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BYLAWS OF THE ASSOCIATION OF UNIT OWNERS  
OF  
SYMPHONY HONOLULU

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THESE BYLAWS are made and adopted by OLIVERMcMILLAN PACIFIC RIM, LLC, a Hawaii limited liability company (the "Developer").

**INTRODUCTION**

- A. **JN Group, Inc.**, a Hawaii corporation, and **Casti Family Limited Partnership**, a Hawaii limited partnership (collectively the "**Landowner**") are the owners in fee simple of the land described in Exhibit A attached to the Declaration of Condominium Property Regime of Symphony Honolulu (the "**Declaration**") dated as of March 4, 2013, and filed in the Land Court as Document No. 3463513.
- B. The Developer is the current holder of that certain Option and Development Agreement dated June 3, 2011 with Landowner, a Short Form and Memorandum of Option and Development Agreement dated June 7, 2011, having been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 4082432, duly noted on Transfer Certificates of Title Nos. 551626, 737380 & 1056247 (the "**Option and Development Agreement**") covering the Land.
- C. Pursuant to the Option and Development Agreement, the Developer was duly authorized to proceed with planning for and seeking the appropriate land use, zoning and related entitlements for a commercial-residential high-rise condominium project on the Land.
- D. Pursuant to the Option and Development Agreement, the Developer obtained from the Hawaii Community Development Authority (**HCDA**) a Development Permit for OM Kapiolani (Symphony Honolulu) (DP 1-11) dated June 6, 2012 (the "**Development Permit**"), under and pursuant to the Kaka'ako Community Development District Plan for the Mauka Area and the Kaka'ako Community Development District Rules for the Mauka Area. The Development Permit sets forth the terms and conditions under which a commercial-residential high-rise condominium project may be developed on the Land.
- E. The Developer intends to construct or place certain buildings and other improvements on the Land, and the Developer, with the consent and joinder of the Landowner, intends to establish a condominium that consists of the land and the improvements to be constructed on it pursuant to the terms and conditions of the Declaration.
- F. The consent and joinder of Landowner in the Declaration is limited and for the sole purpose of submitting the Landowner's fee simple interest to the condominium property regime in accordance with Hawaii law and is further limited to and subject to all of the terms, covenants and conditions set forth in Section 30 of the Declaration.
- G. These Bylaws are one of the documents required by law to create the condominium. The Developer, acting as the present Association of Unit Owners of Symphony Honolulu (the "**Association**"), here and now adopts these Bylaws as the Bylaws of the Association.

**1. DEFINITIONS; SCOPE**

**1.1 DEFINITIONS.** Terms defined in the Declaration will have the same meaning in these Bylaws unless the context clearly indicates otherwise.

**1.2 SUBMISSION TO BYLAWS; COVENANTS TO RUN WITH THE LAND.** The Developer hereby declares that the Land and the Improvements are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the declarations, covenants, conditions, easements and

restrictions set forth in the Declaration or in these Bylaws, all of which:

- ❖ Are intended to create mutual servitudes upon each Unit within the Project and to create reciprocal rights between the respective Unit Owners;
- ❖ Constitute equitable servitudes, liens and covenants running with the land; and

- ❖ Will be binding on and for the benefit of the Developer, its successors, heirs, personal representatives and assigns, and all subsequent Unit Owners, Lenders, tenants, and occupants of all or any part of the Project and any other person who may use any part of the Project, and each of their respective successors, heirs, personal representatives and assigns.

**1.3 CONDOMINIUM DOCUMENT BINDING.** This means, among other things, that the Condominium Documents will be binding on the Land and Improvements and on anyone (i) who now or later owns it or any Unit or other interest in it, or (ii) who is entitled to use or occupy any Unit or any other part of the Project. It also means that the Condominium Documents are intended to benefit each of those persons and also the Association and the Developer. Each of them has the right to enforce the provisions contained in the Condominium Documents in the manner provided in the Condominium Property Act or in the Condominium Documents.

**1.4 WHO MUST OBEY THE CONDOMINIUM DOCUMENTS.** The Condominium Documents apply to all Unit Owners and all other Interested Persons and each of their Representatives, licensees and invitees. This includes, for example, the Developer, all present and future Unit Owners and their Lenders. They also apply to anyone who leases, rents or occupies any Unit. When a Unit Owner or any other Interested Person acquires any interest in the Project or leases, rents or occupies any part of the Project, by doing so he or she also automatically accepts, ratifies and agrees to comply with all of the Condominium Documents.

**1.5 CONFLICTS AMONG THE DOCUMENTS.** The Declaration will control over any inconsistent provision of these Bylaws. If any part of the Condominium Documents is inconsistent with any law that applies, the law will control.

## **2. ASSOCIATION OF UNIT OWNERS**

**2.1 COMPOSITION OF THE ASSOCIATION.** All Owners of Units constitute the Association.

**2.2 POWERS AND DUTIES.** Except as limited by the Declaration, these Bylaws, or the Condominium Property Act, the Association has and may exercise any or all of these powers and has each of these duties and obligations:

- ❖ The powers, duties, and obligations granted to or imposed on the Association in the Declaration or these Bylaws;

- ❖ The powers, duties, and obligations granted to or imposed on the Association in the Condominium Property Act or the Condominium Regulations, including without limitation, Section 514B-104 of the Condominium Property Act, as limited by the terms of Section 514B-105 of the Condominium Property Act;

- ❖ Any other powers, duties and obligations necessary or helpful to carry out the functions of the Association under the Declaration or these Bylaws, or that otherwise promote the general benefit of the Owners.

**2.3 QUALIFICATIONS FOR MEMBERSHIP.** Anyone who is an Owner of a Unit is a Member of the Association. If more than one person is the Owner of a Unit, each of them is a Member of the Association. A person will continue to be a Member so long as he or she is a Unit Owner. A person's membership ends automatically when he or she is no longer a Unit Owner. This would happen when, for example, a Unit Owner completes the sale of his or her Unit to someone else.

## **3. ASSOCIATION MEETINGS**

**3.1 ANNUAL MEETINGS.** The first annual meeting of the Association will be held not later than one hundred eighty (180) days after the first Unit conveyance is recorded, provided that prior to that meeting 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 after the first Unit conveyance is recorded, then an annual meeting will be called if ten percent (10%) of the Unit Owners request it. After the first annual meeting, the Association will hold annual meetings on a date that the Board chooses. If the Board does not choose a meeting date by the 15th of February of each year, then the meeting will be held at the condominium at 6:30 p.m. on the fourth Wednesday in March of each year. The Developer may set the date and time for the first annual meeting.

**3.2 SPECIAL MEETINGS.** A special meeting of the Association may be called at any time for any one or more purposes. It may be called by (a) the President, (b) a majority of the Directors, (c) the Developer during the Development Period, or (d) a petition signed by at least twenty-five percent (25%) of the Unit Owners and presented to the Secretary or to the Managing Agent. The Members may transact only that business the general nature of which is stated in the notice of the special meeting.

**3.3 PLACE OF MEETINGS.** The Association will hold its meetings at the Project unless the Board chooses another place in the State of Hawaii.

**3.4 NOTICE OF MEETINGS.**

**A. NOTICE REQUIRED.** Notice must be given for each meeting of the Association whether it is an annual or special meeting.

**B. CONTENTS.** The notice must:

- ❖ Be in writing;
- ❖ State the authority for calling the meeting;
- ❖ State the place, date and time of the meeting; State whether it is an annual or special meeting; and
- ❖ List the items on the agenda. The agenda must include anything that, as of the day when the notice is prepared: (i) the Board expects to present; or (ii) a Member expects to present, but only if the Member has given written notice of it to the Board. Notices of meetings at which (x) an amendment to the Declaration or these Bylaws is proposed must include the general nature and rationale for such proposal, and (y) a Director's removal is proposed must so state. Notwithstanding the foregoing, a Member may still present any other proper business at any annual meeting unless notice of that business is specifically and expressly required by another part of the Condominium Documents.

**C. STANDARD PROXY FORM.** The Board may include with the notice a standard proxy form authorized by the Association, if any. It may also include any other necessary or helpful information.

**D. WHEN NOTICE MUST BE SENT.** Notice of each annual and special meeting must be given to each Unit Owner at least fourteen (14) days before the date of the meeting. It must not be given more than fifty (50) days before the date of the meeting; provided that if the Condominium Property Act permits it and the Board adopts a resolution permitting it, the notice may be given up to ninety (90) days before the date of the meeting.

**E. WHO MUST SEND NOTICE.** The Secretary will give the notice except when these Bylaws provide otherwise. The Secretary may delegate this task to the Managing Agent. If neither the Secretary nor the Managing Agent sends notice of a special meeting

within fourteen (14) days after the Secretary or the Managing Agent receives a petition, the persons requesting the meeting may give the notice at the Association's expense. A special meeting based on a petition shall be held no later than sixty (60) days from the date the Secretary or Managing Agent receives the petition.

**F. WHO IS ENTITLED TO NOTICE.** Notice must be sent to each person entitled to vote as of the Record Date. Notice must also be sent to each holder, insurer or guarantor of a Mortgage on a Unit if, as of the Record Date, it has made a proper request for notices under Section 10.2.

**G. DELIVERY OF NOTICE.** The notice must be given: (a) by delivering it personally; or (b) by mailing it by first-class mail, postage prepaid; or, (c) pursuant to the written request of a Unit Owner for delivery by electronic mail. Any notice given by mail must be sent to the mailing address of the Unit or to any other mailing address designated by the Unit Owner in writing. Any notice given by electronic mail shall be delivered to the electronic mailing address designated in writing by the Unit Owner.

**1) CHANGE IN ADDRESS.** Each Owner and anyone who holds, insures or guarantees a Mortgage must inform the Association in writing of any change in address at once.

**2) MULTIPLE OWNERS.** If a Unit is owned by multiple persons, notice to all Owners of that Unit may be given by providing notice to any co-Owner of that Unit.

**H. NOTICE DOES NOT HAVE TO BE RECEIVED.** If notice is given in the manner required by this Section 3.4, (i) nobody entitled to notice may object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, invalidate the meeting or any proceedings at the meeting.

**I. WAIVER OF NOTICE.**

**1) ATTENDANCE.** Anyone who attends a meeting, in person or by proxy, gives up (in legal terms, "waives") any right to claim that notice was not given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

**2) WRITTEN WAIVER.** A Member may waive notice of any Association meeting by signing a document (i) that waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that

approves the minutes of the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

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

**4) EFFECT OF WAIVER.** If a Member waives notice under this Section 3.41, the fact that notice was not given to that Member will not, by itself, invalidate the meeting or any proceedings at the meeting.

**J. WHO MAY OBJECT TO NOTICE.** A person entitled to receive notice may object if notice was not sent to him or her. A person cannot object that notice was not sent to someone else.

### **3.5 RECORD DATE FOR NOTICES AND VOTING.**

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

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

**C. EFFECT OF SETTING RECORD DATE.** When a Record Date is set, only the Members of Record on that date (or someone authorized to act for them) have the right to notice and to vote at a meeting or on a ballot or other request for consent or approval. This rule applies despite any issuance or transfer of a Unit in the records of the Association after the Record Date. A person who is the Owner of a Unit as of the Record Date is considered to be the "Member of Record". A person who becomes a Member after the Record Date

can, of course, act for the Member of Record by simply obtaining a proxy from the Member of Record. When these Bylaws refer to the "Owner" or "Member" with respect to notice (including waivers of notice) and voting, it means the Member of Record or someone authorized to act for the Member of Record.

**3.6 QUORUM.** The term "quorum" refers to the number or percentage of Owners according to their respective common interest who must be present at a meeting to conduct business. For all meetings of the Association, fifty percent (50%) of the Owners based on the aggregate total of the common interest appurtenant to the Units of the Owners present at such meeting to have a quorum present unless a different number is required or allowed by law, the Declaration or another part of these Bylaws.

**A. WHEN A MEMBER IS "PRESENT".** Members are "present" at a meeting if: (i) they attend it in person, or (ii) their Proxy Holder attends it for them, or (iii) someone else permitted by these Bylaws attends it for them.

**3.7 ASSOCIATION ACTION.** At any Association meeting at which a quorum is present, the acts and decisions of a Majority of the Owners voting will be regarded as the acts and decisions of the Association, and will be binding on all Unit Owners for all purposes, unless a different percentage vote is required by law or in the Declaration or these Bylaws.

**3.8 RULES FOR CONDUCTING ASSOCIATION MEETINGS.** All meetings of the Association must be conducted in accordance with the latest available edition of Robert's Rules of Order Newly Revised.

**3.9 ADJOURNING ASSOCIATION MEETINGS.** Any meeting of the Association may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a Majority of the Owners. Voting, whether or not a quorum is present. If a meeting is adjourned for thirty (30) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by Section 3.4. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Association may do anything that it could have done at the meeting as originally called.

### **3.10 INSPECTORS FOR VOTING AND PROXIES.**

**A. APPOINTMENT.** At any meeting of the Association or before any ballot is sent to the Members pursuant to Section 3.15, the Board will appoint inspectors of the voting at the meeting, including voting

for the election of Directors. With respect to election of Directors the inspectors of voting will not be appointed until after nominations have been closed. The Board may appoint either one or three inspectors of voting. If the Board fails or chooses not to do so, then the Managing Agent will be the inspector of the voting.

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

### 3.11 VOTING.

**A. VOTES.** Except as may be otherwise provided by law, or in the Declaration, or these Bylaws, each Unit is entitled to a vote equal to the percentage of the Common Interest assigned to that Unit in the Declaration.

#### **B. WHO MAY VOTE.**

**1) GENERALLY.** Votes may be cast by a Unit Owner in person, by proxy, or by mail or electronic transmission through a duly executed proxy by a Unit Owner listed in the Association's record of ownership or by anyone lawfully acting for or on behalf of the Unit Owner.

**2) LEGAL REPRESENTATIVES.** Sometimes a Unit may be owned or controlled by a person acting as a personal representative, guardian, or trustee. At any meeting of the Association, that person may cast the vote of each Unit held by him or her in this capacity. He or she may vote in person or by proxy. It does not matter whether the Association's record of ownership shows that the personal representative, guardian, or trustee owns or controls the Unit. He or she may vote so long as if he or she presents evidence satisfactory to the Secretary that he or she owns or controls it in that capacity.

**3) AGREEMENT OF SALE.** A person buying a Unit under a recorded agreement of sale has the

rights of a Unit Owner. This includes the right to vote except that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the Unit as provided in Section 514B-124 of the Condominium Property Act.

