   
Its General Partner

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this 16<sup>th</sup> day of June, 1993, before me personally appeared DAVID E. WALTERS, to me personally known to be the person described in and who executed the foregoing instrument as one of the partners of THE SHEARWATER, a Hawaii general partnership, and acknowledged that he executed the same as his free act and deed as such partner of said general partnership.

  
Notary Public, State of Hawaii

My commission expires: 14 May 1997