**4) PLEDGES.** Except as otherwise limited by law, an Owner may transfer or pledge the Owner's voting rights to someone else in a Mortgage or any other lawful document. A court order may also transfer an Owner's voting rights to someone else. For simplicity, these arrangements are called a "Pledge" and the person to whom the voting rights are transferred is called the "Proxy Holder". If a true copy of a document containing a Pledge is filed with the Secretary before the Record Date for a meeting, only the Proxy Holder may vote in person or by proxy at that meeting. The Proxy Holder may, however, substitute someone else to vote for it as the Proxy Holder. The Proxy Holder will have the right to vote at all later meetings until someone files with the Secretary satisfactory evidence that the Pledge has ended or has been released.

**C. COMMON ELEMENTS.** Votes allocated to any area outside of Units that constitutes a Common Element under Section 514B-108(b)(8) of the Condominium Property Act shall not be cast at any meeting of the Association.

**3.12 PROXIES.** An Owner may appoint someone else to represent the Owner at meetings of the Association. Except as otherwise provided in Section 3.11B.4):

**A. PROXY REQUIREMENTS.** To be effective, the appointment must be stated in a document (a "proxy") signed by the Owner and filed as required by Section 3.12B. The proxy must contain at least: the name of the Association, the date of the meeting of the Association, the printed names and signatures of the Owner or Owners giving the proxy, the Unit or Units for which the proxy is given, the printed name(s) of the person(s) to whom the proxy is given (the "Proxy Holder"), the date that the proxy is given, and any other information required by law.

**B. FILING OF PROXY.** A proxy, to be valid, must be filed with the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day before the date of the meeting; provided that if the Condominium Property Act permits it, the Board may require that proxies be filed at an earlier date not to exceed seven (7) business days before the date of the meeting.

**C. USE OF DUPLICATES OF PROXIES.** A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction must be a complete reproduction of the entire original proxy.

**D. DURATION; LIMITATIONS.** A proxy is only valid for the meeting to which the proxy pertains and its adjournments. It may designate any person as proxy. It may be limited as the Owner desires and indicates. No proxy may be irrevocable unless it is coupled with a financial interest in the Unit.

**E. PROXY COUPLED WITH AN INTEREST.** The requirements of Sections 3.12A through 3.12D do not apply to voting rights transferred by an agreement of sale pursuant to Section 3.11B.3) or a Pledge pursuant to Section 3.11B.4). These kinds of transfers are "coupled with a financial interest" and so special rules apply to them.

### **3.13 SOLICITATION OF PROXIES.**

**A. DIRECTORS.** Neither the Board nor any Director may use Association funds to solicit proxies except for the distribution of proxies as set forth in Section 3.13C. This does not prevent an individual Director from soliciting proxies as an Owner under Section 3.13C.

**B. RESIDENT MANAGER OR MANAGING AGENT.** No resident manager or Managing Agent, nor their employees, may solicit, for use by the resident manager or Managing Agent, any proxies from any Unit Owner of the Association that employs that resident manager or retains the Managing Agent. Neither the resident manager nor Managing Agent may cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

**C. SOLICITATION BY DIRECTORS AND OWNERS.** Any Board that intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 3.4C, must first post notice of its intent to distribute proxies in prominent locations within the Project at least twenty-one (21) days before it distributes the proxies; provided 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 mail to all Owners either:

1) 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

2) A proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the Owner's qualifications to serve on the Board and/or reasons for wanting to receive proxies.

**3.14 CO-OWNERS.** The entire vote for any Unit owned of record by two (2) or more persons may be exercised by any one of them present at any meeting in the absence of an objection or an inconsistent vote by another Owner of that Unit or a co-Owner's Proxy Holder. A proxy given by an Owner of a Unit owned of record by two (2) or more persons may be exercised to cast the entire vote for that Unit in the absence of an objection or an inconsistent vote by another Owner of that Unit or a co-Owner's Proxy Holder. In all other cases, the entire vote allocated to that Unit will be cast as follows:

**A.** If the co-Owners hold title to the Unit as tenants in common (whether or not the undivided interest of any particular co-tenant may be held in some other tenancy such as joint tenants), then the entire vote allocated to that Unit will be cast in the manner determined by the vote of the holders of a majority of the undivided interests voting (in person or by proxy) with respect to that Unit. If there is a tie vote, however, then one-half of the vote allocated to the Unit will be counted in favor of and one-half against the issue at hand;

**B.** If co-Owners of a Unit do not hold title as tenants in common, then the entire vote allocated to that Unit will not be counted.

**3.15 ACTION WITHOUT A MEETING.** Except as otherwise limited by law, any action that may be taken at a meeting of the Members (such as, for example, electing directors) also may be taken without a meeting and without advance notice if:

**A.** A written ballot is sent to each Member entitled to vote. The ballot must be sent as though it were a notice of meeting and the rules of Section 3.4G will apply;

**B.** The ballot form must:

- ❖ State the proposed action and provide a way for the Member to indicate whether he or she approves or disapproves the proposal;
- ❖ State the deadline by which the ballot must be returned to count; and
- ❖ Provide a reasonable time for the ballot to be returned.

C. The number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action; and

D. The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots cast.

An Owner may cancel or change his or her ballot by sending a letter or other document to the Association. It will take effect when the Secretary receives it, and only if it is received before the deadline for returning ballots.

**3.16 ORDER OF BUSINESS.** The order of business at all meetings of the Association shall be generally as follows:

- A. Roll Call;
- B. Proof of notice of meeting;
- C. Reading of minutes of preceding meeting (unless waived by a vote of a Majority of the Owners Voting);
- D. Report of President (if any);
- E. Report of Treasurer (if any);
- F. Election of inspectors for election or other matters (when so required);
- G. Election of members of the Board (when so required);
- H. Unfinished business (if any);
- I. New business (if any);
- J. Adjournment.

**3.17 TELEPHONE, VIDEO, ELECTRONIC MEETING.** At any regular or special meeting of the Association at which at least ten percent (10%) of the Owners are physically present at the location set for such meeting,

any member of the Association not physically present may participate in such meeting by telephone conference, video conference, or similar electronic (including internet) conference for purposes of constituting a quorum and for all other purposes, and the Association may carry on all business within the Association's authority as if all members participating by such means were physically present at such meeting; provided, however, that all persons participating in such meeting must, at all times during such meeting, be able to hear and be heard by each other satisfactorily to permit each person's full and informed participation in any deliberation, discussion or vote.

**3.18 REGISTRATION OF ASSOCIATION.** Within thirty (30) days of the first meeting of the Association, the Association shall register with the Real Estate Commission, as required by Section 514B-103 of the Condominium Property Act. If the Association has not held its first meeting and it is at least one year after recordation of the first Unit Deed, the Developer or the Developer's affiliate or the Managing Agent shall register on behalf of the Association and shall comply with the applicable requirements of Section 514B-103 of the Condominium Property Act. The Association's registration shall be for a biennial period with termination on June 30 of each odd-numbered year. The Association shall comply with all deadlines and other re-registration procedures and requirements established by the Real Estate Commission pursuant to Section 514B-103 of the Condominium Property Act.

#### **4. BOARD OF DIRECTORS**

**4.1 NUMBER OF DIRECTORS.** The Board will consist of nine (9) persons, unless the Owners amend these Bylaws to reduce the number of Directors. Notwithstanding any other provision in these Bylaws, one of the nine Directors shall at all times be a person otherwise qualified to serve as a Director but shall be elected solely by the Owner or a majority of the Owners of the Commercial Unit(s) based upon the *Common Interest of each Commercial Unit* (if there is more than one Commercial Unit) in order to assure in this mixed used Project that a representative of the Commercial Unit(s) sits as a Director of the Association.

**4.2 POWERS AND DUTIES OF THE BOARD.** Except as limited by law or by the Condominium Documents, the Board may exercise all powers of the Association and must perform all of its duties. The Board may not, however, take any action that, by law or under the Condominium Documents, must be taken, authorized or approved by the Members of the Association, or by some part or percentage of them. The Board may



delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the Managing Agent. This authority is subject to any limits contained in the Declaration or these Bylaws. Until the first Board is elected, the Developer may, but is not obligated to, exercise some or all of the powers of the Board.

#### **4.3 QUALIFICATIONS OF DIRECTORS.**

**A.** All Directors must be Owners, co-Owners, purchasers under an agreement of sale, trustees of a trust that owns a Unit, or an officer, partner, member, manager, or other person authorized to act on behalf of any other legal entity that owns a Unit.

**B.** So long as the Condominium Property Act prohibits it, there can be no more than one representative on the Board from any one Unit.

**C.** No resident manager or employee of the Project is allowed to serve on the Board.

**D.** Except for the Director elected by the Owner or Owners of the Commercial Unit(s) as provided under Section 4.1 above for whom no term limit shall be applicable, no other person may serve as a Director for more than nine (9) successive years. No such person may be elected or appointed as a Director if serving out his or her full term as a Director would result in a violation of the rule against serving more than nine (9) successive years.

#### **4.4 ELECTION OF DIRECTORS.**

**A. ELECTION.** During the Developer Control Period specified in Section 24 of the Declaration, the Developer may appoint and remove all or some of the Directors and Officers of the Association. The Developer may voluntarily surrender this right before termination of the Developer Control Period, but in such event, the Developer may require, for the remainder of the Developer Control Period, that certain actions of the Association or Board, as described in a recorded instrument signed by the Developer, by approved by the Developer before such actions become effective. No later than date of termination of the Developer Control Period, the Members shall elect the initial Directors. At the next annual meeting of the Association (or, if such meeting is less than one year from the election of the initial Directors, at the next subsequent annual meeting, and at any special meeting called for that purpose, the Members will elect a new Director to replace each Director whose term has expired or to fill any vacancy caused by any increase in the number of Directors. Directors will be elected by secret ballot. If the number of candidates

standing for election as a Director is the same or fewer than the number of vacancies on the Board, then, and in such event, with the approval of a majority of the quorum present at such meeting, the new Directors may be elected by acclamation.

**B. CUMULATIVE VOTING.** When electing Directors, an Owner may cumulate his or her votes. This means the Owner can give to one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors being elected multiplied by the number of votes which that Owner has the right to cast. The candidates who receive the highest number of votes, up to the number of available positions, are elected.

#### **4.5 NOMINATIONS.**

**A. BY THE BOARD.** Except with respect to the Director to be elected by the Owner or Owners of the Commercial Unit(s) as set forth in Section 4.1 above, each year, the Board will nominate Members for election to the Board at the annual meeting. The Board must do so before the Secretary gives notice of the annual meeting. The Secretary will send to each Member, with the notice of meeting required by Section 3.4, a list of the Members so nominated by the Board, and in the event of the Director to be elected by the Owner or a majority of the Owners of the Commercial Unit(s) based upon the Common Interest of each Commercial Unit (if there is more than one Commercial Unit) the name of the person so nominated for such Director position, as and when appropriate.

**B. FLOOR NOMINATIONS.** Except with respect to the Director to be elected by the Owner or Owners of the Commercial Unit(s) as set forth in Section 4.1 above, any Member may nominate one or more candidates during an Association meeting.

#### **4.6 TERM OF OFFICE OF ELECTED DIRECTORS.**

**A.** The Association will elect all nine (9) Directors at its meeting described in Section 4.4A. The term of office of the Director elected by the Owner or Owners of the Commercial Unit(s) as set forth in Section 4.1 above, will end when the third annual meeting after their election ends. The term of office of the two (2) Directors elected by the other Members who receive the most votes will end when the third annual meeting after their election ends. The term of office of the three (3) Directors next in order to be elected by the other Members who receive the highest number of votes will end when the second annual meeting after their election ends. Finally, the term of office of the three (3) Directors next in order to be elected by the other Members who receive the highest

number of votes will end when the next annual meeting ends.

**B.** After the term of office of each of the initial Directors expires, each replacement Director will hold office until the end of the third annual meeting after his or her election. This should be a term of about three (3) years.

**C.** Each Director will continue to have the powers and duties of the office until someone else is elected or appointed to replace him or her.

#### **4.7 REMOVAL OF DIRECTORS.**

**A. GENERAL.** The Association may remove and replace Directors only in accordance with the Condominium Property Act and all applicable requirements and procedures in these Bylaws for removing and replacing Directors, including any provisions relating to cumulative voting.

##### **B. BY VOTE OF OWNERS.**

1) The Association may remove any one or more Directors from office, with or without cause, at any regular meeting or at any special meeting called for that purpose; provided, however, that the Director elected by the Owner or Owners of the Commercial Unit as provided in Section 4.1 above, may not be removed without the consent of the Owner or a majority of the Owners of the Commercial Unit(s) based upon the Common Interest of each Commercial Unit (if there is more than one Commercial Unit). Any Director whose removal is proposed must have an opportunity to be heard at the meeting. A Director will be removed if a Majority of the Owners Voting vote to remove him or her; provided however, that unless the entire Board is removed, no individual Director may be removed if the votes cast against removal would be sufficient to elect a Director if voted cumulatively (see Section 4.4B) at an election at which the same number of votes were cast and the entire number of Directors authorized to be elected at the most recent election of the Directors were then being elected; and

2) If a Director is removed, the Association must then and there elect a replacement Director. The replacement will hold office for the rest of the term of the person replaced.

**C. BY VOTE OF THE DIRECTORS.** If any Director misses three (3) regular Board meetings in a row, the Board, by a vote of a majority of the other Directors, may remove him or her; provided, however, that the Director elected by the Owner or Owners of the Commercial Unit(s) as provided in Section 4.1

above, may not be removed without the consent of the Owner or a majority of the Owners of the Commercial Unit(s) based upon the Common Interest of each Commercial Unit (if there is more than one Commercial Unit). The Board may do this at the third or any later meeting. But if the Director attends a Board meeting before being removed, the Director must miss at least three (3) more regular meetings in a row before the Board can remove him or her.

**D. PROCEDURES.** Except as otherwise provided in the Condominium Property Act, any meeting for the removal and replacement of Directors must be scheduled, noticed and conducted in accordance with these Bylaws.

#### **4.8 VACANCIES.**

**A. FILLING VACANCIES.** Vacancies in the Board caused by any reason other than removal of a Director by the Association may be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum; provided, however, that in the instance of a vacancy in the Director elected by the Owner or Owners of the Commercial Unit(s) as provided in Section 4.1 above, the Board shall fill such vacancy with the person designated by the Owner or a majority of the Owners of the Commercial Unit(s) based upon the Common Interest of each Commercial Unit (if there is more than one Commercial Unit). A vacancy exists when any authorized position of Director is not filled. For example, a vacancy exists when:

- ❖ A Director dies or resigns. Unless required by its terms, a resignation does not have to be accepted by the Board to be effective. Instead, it will take effect as of the time stated. If no time is stated, it will take effect when the Board receives it. If a resignation will take effect at a later date, a majority of the remaining Directors can elect a replacement to take office when the resignation takes effect.
- ❖ A Director is removed by the other Directors pursuant to Section 4.7C.
- ❖ A Director is no longer qualified to serve as a Director. See Section 4.3.
- ❖ The Owners increase the authorized number of Directors but the Owners fail to fill the new positions at the same meeting; or
- ❖ An authorized position is not filled for any other reason by a duly elected Director.

**B. TERM OF OFFICE OF APPOINTED DIRECTORS.**

A replacement Director will hold office until the next annual or special meeting of the Association.

**4.9 ANNUAL MEETING.** The Board must meet at least once each year. Immediately after each annual meeting of the Association, the Board will hold a regular meeting at the same place. This meeting will be held to organize the Board. The Board shall also elect any required officers at this meeting. The Board may transact any other business.

**4.10 OTHER REGULAR MEETINGS.**

**A. MEETING REQUIREMENTS.** In addition to the annual meeting, the Board shall hold other regular meetings. The number of meetings and the time and place of these meetings will be set from time to time by a majority of the Directors.

**B. NOTICE.** Notice of regular Board meetings must be given to each Director. The notice may be given personally or by mail, e-mail, telephone, fax, or messenger service. It must be given at least thirty (30) days before the date of the meeting. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records.

**C. WHEN NOTICE MUST BE RECEIVED.** If notice is not given in writing, then it must actually be received to be effective. In all other cases, if notice is given in the manner required by this Section, (i) Directors cannot object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, invalidate the meeting or any proceedings at the meeting.

**4.11 SPECIAL MEETINGS.**

**A. HOW CALLED.** The President or any two Directors may call a special Board meeting for any purpose and at any reasonable time.

**B. NOTICE.** Except in an emergency, as determined by the President, notice of special meetings of the Board must be given in the same manner as notice of a regular meeting except that: (i) it must be given at least fifteen (15) days, instead of thirty days, before the meeting date, and (ii) the notice must state the nature of the special business to be considered. The provisions of Section 4.10C will also apply to notices of special meetings.

**4.12 ADDITIONAL NOTICE OF BOARD MEETINGS.** The resident manager, Managing Agent, or a Director shall post notice of all Board meetings in prominent locations within the Project at least seventy-two (72) hours before the meeting or simultaneously with notice to the Board.

**4.13 WAIVER OF NOTICE.**

**A. ATTENDANCE.** Any Director who attends a meeting, in person or by proxy, gives up (in legal terms "waives") any right to claim that notice was not given properly unless, when the meeting begins, that Director objects to holding it because notice was not given properly.

**B. IN WRITING.** A Director may waive notice of any Board meeting by signing a document that (i) waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. If this happens, the fact that notice was not given to that Director will not, by itself, invalidate the meeting or any proceedings at the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

**4.14 QUORUM.** When referring to the Board, "quorum" means the number or percentage of Directors who must be present at a meeting for the Board to conduct business. A majority of all Directors will be a quorum of the Board. "All Directors" means all the authorized number of Directors, even if a position is not filled.

**A. WHEN A DIRECTOR IS "PRESENT".** Directors are "present" at a Board meeting if they attend it in person or by telephone or other similar equipment as provided in Section 4.18.

**4.15 DECISIONS OF THE BOARD.** At any Board meeting at which a quorum is present, the acts and decisions of a majority of the Directors present will be regarded as the acts and decisions of the Board unless a different percentage is required or allowed by law or by the Declaration or these Bylaws.

**4.16 RULES FOR CONDUCTING BOARD MEETINGS.** All meetings of the Board must be conducted in accordance with the latest available edition of Robert's Rules of Order Newly Revised.

#### **4.17 MEMBERS MAY ATTEND MOST BOARD MEETINGS.**

**A. OPEN MEETINGS.** All Board meetings are open to all Members of the Association. Members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of the Directors present vote not to let them do so. If there is not enough room for all the Members wishing to attend at the place of the meeting, the Board must adjourn and reconvene the meeting as soon as possible in a place that has enough room. Any Member may ask to be connected to any meeting being held by telephone conference call or similar device at the Member's own cost. If the number of Members asking to be connected makes the meeting impractical or impossible, the meeting may not be held by telephone conference or similar device.

**B. PRIVATE MEETINGS.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in "executive session". This means that only Board Members and persons invited by the Board may attend. In executive session the Board may discuss and vote on personnel matters, lawsuits and other legal proceedings in which the Association is or may become involved, to the extent necessary to protect the Association's attorney-client privilege or the Association's interests while negotiating contracts, leases, and other commercial transactions, and other matters of a similar nature. The nature of any and all business to be considered in executive session must first be announced in open session.

**4.18 TELEPHONE, VIDEO, AND ELECTRONIC MEETINGS.** Regardless of any other provision of these Bylaws, and unless the law provides otherwise, one or more Directors may take part in any meeting by telephone conference, video conference or similar electronic (including internet) conference. They may do so only if everyone authorized to participate in and actually participating in the meeting (including Owners who are not on the Board and who may listen and/or participate pursuant to Section 4.17A) can simultaneously hear and be heard by each other. The Board may carry on all business within the Board's authority as if everyone participating by telephone conference, video conference or similar electronic (including internet) conference were physically present at the meeting.

**4.19 ADJOURNING BOARD MEETINGS.** Any meeting of the Board may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a majority of the Directors voting, whether or not a quorum is present. If a meeting is adjourned for fifteen (15) days or more, or if the law requires a new notice, then a new notice must be given in the manner

required by Sections 4.10B or 4.11B, and 4.12. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Board may do anything that it could have done at the meeting as originally called.

**4.20 ACTION WITHOUT A BOARD MEETING.** Except as otherwise provided by law, any action that the Board is required or permitted to take, by law or by the Declaration or these Bylaws, also may be taken without a meeting if all Directors consent in writing to that action. Any written consent or consents must be filed with the minutes of the meetings of the Board, and have the same force and effect as a unanimous vote of the Directors.

**4.21 PROXY VOTE.** Except as otherwise permitted by law, a Director shall not cast any proxy vote, nor vote by proxy, at any Board meeting.

**4.22 CONFLICT OF INTEREST.** A Director who has a conflict of interest on any issue before the Board must disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting. The minutes of the meeting must record the fact that a disclosure was made. Except to the extent permitted by law, a Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest. A conflict of interest shall mean an issue in which a Director has direct personal or pecuniary interest not common to other Members of the Association. If there is any disagreement as to whether or not a conflict of interest exists, a majority of the non-interested Directors will decide whether a conflict of interest exists as to a particular Director or Directors. Their decision will be conclusive and binding on all parties.

**4.23 PAYMENTS TO DIRECTORS.** No Director will receive any compensation from the Association for acting as a Director unless that compensation is specifically authorized by vote of a Majority of the Owners voting (not counting the votes of the Developer) at an Association meeting. This does not prohibit the Association from reimbursing Directors for actual expenses incurred in the course of acting as a Director.

**A. TRAVEL EXPENSES.** Except as otherwise permitted by law, Directors may not spend Association funds for their travel, director's fees, and per diem, unless the Owners are informed and a Majority of the Owners approve of these expenses; provided that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes shall reflect in detail the items and amounts of any such reimbursements.

**B. DIRECTOR EDUCATION.** Directors may spend Association funds, which will not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, economy travel expenses, and any other expenses allowed by law. Except for economy travel expenses within the State, all other travel expenses incurred under this Section 4.23B shall be subject to the requirements of Section 4.23A.

**C. OTHER WORK.** Except as provided in Section 5.2, nothing in these Bylaws prevents any Director from serving the Association in any capacity other than as an officer or a Director and being paid for those services as authorized and approved by the Board. But he or she must be excluded from the discussions and voting by the Board on whether to hire him or her and how much to pay him or her for serving in that other capacity. A Director who is an employee of the Managing Agent shall not participate in any discussion regarding a management contract at a Board meeting, and shall be excluded from any executive session of the Board where the management contract or the Managing Agent will be discussed.

**4.24 FIDUCIARY DUTY; DEGREE OF CARE AND LOYALTY.** In performing their duties, the Directors and officers of the Association shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D of the Hawaii Revised Statutes.

**4.25 LIABILITY OF THE BOARD OF DIRECTORS AND OFFICERS.** The Directors and officers of the Association will not be liable to the Association or to the Owners or any other Interested Person for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct.

## **5. OFFICERS**

### **5.1 OFFICERS.**

**A. REQUIRED OFFICERS.** The Association must have a President, a Vice President, a Secretary and a Treasurer.

**B. OTHER OFFICERS.** The Association may have any other officers it deems necessary or appropriate. The Board will determine the title, term of office, authority and duties of these officers.

**5.2 QUALIFICATIONS OF OFFICERS.** Any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The President and Vice President must be a Director. The Secretary and Treasurer may be Directors but they do not have to be Directors. An Owner may not act as an officer of the Association and an employee of the Managing Agent.

**5.3 APPOINTMENT OF OFFICERS.** The Board will appoint the officers required by Section 5.1A at the annual meeting of the Board. The Board may appoint any other officers permitted by Section 5.1B, or it may authorize the President or another officer to do so. Officers may be appointed at any meeting of the Board by vote of a majority of the entire Board.

**5.4 TERM OF OFFICE.** All officers will take office when they are appointed. They will hold office only for so long as the Board desires.

**5.5 REMOVAL OF OFFICERS.** The Board may remove any officer, with or without cause, by vote of a majority of the Directors at any regular meeting of the Board or at any Special meeting called for that purpose. Removal of an officer will not affect any contracts which may have been executed by such officer on behalf of the Association based on Board approval granted prior to such removal.

**5.6 VACANCIES.** If any required officer resigns or dies, or if his or her office otherwise becomes vacant, then the Board must appoint a replacement at once. A majority of the remaining Directors may appoint a replacement even if there are not enough Directors remaining to have a quorum.

**5.7 PRESIDENT.** The President is the chief executive officer of the Association. The President has these powers and duties:

- ❖ The President supervises and directs the business and affairs of the Association subject, however to the policies, decisions, and directions of the Board.
- ❖ The President chairs all meetings of the Association and all meetings of the Board.
- ❖ The President is a member of all committees.
- ❖ The President has the general powers and duties of management usually authorized for the office of president of a Hawaii corporation. This includes, among others, the power to appoint committees from among the Owners from time to time as the President alone deems appropriate to assist in conducting the affairs of the Association.

- ❖ The President has any and all other powers and duties assigned to the President by the Declaration, these Bylaws or by the Board.

**5.8 VICE PRESIDENT.** If the President is absent or unable to act, or if that office is vacant, the Vice President performs all the duties of the President. When doing so, the Vice President has all the powers and duties of, and is subject to all the restrictions on, the President. The Vice President also has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

**A. OTHER TEMPORARY REPLACEMENT OF THE PRESIDENT.** If the Vice President is also absent or unable to act, or if that office is also vacant, the Board must appoint another of its members to take the place of the President temporarily. The Board must do so even if there are not enough Directors remaining to have a quorum. The Director who is so appointed and acting will also have all of the powers and duties of, and is subject to all the restrictions on, the President.

**5.9 SECRETARY.** The Secretary has these powers and duties:

- ❖ The Secretary must keep the minutes of all meetings of the Association, the Board and all committees. For this purpose, the Secretary is a member of all committees.
- ❖ The Secretary must give all required notices of those meetings.
- ❖ The Secretary must keep a list of (i) all Owners, and (ii) anyone who is holding, insuring or guaranteeing a Mortgage and who has requested copies of all notices or other Association information pursuant to Section 10.2.
- ❖ The Secretary must keep all other books, records and documents of the Association except for financial records kept by the Treasurer.
- ❖ The Secretary must keep the minute book in which resolutions will be recorded.
- ❖ The Secretary has the general powers and duties of management usually authorized for the office of secretary of a Hawaii corporation.
- ❖ The Secretary has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

The duties of the Secretary may be delegated to and performed by the Managing Agent or any other person appointed for that purpose. If the Secretary is absent or unable to act at any meeting, or if the office is vacant, another person must be appointed to act as the Secretary at least temporarily.

**5.10 TREASURER.** The Treasurer is the chief financial officer of the Association. The Treasurer has these powers and duties:

- ❖ The Treasurer must keep full and accurate financial and books and records of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.
- ❖ The Treasurer must deposit all money and other valuables in the name and to the credit of the Association with the depositories (such as a bank) chosen by the Board.
- ❖ The Treasurer must pay out the funds of the Association as ordered by the Board.
- ❖ The Treasurer must prepare all financial statements and reports requested by the President or the Board.
- ❖ The Treasurer has the general powers and duties of management usually authorized for the office of treasurer of a Hawaii corporation.
- ❖ The Treasurer has any other powers and performs any other duties assigned to him or her by the President, the Board, the Declaration, or these Bylaws.

The duties of the Treasurer may be delegated to and performed by the Managing Agent, accountants, or other suitable persons providing professional financial services. If the Treasurer is unable to act or if the office is vacant, another person must be appointed to act as the Treasurer at least temporarily.

**5.11 PAYMENTS TO OFFICERS.**

**A. PAYMENT; EXPENSES.** No officer will receive any compensation from the Association for acting as an officer unless that compensation is specifically authorized by vote of a Majority of the Owners Voting (not counting the votes of the Developer) at an Association meeting. This does not prohibit the Association from reimbursing officers for actual expenses incurred in the course of acting as an officer.

**B. OTHER WORK.** Except as provided in Section 5.2, nothing in these Bylaws prevents any officer from serving the Association in any capacity other than as an officer or a Director and being paid for those services as authorized and approved by the Board. But he or she must be excluded from the discussions and voting by the Board on whether to hire him or her and how much to pay him or her for serving in that other capacity.

**5.12 AMENDMENTS, AGREEMENTS, CONTRACTS, DEEDS, CHECKS AND OTHER INSTRUMENTS.** All amendments to the Declaration and these Bylaws (except as otherwise provided in the Declaration or these Bylaws) shall be prepared at the direction of the President or Vice President and shall be executed by the President or the Vice President and one other officer of the Association and properly recorded at the direction of the President, Vice President or Secretary, and all other agreements, contracts, certificates, deeds, leases, checks and other instruments of the Association shall be signed by the President or the Vice President and one other officer of the Association; provided, however, that no officer, though he may hold more than one office, shall sign any instrument in more than one capacity. Notwithstanding the foregoing, all amendments, agreements, contracts, certificates, deeds, leases, checks and other instruments of the Association may be signed by such person or persons as may be designated from time to time by special resolution of the Board.

## **6. INDEMNIFICATION**

**6.1 DEFINITIONS.** For the purpose of this Section 6:

**A. "Agent"** means any person who is or was a Director, officer, employee, or other agent of the Association, or who is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, limited liability company, trust or other company;

**B. "Proceeding"** means any threatened, pending, or completed action or proceeding (such as a lawsuit or arbitration). It could be for example, a civil suit, a criminal matter, or an administrative or investigative proceeding;

**C. "Expenses"** includes, but is not limited to, attorneys' fees, costs, judgments, fines, settlements and other amounts actually and reasonably incurred.

**6.2 THE ASSOCIATION WILL INDEMNIFY (REIMBURSE) ITS AGENTS.** To the extent allowed by law, the Association must indemnify (that means it will pay) any Expense incurred by any Agent in any Proceeding.

Section 415B-6 of the Hawaii Revised Statutes defines how, when, and under what conditions an agent of a Hawaii non-profit corporation can make those payments. The Association must indemnify its Agents to the same extent that a Hawaii non-profit corporation would be able to indemnify its Agents. These Bylaws authorize and require the Association to indemnify its Agents to the full extent allowed by law. If available, the Association must buy insurance to provide those payments and the Association may, but is not required to, buy insurance that provides for reimbursement under circumstances where the Association could not reimburse the Expense directly.

## **7. MANAGEMENT**

**7.1 MANAGEMENT AND OPERATION OF THE PROJECT.** Subject to the limits described in Section 4.2, the Board will manage and operate the Project, and its powers and duties include, but are not limited to, the following:

**A. OPERATION AND MAINTENANCE OF COMMON ELEMENTS.** The Board will regulate the use, maintenance, repair, replacement, modification and alteration of the Common Elements, except for:

1) Limited Common Elements that are expressly made by the Declaration or these Bylaws the responsibility of individual Unit Owners, or

2) Limited Common Elements the administration and maintenance of which is assumed by the Owners of the Units to which they are appurtenant pursuant to the authorization of the Declaration.

**B. MAINTENANCE AND REPAIR OF UNITS.** The Board may perform maintenance and repairs on any Unit or Limited Common Element if:

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

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

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

**C. RESTORATION OF PROJECT.** The Board will rebuild, repair and restore the Project in accordance

with the provisions of the Declaration and these Bylaws after it is damaged or destroyed by a fire or other casualty or as a result of a condemnation.

**D. EMPLOYMENT OF PERSONNEL.** The Board may designate, employ, train, supervise and dismiss any personnel necessary or useful to maintain, repair, replace, rebuild or restore the Common Elements or to operate the Project.

**E. DELEGATION OF POWERS.** The Board may delegate its powers to committees, agents, officers, representatives and employees.

**F. ENFORCEMENT OF CONDOMINIUM DOCUMENTS.** The Board will enforce the Condominium Documents, the Condominium Property Act, and the Condominium Regulations.

**G. PENALTIES AND FINES.** The Board may pursuant to the House Rules (See Section 7.7 below) and from time set, alter, modify and adjust penalties and fines, and charge interest on them if they are not paid, as it deems appropriate for a violation of or to enforce the Condominium Documents, the Condominium Property Act, and the Condominium Regulations. Any penalties and fines must not be inconsistent with law or the Condominium Documents. The Board may also terminate the Unit's access to the Common Elements and stop supplying the Unit with any and all services normally supplied or paid for by the Association.

**1) RIGHT TO APPEAL.** Pursuant to the House Rules the Board must establish and maintain in place at all times that fines, penalties, or termination of access or services are authorized a right to and appropriate procedure for holding a hearing to allow for the aggrieved Owner to appeal any fine, penalty, or termination of access to certain Common Elements or services supplied by the Association which may be imposed pursuant to the House Rules. At the hearing on any such appeal the Owner has the right to appear and to explain why the fine or penalty should not be imposed or access and services terminated. The Board will decide whether the Owner's appeal will be oral or written, or both, and shall so notify the Owner concurrently with delivery of the meeting notice to hear the appeal. A majority of the Directors present will decide whether to affirm the fine or penalty or to terminate access and services. The Directors, however, cannot act unless a quorum is present and the meeting is held as provided in these Bylaws and the House Rules

**2) DISPOSITION OF APPEAL.** At the conclusion of the hearing on the appeal the Board shall

vote as to whether or not to affirm the fine, penalty or termination of access or services, and if a majority of the Board present at the hearing on the appeal vote in the affirmative then the fine, penalty or termination of access or services shall be affirmed and stand. If less than a majority of the Board present at the hearing on the appeal vote in the affirmative then the appeal shall be granted and the fine, penalty, or termination of access or services rescinded.

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

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

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

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

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

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

**L. BORROWING MONEY.** Subject to any approval requirements and spending limitations contained in these Bylaws or in the Declaration, the Association may authorize the Board to borrow money to be used for the repair, replacement, maintenance, operation, or administration of the Common Elements of the Project, or to make any additions, alterations and improvements to them; provided that written notice of the purpose and use of the funds is first sent to all Unit owners and owners representing fifty percent (50%) of the common interest vote or give written consent to the borrowing. In connection with this borrowing, the Board may grant the lender the right to assess and collection monthly or special Assessments from the Owners and to enforce payment of the Assessments or other sums by statutory lien and foreclosure proceedings. The cost of this borrowing, including,



without limitation, all principal, interest, commitment fees, and other expenses payable with respect to this borrowing or the enforcement of the obligations under this borrowing, will be a Common Expense. For purposes of this section the financing of insurance premiums by the Association within the policy period shall not be deemed a loan, and no lease shall be deemed a loan if it provides that at the end of the lease term the Association may purchase the leased equipment for its fair market value.

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

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

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

**P. PROVISION OF UTILITIES TO UNITS.** The Board will provide to each Unit and its Limited Common Elements all water, sewer, electricity, and any other utility services and utilities that the Board deems necessary. The cost of the utilities will be charged either to the Unit or as a Common Expense or Limited Common Expense, as the Board decides in accordance with these Bylaws and the Declaration.

**Q. PROVISION OF COMMON ELEMENT UTILITIES.** The Board will provide all water, sewer, electricity, and any other services and utilities required for the Common Elements or as the Board deems necessary.

**R. PURCHASE OF GOODS.** If required by the Condominium Documents or by law, or if it is necessary or proper, in the Board's opinion, to operate the Project or to enforce the Condominium Documents, the Board may:

- 1) Buy, lease or otherwise procure any other materials, equipment, supplies, furniture, labor and services,
- 2) Make repairs and structural alterations, and

3) Pay taxes and assessments and other Common Expenses.

If any materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the acts, misuse, or negligence of the Owners or occupants of a particular Unit, the Board will charge the costs of it as a Special Assessment to that Unit to the extent permitted by Section 8.3B.2).

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

**T. PURCHASING UNITS.** The Board may buy, lease or otherwise acquire any Unit on behalf of the Association. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title.

**U. LEGAL PROCEEDINGS.** Subject to the provisions contained in the Declaration, if any, the Board may begin, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair them; (iii) damage to any part of any Unit to the extent that the Association is obligated to maintain and repair it; (iv) damage to the Units which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Unit to the extent that the Association is obligated to maintain and repair them, or (v) any claims by third parties with relation to the Project or the Association as a whole. If the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees.

## 7.2 MANAGING AGENT.

**A. MANAGING AGENT.** The Association must hire and at all times it must have a Managing Agent.

**B. QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii. The Managing Agent may be the Developer or an affiliate of the Developer.

**C. SELECTION.** The Developer has the right to choose and employ the first Managing Agent for the Project. (At the outset, the Developer is the only Member of the Association.) If the first Managing Agent must be replaced for any reason, the Board will choose the replacement. The Board must use its best efforts to hire and keep a responsible company as the Managing Agent.

**D. MANAGEMENT CONTRACT.** The Managing Agent must sign a written contract (the "*Management Contract*"). Subject to the requirements of the Condominium Property Act:

**1) POWERS AND DUTIES.** The Management Contract may delegate to the Managing Agent any of the Board's powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. Subject to prior approval by the Board, it may also permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper. In all cases, the Managing Agent and any sub-agents will be subject to the direction of the Board and to the limits listed in Section 7.4.

### **2) TERM.** The Management Contract:

(a) May provide for an initial term of not more than one year from the Starting Date. The "*Starting Date*" is the date on which the Managing Agent must begin its performance. Unless otherwise provided in the Management Contract, the Starting Date will be the later of (i) the first date on which a deed of an Unit is recorded, or (ii) the first date on which the City and County of Honolulu issues a temporary or permanent certificate of occupancy for a Unit in the Project.

(b) May provide that after the first term and each later term ends, the contract will be renewed automatically unless a written notice canceling the Management Contract is sent by either party at least sixty (60) days before the renewal date.

**E. CANCELLATION BY THE ASSOCIATION.** The Management Contract must give the Association the right to cancel in each of the following situations:

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

**2) WITHOUT CAUSE.** Subject to the provisions of Section 7.2E.3) below, the Association must have the right to cancel the Management Contract on not more than sixty (60) days' written notice.

**3) ELECTION OF BOARD.** If the Management Contract was entered into before the Board elected by the Owners pursuant to Section 4.4A takes office, the Association may terminate such Management Contract without penalty, within 180 days after the Owner elected Board takes office, with not less than ninety (90) days written notice of termination to the management company under the Management Contract.

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

**G. FEES.** The Management Contract must specifically state the fees to be paid to the Managing Agent by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project's Common Expenses or to cost plus a percentage profit.

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

**7.3 EMPLOYMENT OF RESIDENT MANAGER.** The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

**7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS.** Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners Voting. The Developer must abstain from this vote. This rule does not apply, however, to:

- ❖ The Management Contract.
- ❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.
- ❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.
- ❖ Agreements for cable television, satellite television, and/or internet services and equipment for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, ten percent (10%) or more of the provider or supplier.
- ❖ Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, ten percent (10%) or more of the supplier.
- ❖ Any other contract for three years or less so long as the Association can cancel it after no more than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

**7.5 LIMITS ON ASSOCIATION AUTHORITY.** Unless authorized by the vote or written consent of a Majority of the Owners Voting (not counting the Developer's votes), the Association shall not:

**A.** Incur aggregate expenditures for Capital Improvements to the Common Elements in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year; or

**B.** Sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

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

**7.7 HOUSE RULES.** The Board may adopt, publish and enforce fair and reasonable rules and regulations governing details of the operation and use of the Common Elements and any mechanical, electrical and plumbing components located in the Units to the extent they may adversely affect the Common Elements or other Units (the "**House Rules**"). The Developer may adopt the initial House Rules and revise the House Rules until the first annual meeting of the Association. The Board may revise the House Rules thereafter from time to time. The House Rules must be consistent with the Declaration, these Bylaws, the Condominium Property Act, and the Condominium Regulations; provided, however, that in no event may the Board adopt any House Rule which has any adverse effect in any manner whatsoever on the Commercial Unit(s) in the use, occupancy, and operation of the Commercial Unit(s), without the prior written consent of the Owner of the Commercial Unit(s) to be directly affected by any such proposed House Rule(s).

**7.8 STOPPING VIOLATIONS BY UNIT OWNERS.**

**A. THE BOARD MAY STOP CERTAIN ACTIVITIES.** In addition to any other rights they may have, the Board and the Managing Agent may stop ("abate") any activity or condition or remove anything that:

- 1) Violates the law or the Condominium Documents;
- 2) Is unauthorized, harmful, offensive, or potentially dangerous to others or their property; or
- 3) Threatens the property, rights or welfare of others.

**B. THE BOARD MAY ENTER A UNIT.** The rights of the Board and the Managing Agent under Section 7.8A include the right and power to enter any Unit at any time and to use any means and as much force as is reasonable under the circumstances. Neither the Board nor the Managing Agent will be liable to the Unit Owner or occupant for doing so. This includes claims for trespass or anything else. The Board and the Managing Agent can use these rights only when the violation threatens an immediate, substantial and undeniable threat to life, safety or property of any Unit

Owner, Member of his or her family, tenant, guest or invitee.

**C. THE BOARD MAY FILE A LAWSUIT.** The rights of the Board and the Managing Agent under Section 7.8A also include the right and power to file a lawsuit or other legal proceedings. For example, the Board may obtain a court order or "injunction" ordering the Unit Owner to stop its activity or to abate any unsafe condition. The Unit Owner must pay to the Association on demand all costs of any such lawsuit or other legal proceedings, including attorneys' fees.

**7.9 ABANDONED PROPERTY.** "Personal property" is a legal term. It generally means any kind of property except for land or anything built on, growing on or attached to land. For example, a car, a coat, a camera, and similar things are personal property. If anyone abandons any personal property in or on the Common Elements of the Project, the Board may sell it in a commercially reasonable manner, store it at the expense of its Owner, donate it to a charitable organization, or otherwise dispose of it as the Board chooses. However, the Board must do so in keeping with any requirements in the Condominium Property Act. The Association may keep any money from sale of the personal property except as otherwise provided by law.

## **8. COMMON EXPENSES**

**8.1 DESIGNATION OF COMMON EXPENSES.** "*Common Expenses*" means (i) all charges, costs and expenses incurred by the Association for or in connection with the administration, management, and operation of the Project, and (ii) all other sums designated as Common Expenses under the Condominium Property Act or the Condominium Documents. For example, the following expense are Common Expenses:

**A. TAXES AND ASSESSMENTS.** All charges for taxes and assessments. However, unless the Board determines otherwise,

1) Real property taxes are not Common Expenses, and

2) Other taxes or assessments will not be Common Expenses if they are assessed separately to each Unit and its Common Interest, or on the personal property or any other interest of the Unit Owner;

**B. MAINTENANCE AND REPAIR.** All costs:

1) To maintain, repair, rebuild, upgrade, replace and restore the Common Elements;

2) To make any additions and alterations to the Common Elements. This does not include, however, additions and alterations made by the Developer in the exercise of the Developer's Reserved Rights; and

3) For any labor, services, materials, supplies and equipment needed to do any of those things.

**C. LIABILITY.** Any liability for loss or damage arising out of or relating to the Common Elements or any accident, fire or nuisance on them;

**D. YARD AND JANITORIAL SERVICES.** All yard, janitorial or other similar services;

**E. WAGES AND FEES.** All wages, and all accounting, legal, and management fees;

**F. MAINTENANCE, MANAGEMENT AND OPERATION OF COMMON ELEMENTS.** All other necessary expenses to maintain, manage, and operate the Common Elements;

**G. PEST CONTROL.** The cost of pest control services, including termite control, whether or not affecting any particular Unit or Units;

**H. INSURANCE PREMIUMS.** Any premiums for insurance and bonds. This includes, for example, any hazard and liability insurance that the Association must or may buy;

**I. UTILITIES.** The cost of all utility services. This includes, for example, water, electricity, gas (if any), garbage disposal, sewer, sewage treatment, telephone and other similar services. However this does not apply to costs of such services that are separately charged to the individual Unit Owners as provided in Section 8.15;

**J. SHORTFALLS.** Any amount that the Board deems proper to make up any shortfall in funds needed to pay the Common Expense for any prior year; and

**K. RESERVES.** All amounts that the Association collects for the fiscal year to fund the estimated replacement reserves or any other reserves established by the Board.

**8.2 BUDGET AND RESERVES.** The Board must prepare and adopt an annual operating budget and give copies of it to the Owners. The budget must contain any information required by the Condominium Property Act and the Condominium Regulations.

**A. BUDGET.** The annual operating budget must include at least the following:

- ❖ The estimated revenues and operating expenses of the Association for the coming fiscal year;
- ❖ Information as to whether the budget has been prepared on a cash or accrual basis;
- ❖ The total replacement reserves of the Association as of the date of the budget;
- ❖ The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association;
- ❖ A general explanation of how the estimated replacement reserves are computed;
- ❖ The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- ❖ Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study.

**B. RESERVE FUNDS.**

**1) REPLACEMENT RESERVES.** The Association must establish replacement reserve funds as required by law. The Association may set up any additional replacement reserve funds that the Board determines to be necessary or prudent. The Association must compute the estimated replacement reserves in the manner required by the Condominium Property Act and the Condominium Regulations. The annual operating budget must include all sums required to fund the replacement reserves funds in accordance with the Condominium Property Act and the Condominium Regulations. The Association shall cause the reserve study to identify replacement costs associated with the various Limited Common Elements whenever reasonably possible so that an appropriate allocation of such replacement reserves may be made by the Board to the Owner or Owners responsible for the same as a Limited Common Element Expense. It may also include any greater amounts that the Board chooses in the exercise of its reasonable business judgment.

(a) **LIMITATION ON LIABILITY.** Neither the Association, nor any Unit Owner, Director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association will be liable if the estimates later prove incorrect.

**2) OTHER RESERVES.** The Association may establish working capital reserve funds and any other reserve funds that the Board determines to be necessary or prudent in the exercise of its reasonable business judgment.

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

(a) Cannot be withdrawn or assigned separately, and

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

**4) USE OF RESERVE FUNDS IN REPLACEMENT RESERVES.** Money in the replacement reserve funds may only be used to pay for Capital Improvements.

**8.3 ALLOCATION OF COMMON EXPENSES.**

**A. GENERAL RULE.** Except as otherwise provided by law or in the Declaration or elsewhere in these Bylaws, the Common Expenses will be charged to the Unit Owners in proportion to the Common Interests appurtenant to their respective Units. The share for each Unit will be equal to the total amount of the Common Expenses multiplied The Common Interest of that Unit.

**B. EXCEPTIONS.** Regardless of the rule in Section, 8.3A:

**1) LIMITED COMMON EXPENSES.** All costs and expenses of any Limited Common Element incurred by the Association will be charged to the Owner of the Unit to which the Limited Common Element is appurtenant. This includes, for example, all costs of maintenance, repair, replacement, additions and improvements to a Limited Common Element which is not self-maintained by the Owner of the Unit.

(a) If a Limited Common Element is appurtenant to more than one Unit, each of those Units will be liable for a share of the costs and expenses of that Limited Common Element. The share for each

Unit will be equal to the total of the cost and expenses multiplied by this fraction:

The Common Interest of that Unit

The sum of the Common Interests of all Units to which that Limited Common Element is appurtenant

(b) Costs and expenses relating to parking stalls that are Limited Common Elements may be (i) divided into equal shares for each stall, (ii) allocated based on a comparison of relative square footage (using actual areas, or estimated areas, or estimated average stall sizes), or (iii) allocated in some other fair and equitable manner determined by the Board from time to time with the consent, during the Development Period, of the Developer. Notwithstanding the foregoing, it is understood and agreed that (x) the Second Floor and Third Floor Parking Level Limited Common Element parking and related areas which are appurtenant to the Commercial Unit as set forth in Section 5.3.20 and 5.3.21 of the Declaration, and (y) the Limited Common Element L6 located on the Sixth Floor Parking Level which is appurtenant to the Commercial Unit as set forth in Section 5.2.23 of the Declaration, shall all be maintained by the Owner of the Commercial Unit at its cost and expense, and therefore shall not be a part of the allocation described above.

(c) At the request of the Owner or a majority of the Owners of the Commercial Unit(s) based upon the Common Interest of each Commercial Unit (if there is more than one Commercial Unit) made on or before October 1 of any calendar year the Board shall provide to the Owner or Owners of the Commercial Unit(s) for review and comment the budgeted allocation of the Limited Common Element Expenses for the Limited Common Elements appurtenant to the Commercial Unit(s) to be included in the Association Budget for the ensuing calendar year. The Board in approving the annual Association Budget shall consider any comments regarding the budgeted allocation of Limited Common Element Expenses to be charged to the Commercial Unit(s) received prior to November 1 of such calendar year, but final approval thereof in the context of the annual Association Budget resides solely with the Board.

(d) The Board shall cause the Association Budget to include the estimated or projected Limited Common Element Expenses to be included in the Association Budget and which are allocable to and chargeable against the Residential Unit(s) and/or the Commercial Unit(s).

**2) SPECIAL ASSESSMENTS AGAINST OWNERS.** The Association will charge a Special Assessment to a Unit to pay for all charges, costs and expenses incurred by the Association due to the negligence, misuse or neglect of the Unit Owner or an occupant of the Owner's Unit, or any person under either of them. Any Special Assessment charged under this Section 8.3B.2) will be secured by the lien of the Association described in Section 8.8.

**8.4 ASSESSMENTS.**

**A. WHEN ASSESSMENTS BEGIN.** Accounting for Common Expenses for a Unit will start on the date when the City and County of Honolulu issues a temporary or permanent certificate of occupancy for the building, including the Units of the Project. The first installment of Common Expenses will be prorated for each Unit from the date that the certificate of occupancy is issued. Provided, however, that the Developer may elect by stating in the public report for the Project that the Unit Owner shall not be obligated for the payment of the Common Expenses assessable against the Unit until the Developer sends the Unit Owners written notice that after a specified date, the Unit Owners shall be obligated to pay for the Common Expenses assessable against their respective Units. The Developer shall mail such written notice to the Unit Owners, the Association, and the Managing Agent (if any) at least thirty (30) days before the date specified in such notice. After that, Assessments of Common Expenses will be payable in advance in monthly installments on the first day of each month, or at any other time that the Board chooses.

**B. AMOUNT OF ASSESSMENTS.**

**1) REGULAR ASSESSMENT.** Each year the Board will set the amount of the Regular Assessments of Common Expenses for each Unit based on the budget and the requirements of the Condominium Documents. Until the first Board is elected at the first annual meeting of the Association, the Developer will set the amount of the Regular Assessments. The Board may increase the amount of the Regular Assessments during the year.

**2) SPECIAL ASSESSMENTS.** If for any reason the Regular Assessments for Common Expenses are, or will be, inadequate to pay all Common Expenses, the Board must estimate the shortfall. The Board must then (i) increase the next year's budget, or (ii) charge a Special Assessment. The Board may also charge a Special Assessment in any other circumstances permitted by law or by these Bylaws or the Declaration. For example, the Board

may charge a Special Assessment to a single Unit under Section 8.3B.2).

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

**4) LIMITS ON ASSESSMENTS.** The Board may not exceed its total adopted annual operating budget by more than twenty per cent (20%) during the fiscal year to which the budget relates, except in emergency situations. Before it charges or collects an Assessment under this paragraph:

(1) The Board must 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

(2) The Board must distribute the resolution to the Members with the notice of Assessment.

**C. TREATMENT OF ASSESSMENTS.** "Capital Improvements" are things like replacing the roof, painting the building exterior, resurfacing the parking areas, and other major repairs and remodeling. Day to day maintenance and repairs are not Capital Improvements. Any part of an Owner's Assessments used or to be used by the Association for Capital Improvements or any other capital expense will be treated as a capital contribution by the Owner. It will be credited by the Association on its books as paid in surplus. It will not be treated as income to the Association or to the Owners.

**8.5 HANDLING AND PAYMENT OF ASSOCIATION FUNDS.**

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

**B.** All funds collected by the Association or by the Managing Agent, must be deposited, held,

transferred, invested, and paid out in accordance with the requirements of the Condominium Property Act.

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

**8.7 DUTY TO PAY; INTEREST AND LATE CHARGES.**

**A. PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay, on time, all Regular and Special Assessments charged to the Owner or to his or her Unit. If a Unit is owned by more than one person, each of them will be jointly and severally liable for the Assessments. "Jointly and severally" is a legal term. In general, it means that each co-Owner of a Unit is obligated to pay the full amount of the Assessment, not just a share of it. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. By acquiring a Unit, an Owner promises to pay all Assessments charged to him or her, or to his or her Unit.

**B. INTEREST AND LATE CHARGES.** All sums not paid within fifteen (15) days after the due date will be subject to (i) interest at a rate to be set by the Board from time to time and published as part of the House Rules, or, if no rate is set, then at one percent (1%) per month from the due date until paid; and (ii) a late charge as shall be determined from time to time by the Board and published as part of the House Rules, or if no late charge has been set, then at a flat fee of Seventy-Five Dollars (\$75.00). An Owner must also pay all costs of collection, including reasonable attorneys' fees.

**C. HOW PAYMENTS WILL BE APPLIED.** Payments will be applied as the Board provides in the House Rules. If the House Rules do not say how payments will be applied, then they will be applied first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment.

## 8.8 ENFORCEMENT.

**A. ASSOCIATION LIEN.** The Association has a lien on each Unit for all Assessments charged to that Unit or to its Owner. This means that the Unit is collateral for the Owner's obligation to pay Assessments, including late charges, interest, costs of collection and reasonable attorneys' fees. If the Owner fails to pay these amounts, the Association may "foreclose" its lien. This means that the Unit will be sold and the money from the sale will be used to pay the amounts owed. The Association's lien is prior to all other liens, except only:

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

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

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

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

2) **LAWSUIT.** The Association may file one or more lawsuits to enforce an Owner's obligation to pay Assessments. The Association may file a lawsuit to recover a money judgment for the unpaid Common Expenses without foreclosing or giving up (in legal terms, "waiving") its lien for those expenses. The Association may not file a lawsuit unless a majority

of the Board authorizes it at a regular or special Board meeting. The Board may file the suit on behalf of the Association. The Managing Agent may file the suit on behalf of the Association if the Board authorizes it to do so in writing.

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

### (a) CANCELLATION OF NOTICE OF LIEN.

On behalf of the Board, any two (2) Directors or officers of the Association or the Managing Agent, will sign, acknowledge and deliver to the Owner a document canceling a Notice of Lien if:

(1) The Board receives payment in full of the amount claimed to be due and owing (including interest, late fees, and any costs of enforcement and attorneys' fees), and

(2) The Owner asks for the cancellation document and pays a reasonable fee for it.

4) **TERMINATION OF RIGHT TO USE COMMON ELEMENTS.** At any time after an Owner defaults for a period of thirty (30) days or more in the payment of the Owner's share of the Common Expenses, the Board at its option, for so long as such default continues, may terminate the Unit Owner's right of access to and use of the Common Elements other than as may be strictly required for access to the Unit and may stop supplying the Unit with any and all services normally supplied or paid for by the Association.

8.9 **WAIVER.** In one or more cases, the Board may not insist on strict performance of or compliance with the covenants of an Owner under the Condominium Documents, or may not use some or all of rights and



powers that the Board has to enforce compliance. This does not mean, however, that the Board has given up (in legal terms, "waived") the right to do so. Instead, the covenants of each Owner will remain in full force and effect and the Board will continue to have all of its rights and powers to enforce them despite any failure to do so in the past. Whether or not the Board knows that an Owner has violated the Condominium Documents, it may receive and accept any money paid by the Owner without waiving the Owner's breach. The Board will not be deemed to have waived any provision of the Condominium Documents, expressly or by implication, unless the Board says so in a document that is signed by an officer of the Association pursuant to authority contained in a resolution of the Board.

#### **8.10 ASSESSMENT DISPUTES.**

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

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

**8.11 LIABILITY OF ANYONE WHO ACQUIRES TITLE THROUGH FORECLOSURE.** In this Section, "New Owner" means a Lender or anyone else who obtains title to a Unit as a result of the foreclosure of a Mortgage. A New Owner and its successors and assigns are not liable for the share of the Common Expenses or Assessments charged to the Unit and which became due before the New Owner took title. Instead, those amounts will be Common Expenses collectible from all of the Unit Owners, including the New Owner and his or her successors and assigns. A New Owner will be deemed to acquire title and is required to pay the Unit's share of Common Expenses and Assessments beginning at the time stated in the Condominium Property Act or, if not stated, then: (1) thirty-six (36) days after the order confirming the sale to the purchaser has been filed with the court; (2) sixty (60)

days after the hearing at which the court grants the motion to confirm the sale to the purchaser; (3) thirty (30) days after a public sale in a nonjudicial power of sale foreclosure pursuant to Section 667-5 of the Hawaii Revised Statutes, or (4) the date when the deed is recorded.

#### **8.12 LIABILITY FOR UNPAID COMMON EXPENSES.**

**A.** In this Section 8.12, "*Existing Owner*" means the Owner who transfers a Unit, and "*New Owner*" means the person to whom the Unit is transferred. If a Unit is transferred voluntarily, the New Owner will be jointly and severally liable with the Existing Owner for all unpaid Assessments against the Existing Owner for his or her share of the Common Expenses up to the time of the transfer. This does not limit (in legal terms "*prejudice*") the New Owner's right to recover from the Existing Owner the amounts paid by the New Owner for these unpaid Assessments.

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

**8.13 ABANDONMENT OF UNIT; DEED TO BOARD.** An Owner cannot avoid liability for Assessments by not using or by abandoning his or her Unit or by giving up (in legal terms, "*waiving*") his or her rights to use or enjoy the Common Elements. Any Unit Owner may deed his or her Unit and its Common Interest to the Board on behalf of all other Unit Owners. The Owner will not be liable for any Common Expenses charged after the deed takes effect.

#### **8.14 TAXES AND ASSESSMENTS.**

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

B. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Project or any part of the Common Elements, the Board may pay those taxes or assessments as part of the Common Expenses. Each Owner must pay to the Board his or her proportionate share of any Assessment by the Board for any such taxes or assessments paid by the Board. The Owners must make these payments at the time and in the manner that the Board directs. Any Assessments charged by the Board under this Section 8.14 will be secured by the Association's lien under Section 8.8.

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

#### 8.15 UTILITY EXPENSES.

A. **COMMON ELEMENTS.** The cost of utility services for Common Elements is a Common Expense. The Owners will pay this as provided in Section 8.3 for other Common Expenses, subject to the requirements of Section 8.3B.1) with respect to Limited Common Elements.

B. **METERED UTILITIES.** The Assessments charged to each Unit will be adjusted as necessary to avoid any duplication of charges for the cost of metered utilities.

8.16 **COLLECTION FROM TENANT.** An Owner may rent or lease his or her Unit to someone else (a "tenant"). If an Owner does so and if the Owner is in default for thirty (30) days or more in paying the Unit's share of the Common Expenses, then for so long as the default continues, the Board may demand in writing and receive from the Owner's tenant any rent due up to the full amount owed by the Owner to the Association, including interest, if any. Any such demand or acceptance of rent from any tenant shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner under the Condominium Documents, or an acknowledgement or surrender of any rights or duties under the Condominium Documents. If the Board makes such a demand upon the tenant, the tenant shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the payments to the Board as demanded; provided, however, that the Board may not exercise this right if a receiver has been appointed to take charge of the Unit pending a mortgage foreclosure, if a mortgagee is in possession pending a mortgage foreclosure, or if the Developer is the Owner. Of course, the Association may not

demand that the tenant pay more than the amount of rent due from the tenant to the Owner under the lease or rental arrangement. Any amount paid by the tenant under this Section will discharge that amount of payment from the tenant's rent obligation. Even if the Board demands and receives any rent from a tenant, this will not release or discharge (i) any obligations of the Owner remaining unpaid or unperformed, (ii) any other duties of the Owner, or (iii) any rights of the Association under the Condominium Documents. The Board must comply with the requirements of the Condominium Property Act when exercising its rights under this Section.

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

#### 8.18 FINANCIAL REPORTS.

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

1) **THE BUDGET.** Within thirty (30) days after the adoption of any proposed budget, the Board shall make a copy available to all Owners, and shall notify each Owner that the Owner may request a copy of the approved budget for that year.

2) **THE ANNUAL REPORT.** The Association must send an annual report to each owner within one hundred twenty (120) days after the end of each fiscal year. It must include:

(a) An operating (income) statement for the fiscal year;

(b) A statement of the net changes in the financial condition of the Association for the fiscal year;

(c) The name, mailing address, email address, and phone number of each board member; and

(d) Any other information required by the laws of the State of Hawaii or any place (for example, another state) where the Project is registered for public sale.

**3) ANNUAL STATEMENT.** Not more than sixty (60) days before the start of each fiscal year, the Association must send to the Owners a statement describing the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments of Common Expenses, including recording Notices of Liens and foreclosing the Association's lien against Owners' Units. This statement may be mailed with the budget information required in Section 8.18A.1).

## **9. MAINTENANCE, REPAIR AND USE**

**9.1 USE.** Subject to the Developer's Reserved Rights and to the provisions of the Declaration:

**A.** Each Unit may be used only for the purposes expressly permitted in the Declaration and subject to any occupancy limitation set forth in the Declaration.

**B.** The Limited Common Elements appurtenant to the Commercial Unit (or any further commercial units into which the Commercial Unit may be subdivided) may, subject to any limitations contained in Section 9.3 of the Declaration, be operated and used for only for "office", "commercial" or "industrial" purposes or use, as said terms are defined or described in the Kaka'ako Community Development District Plan for the Mauka Area and Kaka'ako Community Development District Rules or the Mauka Area established by the Hawaii Community Development Authority, as amended from time to time. This provision is not intended to limit or restrict any grandfathered use to which the owner of a Commercial Unit or its appurtenant Limited Common Elements may at any time be entitled under applicable law. A Commercial Unit and any Limited Common Elements appurtenant to a Commercial Unit may not at any time be used for any residential use as contemplated under Section 9.1.1 of the Declaration for the Residential Units.

**C.** The Common Elements shall be used for the respective purposes for which they were intended as designed or as set forth in the Declaration, subject to:

**1)** The right of the Board to change the use of the Common Elements or to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Property Act. See, for example, Section 514B-38 of the Condominium Property Act. However, except as provided in Section 514B-140(c) of the Condominium Property Act, no such lease, use or

change in use may be made before the Development Period ends unless the Developer consents to it in writing.

**2)** The right of the Developer to use, change the use of, or otherwise deal with the Common Elements and Limited Common Elements in the exercise of the Developer's Reserved Rights.

**D.** Every Owner and occupant must at all times keep his or her Unit in a strictly clean and sanitary condition and in a condition that is consistent with a first class condominium project.

**E.** No Owner or occupant may make or suffer any strip or waste or unlawful, improper, or offensive use of his or her Unit or the Project. No Owner or occupant may alter or remove any furniture, furnishings, or equipment from the Common Elements.

**F.** Except to the extent and as may be otherwise expressly provided in the Declaration, these Bylaws or the House Rules, all Unit Owners and occupants must use reasonable care to avoid (i) making any noise(s) that will unreasonably disturb the Owners or occupants of other Units, or (ii) making any odors or noxious fumes that will unreasonably disturb the Owners or occupants of the other Units or permeate the Common Element corridors on which such Unit is located.

**G.** No Owner or occupant may throw, place, or keep any refuse, garbage, or trash of any kind on any Common Elements of the Project other than the trash disposal facilities. All Owners and occupants must comply with any rules adopted by the Association regarding the sorting and disposal of various types of refuse, garbage and trash, including re-cycling.

**H.** These are the rules about having animals in the Project.

### **1) Definitions:**

(a) "***Specially trained animals***" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people.

(b) "***Guide dog***" has the meaning stated in Section 515-3(8), Hawaii Revised Statutes. The current definition is "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and rigid handle grasped by the person." This definition will change as the law changes.

(c) "**Signal dog**" has the meaning stated in Section 515-3(8), Hawaii Revised Statutes. The current definition is "any dog trained to alert a deaf person to intruders or sounds." This definition will change as the law changes.

(d) "**Service animal**" has the meaning stated in Section 515-3(8), Hawaii Revised Statutes. The current definition is "any animal that is trained to provide those life activities limited by the disability of the person." This definition will change as the law changes.

2) No livestock, poultry, or other animals of any kind are allowed on or may be kept in any part of the Project except as expressly permitted in subsections 3), 4), 5), 6) and 7) hereinbelow.

3) Regardless of anything else stated in these Bylaws, dogs, cats or other typical household pets (each a "**pet**"), such as guinea pigs, rabbits, fishes, or birds may be kept by occupants in their respective Units, but not on any Limited Common Element lanai appurtenant to such Unit, subject to the following conditions and restrictions:

(a) Pets may not be kept, bred, or used at the Project for any commercial purpose.

(b) Except for fish, no more than two (2) pets shall be allowed per Unit.

(c) No animal described as a pest under H.R.S. Section 150A-2 or prohibited from importation under H.R.S. Sections 141-2, 150A-5 or 150A-6, may be kept in the Project.

(d) Every Owner or occupant keeping a pet or pets in a Unit shall register the pet or pets with the Managing Agent or Resident Manager, who shall maintain a register of all pets kept in the Project.

(e) Except when in transit, pets (other than specially trained animals) shall not be allowed on any Common Elements other than the "Dog Park" on the Seventh Floor of the Project, as shown and designated on Sheet CPR-9 of the Condominium Map. Any pet (other than a specially trained animal) in transit through the Common Elements must be carried whenever practicable or on a leash which keeps the pet within two feet (2') of its handler's feet. Pets shall not be allowed to come into contact with persons other than the handlers thereof, or their pets or specially trained animals, except as permitted by such other persons.

(f) Any pet causing a nuisance or an unreasonable disturbance to any other Owner or occupant of the Project must be permanently removed from the Project promptly after the Board or the Managing Agent gives notice to the person owning the pet. The pet causing a nuisance or disturbance need not be removed before the time stated in the notice unless the Board believes that the pet poses an imminent and serious threat of physical harm to other Owners or occupants of the Project.

(g) The Board may from time to time include in the House Rules other reasonable restrictions, limitations, regulations, or prohibitions relating to pets.

4) Regardless of anything else stated in these Bylaws, animals that must be permitted on the Project pursuant to the Americans with Disabilities Act are allowed on the Project and may be kept by occupants in their respective Units.

5) Regardless of anything else stated in these Bylaws, specially trained animals are permitted on the Project pursuant to Chapter 515, Hawaii Revised Statutes, provided that:

(a) Specially trained animals may not be kept, bred, or used at the Project for any commercial purpose.

(b) Specially trained animals must be kept on a leash when they are on the Common Elements, including, but not limited to, any recreation areas.

(c) Any specially trained animal causing a nuisance or an unreasonable disturbance to any other occupant of the Project must be permanently removed from the Project promptly after the Board or the Managing Agent gives notice to the person using the specially trained animal. The notice must give the person a reasonable period within which to obtain a replacement specially trained animal. The animal causing a nuisance or disturbance need not be removed before the time stated in the notice unless the Board believes that the animal poses an imminent and serious threat of physical harm to other occupants of the Project.

(d) The Board may from time to time include in the House Rules reasonable restrictions or prohibitions relating to specially trained animals. Any such restrictions or prohibitions must be consistent with any laws protecting the civil rights of persons using specially trained animals.

6) A tenant of an Owner must obtain the written consent of the Owner to keep a pet or pets in the Unit and provide a copy thereof to the Managing Agent. Notwithstanding such consent, a tenant may keep only those types of pets which may be kept by an Owner.

7) Any occupant who keeps and has properly registered a pet or pets in accordance with these Bylaws may, upon the death of the pet, replace the pet with the same type of pet and continue to do so as long as the occupant resides in the Unit or another Unit in the Project subject to these same Bylaws.

I. Nothing may be allowed, done or kept in any Unit or Common Element of the Project if it would:

1) Overload or impair the floors, walls or roofs.

2) Cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance on the Project maintained by or for the Association unless the Owner of the Unit agrees to pay the increased cost and the Board approves it.

J. It is intended that the Tower portion of the Project will have a uniform exterior appearance that is consistent with a first-class condominium. To that end, without the prior written consent of the Board, no Owner or occupant of a Residential Unit (other than the Developer) may do anything that changes the exterior appearance of the Tower portion of the Project. For example,

1) No Owner or occupant of a Residential Unit may change the color of or tint the windows of such Owner's Residential Unit if it may affect the exterior appearance of the Residential Unit. All window shades, blinds or coverings shall on the side visible from outside the Residential Unit be of a neutral color so as to maintain a uniform exterior appearance.

2) Nobody can hang clothing, rugs, or anything else from the windows, lanais, balconies, or otherwise on the Project exterior.

3) No Unit Owner or occupant of a Residential Unit may install or have any electrical or telephone wiring, television or other antenna, machines, air-conditioning units, or other equipment or accessories of any kind on the exterior of the Project or that stick out of the walls, windows, or roof of the Project; provided, however that antennae covered by the FCC Antenna Rule (47 C.F.R. Part 1, Subpart S, Section 1.400 et seq.) may be installed in accordance with such antenna installation guidelines, rules,

regulations and requirements as the Board may adopt from time to time in the House Rules.

4) No Owner or occupant of a Residential Unit may install awnings, shades, blinds, screens, louvers, or other similar objects on the lanai or balcony of any Residential Unit, or any exhaust vents, wind baffles, or drains, except in strict accordance with such guidelines, rules, regulations, and requirements as the Board may adopt from time to time in the House Rules.

K. It is intended that the Commercial Unit or Units within the Platform portion of the Project will have at all times an exterior appearance that is consistent with a first-class car dealership and service facility and/or other commercial uses that may be located within the Commercial Unit(s) in order to complement and not materially detract from the Tower portion of the Project. To that end, and except as may be expressly authorized by the provisions of the Declaration or these Bylaws, without the prior written consent of the Board, no Owner or occupant of a Commercial Unit (other than the Developer) may do anything that materially and detrimentally changes the exterior appearance of the Platform portion of the Project.

L. No Owner or occupant of a Residential Unit may paint, resurface, enclose or make any structural modifications, changes, additions or alterations to such Owner's or occupant's lanai or balcony, except in strict accordance with such guidelines, rules, regulations, and requirements as the Board may adopt from time to time in the House Rules; provided, however, that under no circumstance shall any lanai or balcony located above the ground floor be painted or resurfaced.

M. No Owner or other occupant of a Residential Unit may post any advertisement, bill, poster, or other sign on or in the Project, except in strict accordance with guidelines, rules, regulations, and requirements adopted by the Board from time to time in the House Rules. All signage exhibited within or affixed to any part of a Commercial Unit and visible from outside that Commercial Unit must comply with the Commercial Signage Guidelines set forth in Exhibit D to the Declaration.

N. No Owner or occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the Common Elements. This does not prohibit the Owners of Units from placing goods and other materials on the Common Elements when loading or unloading them, or transporting them to the Unit or to a storage area that

is a Limited Common Element appurtenant to the Unit. Any such loading, unloading, and transportation must be completed promptly.

O. Access to the roof level of the Tower is limited to persons authorized by the Board to perform any necessary inspections, maintenance or repairs on the roofs. The Board may likewise restrict access to other parts of the Common Elements such as elevator mechanical rooms, electrical equipment rooms, and other areas that would not ordinarily be open to the public in a residential building.

**9.2 MAINTENANCE AND REPAIR OF UNITS AND APPURTENANT LIMITED COMMON ELEMENTS.** Except as otherwise provided by law or in these Bylaws or in the Declaration:

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

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

(a) The interior decorated or finished surfaces of all walls, floors, and ceilings of the Unit, and

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

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

2) Each Unit Owner shall be responsible for doing the following with respect to the Owner's Unit and limited common elements appurtenant thereto in order to prevent or eliminate the occurrence of mold growth in the Unit and at the Project:

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

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

(c) Inspect for leaks on a regular basis. Look for discoloration or wet spots. Repair any leaks promptly. Promptly report any leaks, wet spots, or discoloration to the Resident Manager and/or Managing Agent. Inspect condensation pans (refrigerators and air conditions) for mold growth. Take notice of musty odors and any visible signs of mold.

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

3) Each Unit Owner shall be responsible at such Unit Owner's expense for cleaning all window surfaces that are readily and safely accessible from inside the Unit. Each Unit Owner shall also be responsible, at such Unit Owner's sole cost and expense, for the timely repair and replacement of any damaged limited common element windows, window frames and entry doors so as to insure the uniform and attractive appearance of the Project. In the event that a Unit Owner fails to properly repair or replace a damaged limited common element window, window frame or entry door within fourteen (14) days of such Unit Owner's receipt of a written request to do so from the Board, the Association shall have the right (but not the obligation) to enter the Unit during normal business hours and make all required repairs or replacements to such windows, window frames and/or entry doors and to levy a special assessment against the Unit Owner for the full cost of the same, including all parts, materials and labor. All unpaid amounts of such special assessment shall constitute a lien on the Unit, as provided in these Bylaws.

4) The Board, after notice to all Unit Owners and an opportunity for comment by the Unit Owners, may determine that certain portions of the Units or limited common elements, or certain objects or appliances therein (such as, by way of example but not limitation, washing machines, hoses, dishwashers, water heaters, air conditioning elements) pose a particular risk of damage to other Units, or limited

common elements, or common elements if they are not properly inspected, maintained, repaired or replaced by the Unit Owners (hereinafter called "**High Risk Components**"). With regard to items designated by the Board as High Risk Components, the Board may require any of the following:

(a) Inspection, by the Association or by inspectors designated by the Association, as specified intervals or upon replacement or repair of the item;

(b) Replacement or repair of the item as specified intervals whether or not the item is deteriorated or defective; and

(c) Replacement or repair of the item that either meets particular standards or specifications established by the Board, or that includes additional components or installations specified by the Board, or that uses contractors with specific licensing, training or certification approved by the Board.

5) Notwithstanding the Board's imposition of any requirements of any High Risk Components, a Unit Owner shall not be relieved of such Unit Owner's obligations regarding High Risk Components as set forth in the Declaration or in these Bylaws, including, but not limited to, the obligation to maintain, repair, and replace the High Risk Components.

6) If the Unit Owner fails to follow requirements imposed by the Board pursuant to this Section 9.2A.4, the Association, after reasonable notice, may enter the Unit to perform the requirements with regard to High Risk Components at the sole cost and expense of the Unit Owner, which costs and expenses shall be a lien on the Unit as provided herein and in Section 514B-146 of the Condominium Property Act. Nothing in this Section shall be deemed to limit the remedies of the Association for damages, or injunctive relief, or both.

7) Each Unit Owner is liable for all loss or damage caused by his or her failure to perform any such work diligently, or from a cause originating within the Unit or from a fixture or appliance over which the Unit Owner has control. Each Unit Owner is also liable for the amount of any applicable insurance deductible or co-payment. If the Owner fails to do it after reasonable notice from the Association, the Association may do it. The Association may then charge the cost of doing it to the Owner pursuant to Section 8.3B.2).

**B. DAMAGE TO COMMON PROPERTY.** Every Unit Owner and occupant:

1) Must reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the Common Elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or occupant or by any person under either of them, and

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

**3) EXTERIOR PAINTING AND REPAIRS.** It is intended that the exterior of the buildings will have a uniform appearance and that the Project will be maintained as a first class condominium project. To that end, but excluding the exterior non-structural, storefront façade elements of the Commercial Unit(s), the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows, trim, walls, railings and other exterior parts of any buildings, even if they are Limited Common Elements or part of the Units. The Board may also choose the type and color of paint to be used, but excluding the exterior non-structural storefront façade elements of the Commercial Unit(s). The Board may assess each Owner for his or her proportionate share of the painting and repairs or the Board may pay for it using the reserve funds. However, the cost of painting and repairs due to negligence, misuse or neglect of an Owner or other occupant, or someone under either of them, may be charged as a Special Assessment pursuant to Section 8.3B.2). The Owner or Owners of the Commercial Unit(s) shall at all times maintain the exterior non-structural storefront facades of the Commercial Unit(s) in a first class manner.

### **9.3 MAINTENANCE AND REPAIR OF COMMON ELEMENTS.**

**A. COMMON ELEMENTS OTHER THAN LIMITED COMMON ELEMENTS.** Except as otherwise provided in these Bylaws or in the Declaration, all maintenance, repairs and replacements of Common Elements that are not Limited Common Elements will be made only by or at the direction of the Board. The cost will be charged to all the Owners as a Common Expense.

**B. LIMITED COMMON ELEMENTS APPURTENANT TO UNITS.** Except as otherwise provided in these Bylaws or in the Declaration, all maintenance, repairs and replacements of Limited Common Elements appurtenant to the respective Units, whether located inside or outside of the Units, will be made by or at the direction of the Board. Except as otherwise required by law, however, this rule does not apply to Limited Common Elements appurtenant to Units whose

Owners choose to conduct such maintenance, repairs and replacements themselves as authorized in the Declaration.

#### **9.4 ALTERATIONS AND ADDITIONS BY OWNERS.**

**A. PERMITTED ALTERATIONS.** A Unit Owner may make additions, alterations or improvements solely within the Owner's Unit or within a Limited Common Element appurtenant to and for the exclusive use of the Owner's Unit:

- 1) At the Unit Owner's sole cost and expense;
- 2) With the approval of the Board, unless an express provision of the Declaration and/or these Bylaws allow for such addition, alteration, or improvement to be made without Board approval;
- 3) In accordance with the requirements of the Declaration and the Condominium Property Act; and,
- 4) In accordance with all applicable building code requirements of the City and County of Honolulu.

**B. PROHIBITED ALTERATIONS.** Subject to the provisions of the Declaration and the Condominium Property Act, no Owner of a Unit may make any alteration or addition: (i) to the Owner's Unit that adversely affects the Common Elements or changes the exterior appearance of the Owner's Unit or the Project, except to the extent expressly authorized in the Declaration or these Bylaws; or (ii) to any of the Common Elements including, without limitation, Common Elements within, encompassing or adjacent to the Owner's Unit.

**C. LIMITATION ON HARD FLOOR SURFACES IN RESIDENTIAL UNITS.** Any Owner of a Residential Unit who installs hard floor surfaces in the Unit shall comply with the requirements set forth in Section 18.2.2E of the Declaration, including without limitation, the utilization of such flooring materials, methods of installation and/or systems which meet a Sound Transmission Coefficient (STC) acoustic standard of STC-55 or better and an Impact Insulation Class (IIC) rating of IIC-55 or better.

**D. BOARD APPROVAL.** An Owner must not begin work on any alterations, additions or improvements that require Board approval until after:

- 1) The Owner submits a written request for Board approval, which request must include plans

and specifications depicting or showing the proposed alteration, addition or improvement; and,

- 2) The Board (or a subcommittee of the Board) approves the request in writing or the Board is deemed to have approved the request as provided in Section 9.4E.

**E. TIME LIMIT FOR BOARD RESPONSE.** The Board must respond to a request for approval within sixty (60) days after it receives it. The request will be approved automatically unless, within the sixty-day period, the Board either (i) disapproves the request, or (ii) asks the Owner to make changes or to provide further documentation or information to allow the Board to make an informed determination. This automatic approval, however, does not apply to work that will affect the Common Elements, the exterior appearance of the Project or the rights of any other Owner.

**F. CONDITIONS TO APPROVAL.** The Board may impose reasonable conditions on its approval of any such request. For example, the Board might condition its approval on any of the following:

- 1) Changes to the plans or specifications;
- 2) That the work be supervised by a licensed architect, engineer or other construction professional;
- 3) That Owner submit an executed copy of a construction contract with a licensed contractor covering all of the work depicted in the plans;
- 4) That Owner provide evidence to the Board that Owner has sufficient funds set aside in cash and/or funds to be loaned pursuant to a binding loan commitment to enable Owner to pay 100% of the estimated costs of construction for the contemplated alteration, addition or improvement;
- 5) That the Owner submit to the Board or Managing Agent a copy of an issued building permit covering the contemplated alteration, addition or improvement, if required under the building code;
- 6) That the Owner submit to the Board a performance bond and labor and material payment bond in a face amount equal to the 100% of the estimated cost of the construction, naming the Board on behalf of the Association, the Unit Owners and their lenders, as their respective interests may appear, as additional obligees; provided that in appropriate circumstances the Board may accept in lieu of such bonds a written indemnity, in form and content acceptable to the Association, under which the Owner



agrees to indemnify and hold harmless the Association, the Unit Owners and their lenders, as their respective interests may appear, from and against any claims, demands, or liability arising out of the failure of the Owner to pay all costs and expenses for any labor, materials or supplies for any work performed to the Unit or Limited Common Element;

7) That due to the limited amount of available on-site parking, the Owner's contractor will not be allowed to park on-site, but will be required to park its trucks, cars and other vehicles off-site and may only enter onto the Project grounds for drop off, delivery and pick-up purposes;

8) That the Owner's contractor shall not be permitted to use the Association's trash containers or receptacles for disposal of any construction trash or debris and that no accumulation of trash or other debris from any construction activity within the Unit or Limited Common Element shall be allowed or permitted to remain on the Common Elements but shall be removed on a daily basis by the Owner's contractor; and,

9) That upon completion of the work the Owner shall provide to the Association a copy of the Notice of Completion covering the alteration, addition or improvement, duly published, and the Affidavit of Publication regarding such Notice of Completion, duly filed, in accordance with Section 507-43 of the Hawaii Revised Statutes.

**G. UNAUTHORIZED WORK.** The Board may inspect the work from time to time. It may require the removal or correction of any work (i) not authorized by the Board, or (ii) that may adversely affect the Common Elements, the exterior of the Project or the rights of any other Unit Owner.

**H. DEVELOPER'S RESERVED RIGHTS.** Despite the requirements of this Section 9.4, the Developer does not need Board approval when exercising the Developer's Reserved Rights as set forth in the Declaration.

**9.5 ALTERATION OF THE PROJECT.** Except for Limited Common Elements to be maintained by the Owners of Units to which they are appurtenant, whenever in the judgment of the Board, the Common Elements need additions or alterations, the Board can make the additions or alterations. Until the Development Period ends, however, the Board may not proceed without the written approval of the Developer. The cost will be a Common Expense, except that the cost of any such work performed on any Limited Common Elements will be charged to the

Owners of the Units to which the Limited Common Elements are appurtenant. Notwithstanding anything to the contrary herein, the Board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the Common Elements; provided that the same shall not be installed upon any Limited Common Element without the consent of the Owners for the use of which the Limited Common Element is reserved. The installation of antennas, conduits, chases, cables, wires and other television and telecommunications equipment upon the Common Elements by the Board shall not be deemed to alter, impair, or diminish the Common Interest and Common Elements appurtenant to each Unit or be a structural alteration or addition to any building different in any material respect from the Plans of the Project filed in accordance with the Act; provided that no such installation shall directly affect any non-consenting Owner. Further, the Board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence (which determination shall be within the Board's sole discretion) or to provide an equivalent function by different means or methods; and the abandonment or change of use of any television signal distribution or telecommunications equipment by the Board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the Common Interest, Common Elements, and easements appurtenant to each Unit or to be a structural alteration to any building different in any material respect from the Plans of the Project. For the purposes of this Section 9.5, (a) "directly affects" means the installation of television signal distribution and telecommunications equipment in a manner which would specifically, personally, and adversely affect an Owner in a manner not common to the Unit Owners as a whole, and (b) "**television signal distribution**" and "**telecommunications equipment**" shall be construed in their broadest senses in order to encompass all present and future forms of communications technology.

**9.6 OWNER APPROVAL.** Alterations, additions, maintenance, repair or replacement of the Common Elements costing in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) in any one instance may be made by the Board only after obtaining approval of a Majority of the Owners Voting and, until the end of the Development Period, the Developer. This threshold amount requiring approval of a Majority of the Owners Voting shall be subject to periodic increase by affirmative vote of a majority of the

Board, but not more frequently than every five (5) years and by not more than ten percent (10%) at any one time. This rule does not apply to additions, alterations, maintenance, repairs or replacements:

A. Required by law or by the Declaration or these Bylaws;

B. Required due to an emergency threatening immediate and substantial damage to person or property;

C. Required to maintain or repair the Project as originally designed or constructed, or in accordance with any changes to the Project previously approved by the Association or required by law;

D. For which replacement reserve funds have been established and substantially funded; or

E. Made by the Developer when exercising the Developer's Reserved Rights.

**9.7 DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights under the Declaration include various rights such as the right: (i) to amend the Condominium Documents to file an "*as-built*" statement with plans as may be required by Section 514B-33, Hawaii Revised Statutes, to comply with any requirements of real estate laws in connection with the registration of the Project, or to satisfy requests of any institutional lender loaning money to the Developer; (ii) to make certain alterations to adjacent Units and their appurtenant Limited Common Elements; (iii) to further subdivide and/or consolidate and annex the Land of the Project with any Adjacent Parcel, (iv) to amend the Condominium Documents, without the consent of anyone else, as necessary to reflect any changes in or additions to the Project made pursuant to the Developer's exercise of the Developer's Reserved Rights, and (v) to record documents as contemplated in the Condominium Documents and Developer's Reserved Rights.

A. To ensure that the quality, integrity, uniformity and value of the Project remains substantially the same at all times, and regardless of any other provisions of these Bylaws, the Developer reserves the following rights as additional Developer's Reserved Rights:

1) Except as may be otherwise expressly allowed under the Declaration or these Bylaws, without the prior written approval of the Developer, nobody (including individual Unit Owners, the Association, the Managing Agent and any employee or agent of any of them) can make any alterations of any kind that affect

or may affect the appearance of all or any part of the Project. This rule does not apply to alterations made entirely inside a Unit if they are not visible from outside of the Unit and if they are otherwise permitted by the Condominium Documents. Alterations subject to the Developer's approval under this subsection include for example:

(a) Painting or repainting all or any part of any Residential Unit (including but not limited to the lanai) or Limited Common Element. This rule does not apply to painting or repainting that is not visible from any vantage point commonly accessible to the public;

(b) Any externally visible cosmetic or structural addition to or deletion from any Residential Unit, any Limited Common Element of a Residential Unit, or any Common Element; and

(c) Any substantial change in the landscaping of all or any part of the Project. This includes, for example, planting or removing any flowers, shrubs, trees, grass or similar ground cover on the Common Elements. It does not include changes in the landscaping that are not visible from any vantage point commonly accessible to the public.

2) The Condominium Documents may not be amended in any way that changes or otherwise affects the use or ownership of the Commercial Unit(s) or any Limited Common Element appurtenant to them without the prior written approval of the Owner or Owners of the Commercial Unit(s) directly affected and the Developer. This rule does not apply, however, to amendments that only transfer parking stalls among Units.

B. The rights reserved in this Section 9.7 shall survive and remain in full force and effect until the expiration of the Development Period.

## **10. MORTGAGES**

**10.1 NOTICE TO BOARD.** If a Unit Owner Mortgages his or her interest in a Unit, he or she must notify the Board of the name and address of the Lender.

**10.2 REQUESTS FOR INFORMATION.** A holder, insurer or guarantor of a Mortgage may request certain information under this Section 10. To be valid, the request must be made in writing. It must state the holder's, insurer's or guarantor's name and address. It must also state the Unit number of the Unit upon which it has, insures or guarantees a Mortgage, and the name of the borrower.

**10.3 NOTICE TO LENDER.** A holder, insurer or guarantor of a Mortgage on an Unit or any interest in it may request copies of:

A. Any notice of default given to the Owner of that Unit. This would include, for example, a notice of failure to pay of Assessments.

B. Any other notice given to the Owner.

After the Board receives such a request, it must provide copies of all such notices to the person making the request. The Board may also choose to send copies of some or all of such notices to any Lender even if the Lender does not make a proper request.

**10.4 STATEMENT OF UNPAID AMOUNTS.** Any holder, insurer or guarantor of any Mortgage may ask the Board for a letter listing any unpaid Assessments against the Unit or its Owner. Within twenty (20) days after receiving the request, the Board or the Managing Agent must provide the letter. The letter will bind the Association in favor of any holder, insurer or guarantor of any Mortgage who relies on it in good faith except as to the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the 30-day period immediately preceding the date of such statement. The Board may require payment of a reasonable fee before preparing the letter.

**10.5 EXAMINATION OF BUDGETS AND AUDITS; REQUESTS FOR LEGAL OR OTHER INFORMATION.** If asked by any holder, insurer or guarantor of any Mortgage of an interest in a Unit, the Association will provide a copy of its budgets, audited financial statements (including those for the prior fiscal year) and any other such reports prepared in connection with the Project. The Board may require payment of a reasonable fee for providing these materials. With respect to an Owner who submits a request for legal or other information from the Association, the Board (or its Managing Agent) shall notify the Owner of any charge for the provision of the requested information in writing at least ten (10) days prior to incurring the cost of providing the information, except that no prior notice shall be required to assess the cost of providing information on delinquent assessments or in connection with the proceedings to enforce the law, the Declaration, the House Rules (if any) or these By-Laws. After being notified of the cost of providing the requested information, an Owner may withdraw its request, in writing. An Owner who properly withdraws its request in accordance with this Section 10.5 shall not be charged for the cost of providing the information.

**10.6 LENDER PROTECTION.** Regardless of anything else stated in the Condominium Documents:

A. The Condominium Documents do not give an Owner or anyone else priority over the rights of any Lender under its Mortgage in the case of a distribution to the Owner of insurance or condemnation proceeds; provided, however, that this does not change the provision of the Declaration allocating proceeds as between the Developer and the Owners with respect to the Developer's right to compensation or damages paid on account of loss of the Developer's Reserved Rights.

B. No amendment to this Section 10.6 will affect the rights of any Lender whose Mortgage is recorded before the amendment unless the Lender signs or approves (in legal terms, "*joins in*") the amendment.

**10.7 REQUEST FOR NOTICE.** A holder, insurer, or guarantor of a first Mortgage may ask the Association for written notice of any proposed action that requires the consent of certain Lenders or a percentage of certain Lenders. After the Board receives such a request, it must provide the notice requested whenever action requiring Lender consent is proposed.

**10.8 RELEASE OF INFORMATION.** The Board may provide any information available to it pertaining to an Unit or the Project to the any Lender having a Mortgage on that Unit. Any Lender may provide any information to the Board regarding the borrower, the borrower's loan and the status of the loan.

## **11. ASSOCIATION RECORDS**

**11.1 PROJECT DOCUMENTS.** The Association must keep at the Managing Agent's office an accurate copy of the Declaration, these Bylaws, the House Rules, a sample original Unit Deed, and all public reports and any amendments to them. The Managing Agent must provide copies of those documents to Owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

**11.2 DOCUMENTS FOR DIRECTORS.** The Association, at its own expense, must provide to all Directors a current copy of the Declaration, these Bylaws, the House Rules and, annually, a copy of the Condominium Property Act with amendments.

### 11.3 MEMBERSHIP LIST.

**A. THE ASSOCIATION MUST KEEP A LIST.** The Resident Manager or Managing Agent or Board must keep an accurate and current list of names and addresses of the Members of the Association. The list must include, among others, anyone who is buying a Unit under any agreement of sale. It must also include the names and addresses of each Lender whose name and address is furnished to the Association. The list will be maintained at a place designated by the Board.

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

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

(b) The person requesting the list satisfies any other conditions to obtaining the list contained in the Condominium Property Act.

(c) All other lawful conditions adopted by the Board pursuant to Section 11.4F have been fully satisfied.

### C. OWNERS' DEEDS, MORTGAGES, ETC.

#### 1) Each Owner must promptly:

(a) Record the deed or other document conveying the Unit to him or her,

(b) Record any Mortgage of his or her interest in his or her Unit, and

(c) File a copy of those documents with the Board.

2) Anyone who sells a Unit using an agreement of sale must promptly record the agreement of sale and file a copy of it with the Board.

3) Each Unit Owner, each seller and each buyer under an agreement of sale, and each Lender must promptly notify the Board of any changes in his, her or its address. The Association does not have to change its membership list unless and until the Board receives satisfactory evidence of a person's interest in the Project. A current title report or a recorded copy of a Unit deed, or a Mortgage are examples of satisfactory evidence.

4) During the Development Period, the Board must provide to the Developer a clear and readable copy of all documents and information that it receives pursuant to this Section 11.3C within seven (7) days after the Board receives it.

### 11.4 MINUTES AND RECORDS; EXAMINATION.

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

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

**C. FINANCIAL RECORDS.** Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers (or other comparable lists or schedules), insurance policies, contracts and invoices of the Association for the duration such records are kept by the Association, and delinquencies of ninety (90) days or more will be available for examination by the Unit Owners at convenient hours at a place designated by the Board; provided that:

1) The Board must require the Unit 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

2) The Unit Owners pay for administrative costs in excess of eight hours per year.

Copies of these items will be provided to any Unit Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage and stationery and other administrative costs associated with handling the request.

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

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

2) The 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 certificate of election from the most recent meeting of the Association will be provided to any Unit Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling such request.

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

**F. PROTECTION OF ASSOCIATION INFORMATION.** To the extent permitted by law, the Board may establish reasonable additional requirements and conditions to the inspection by Owners (including Directors) of the list of Owners or to furnishing information from the register or other books, papers or records of the Association especially when that information might be used to compile a list of Owners. For example, the Board may set rules governing (1) when notice must be given to the Association or

Managing Agent by the person desiring to inspect the Association's records, (2) hours and days of the week when an inspection may be made, (3) payment of the cost of reproducing copies requested by the party making the inspection, to the extent not specified elsewhere in these Bylaws, and (4) the posting of a bond.

## 11.5 RECORDS; EXAMINATION; DISPOSAL.

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

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

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

## 12. SPECIAL PROVISIONS

**12.1 SHARED ACCESS DRIVEWAY.** As part of the development of the Project a ground level entrance/exit driveway has been or will be improved off of Kapiolani Boulevard which entrance/exit driveway, as more particularly shown on Sheet CPR-2 of the the Condominium Map (the "**Shared Access Driveway**"), is and will be shared and used by (a) the officers, employees, business invitees, customers, and guests to the Mercedes Dealership Facility (as defined in the Declaration), and (b) (a) the officers, employees, business invitees, and customers of Hawaiian Electric Company, Ltd. to its adjoining real property at the mauka end of the Shared Access Driveway. The Owners and residents of the Project shall also have a shared right to access the Project by use of this shared entrance/exit driveway off Kapiolani Boulevard. Furthermore service providers to the Mercedes Dealership Facility and the Project may also access

their respective loading areas by way of this Shared Access Driveway off of Kapiolani Boulevard. As a result of this shared access and use right by the Project over and across the Shared Access Driveway, the Association will be responsible for by and through the Unit owners to pay a fair and equitable annual share of the costs and expenses incurred to maintain, repair, and resurface this Shared Access Driveway off of Kapiolani Boulevard. This annual maintenance and repair contribution shall be funded by the Association as a part of the monthly assessments for common expenses against the Unit Owners made under the Declaration and Bylaws.

### **13. GENERAL PROVISIONS**

**13.1 WHO CAN SIGN CHECKS.** All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Association must be signed or endorsed as stated in a resolution adopted by the Board. If no resolution is adopted, they must be signed by any one of the elected officers of the Association, being the President, Vice President, Secretary or Treasurer. The same rule applies to signing and delivering other documents authorized by the Condominium Documents or by action of the Board or the Association. Notwithstanding the foregoing and unless provided in a resolution duly adopted by the Board, any check, draft or other orders for payment of money, notes or similar documents to be signed by the Association in excess of the amount of \$5,000 must be signed by any two (2) of the then officers of the Association.

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

**13.3 RIGHT OF ACCESS.** The Association has the right and an easement to enter any Units and/or Limited Common Elements, if any, from time to time as authorized by law and/or by the Declaration.

#### **13.4 AMENDMENT.**

**A. AMENDMENT BY VOTE OR WRITTEN CONSENT.** Except as otherwise provided in these Bylaws or by law, these Bylaws may be amended in any respect consistent with law and the Declaration by

the vote or written consent of sixty-seven percent (67%) of all Unit Owners, provided that:

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

2) Regardless of anything else stated in the Condominium Documents, no amendment to the Condominium Documents that changes, terminates, or otherwise adversely impacts any of the Developer's Reserved Rights, or any other rights of the Developer under the Condominium Documents, will be effective unless the Developer signs it and it is recorded.

3) Regardless of anything else stated in the Condominium Documents, no amendment to the Condominium Documents, including these Bylaws, that changes, terminates, or otherwise adversely impacts, restricts, limits or impairs any of the rights of use or any other rights of the Owner of the Commercial Unit under the Condominium Documents, including these Bylaws, will be effective unless the Owner or a majority of the Owners of the Commercial Unit(s) based upon the Common Interest of each Commercial Unit (if there is more than one Commercial Unit) consent to and approve of such amendment, which consent and approval can be granted or withheld in the sole and absolute discretion of the Owner or a majority of the Owners of the Commercial Unit(s) and such Owner(s) sign it and it is recorded.

**B. DEVELOPER'S RESERVED RIGHTS TO AMEND.** Despite what Section 13.4A says, the Developer acting alone has the right to amend these Bylaws at the times and under the circumstances stated in the Declaration. Those rights are some of the Developer's Reserved Rights.

**C. RECORDING.** An amendment to these Bylaws will take effect only after (i) it is signed by the proper officers of the Association and/or by the Developer, as required in these Bylaws or in the Declaration, and (ii) it is recorded.

**D. PROPOSAL OF AMENDMENTS.** Any proposed amendment to these Bylaws with the rationale for such proposal may be submitted by the Board or by a volunteer Unit Owners' committee. If submitted by the volunteer Unit Owners' committee, it must be accompanied by a petition signed by not less than twenty-five percent (25%) of the Unit Owners as shown in the Association's records of ownership maintained by the Board as provided in Section 11.3. The proposed amendment, the rationale, and the ballots for voting on the amendment must be mailed by the Board to the Unit Owners at the Common Expense of the

Association for vote or written consent without change within thirty (30) days after the Board receives the petition. The vote or written consent required to adopt the proposed amendment to these Bylaws will be sixty-seven percent (67%) of all Unit Owners; provided that the vote or written consent must be obtained within three hundred sixty-five (365) days after mailing for a proposed by-law submitted by either the Board or a volunteer Owners' committee; and provided further than any such amendment shall be subject to the limitations set forth in Section 13.4A. If the proposed amendment is duly adopted, then the Board must record the amendment. The volunteer Unit Owners' committee cannot submit a petition for a proposed amendment to these Bylaws that is substantially similar to the amendment previously mailed to the Unit Owners within one (1) year after the original petition was submitted to the Board. This Section 13.4D does not preclude any Unit Owner or voluntary Unit Owners' committee from proposing any amendment to these Bylaws at any annual meeting of the Association.

**E. RESTATEMENT OF BYLAWS.** No matter what else the Condominium Documents say, the Association has the authority under the Condominium Property Act:

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

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

The Association may do this if the Board adopts a resolution authorizing it. No other vote of the Association is necessary. No restated or amended Bylaws will be effective unless they are recorded.

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

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

**B.** Notice to an Owner may be given by delivering such notice in person or by mail, electronic mail, fax, or messenger service. The notice must be

mailed or delivered to his or her address as it is shown on the membership list.

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

**D.** All notices must be in writing. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records. Regardless of the prior two sentences, notices of addresses and changes of addresses will be deemed given only when they are actually received.

**13.6 CAPTIONS.** The Developer has tried to divide these Bylaws into useful Sections and to provide captions describing each Section. The captions are here for convenience only. They do not completely or adequately explain each Section or the entire document. Owners must read with care each and every part of these Bylaws, not just the captions.

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

**13.8 INTERPRETATION.** The provisions of these Bylaws will be interpreted to carry out the purpose of creating a uniform condominium complex in which the Unit Owners operate, maintain, and pay the costs of the Project for their mutual benefit.

**13.9 EFFECT OF INVALID PROVISIONS.** The provisions of these Bylaws are "*severable*". This means that if any part of them is not legal or valid, that part can be ignored. But the rest of these Bylaws will remain in effect and everyone must obey them.

**[Signature Appears on Following Page]**

The Developer has signed these Bylaws as of the 4th day of March, 2013.

**OLIVERMcMILLAN PACIFIC RIM, LLC**  
a Hawaii limited liability company

By  \_\_\_\_\_

Name: Daniel Nishikawa  
Title: President



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

On this 8th day of February, 2013, before me personally appeared DANIEL NISHIKAWA, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



[Signature]  
Name: NOELANI N. JINBO

Notary Public, State of Hawaii  
My Commission expires: September 22, 2014

Date of Doc: <u>-Updated-</u>	# Pages: <u>41</u>
Name of Notary: <u>NOELANI N. JINBO</u>	Notes: _____
Doc. Description: <u>Bylaws of the Association of Unit Owners of Symphony Honolulu</u>	
<u>[Signature]</u>	
Notary Signature	Date
	<u>FEB 18 2013</u>
First Circuit, State of Hawaii	
NOTARY CERTIFICATION	