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ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
(BUREAU OF CONVEYANCES)

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Condominium Map No.: 1227
(Land Court)

**AMENDMENT AND RESTATEMENT OF BY-LAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF HAWAIKI TOWER**

WHEREAS, by Declaration of Condominium Property Regime of Hawaiki Tower (the "Declaration") dated December 19, 1997, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2428170 and **noted on the Certificates of Title shown on the attached Exhibit "1"**, the property described in the Declaration was submitted to the provisions of the Condominium Property Act, Chapter 514A, H.R.S., (now Chapter 514B, Hawai'i Revised Statutes) as amended¹; and

WHEREAS, the By-Laws of the Association of Apartment Owners of Hawaiki Tower ("By-Laws") dated December 19, 1997, were recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2428171;

WHEREAS, simultaneously with the recording of the Declaration and the By-Laws, Declarant also recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Condominium Map No. 1227 plans describing the improvements to the project;

WHEREAS, the Declaration was amended by instruments dated March 10, 1998, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2442735; dated March 29, 1999, recorded in the Office of the Assistant Registrar

of the Land Court of the State of Hawai'i as Land Court Document No. 2542893; dated June 15, 2000, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2634577; and dated November 26, 2007, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 3698590; all noted on the Certificates of Title shown on the attached Exhibit "1"; and

WHEREAS, the By-Laws were amended by instrument dated March 10, 1998, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2442736; and

WHEREAS, the Association was incorporated under Chapter 415B, Hawai'i Revised Statutes, as the Association of Apartment Owners of Hawaiiki Tower, Inc.; and

WHEREAS, pursuant to HRS Section 514B-108(e), owners of at least sixty-seven percent (67%) of the common interest of Hawaiiki Tower approved amending Article II, Section 3; Article II, Section 5; Article II, Section 6; Article II, Section 8; Article III, Section 3; Article III, Section 11; Article V, Section 1(P); Article V, Section 12; and adding one new subsection to Article VI, Section 4, each to read as provided herein;

WHEREAS, Section 514B-109, Hawai'i Revised Statutes, as amended, empowers the Board of Directors of the Association established by the By-Laws to restate the By-Laws to include any amendments to them and to conform them to the provisions of Chapter 514B and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on May 24, 2021, the Board of Directors resolved to restate the By-Laws in accordance with Section 514B-109, H.R.S., as amended.

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

**AMENDMENT AND RESTATEMENT OF BY-LAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF HAWAII TOWER**

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The following By-Laws shall apply to the Hawaiki Tower condominium project (herein called the "Project"), as described in and created by the Declaration of Condominium Property Regime of Hawaiki Tower (herein called the "Declaration") to be recorded or filed of record in the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii immediately preceding these By-Laws, which Project is being developed upon the land described in the Declaration, and to all present and future owners, tenants, and occupants of any units² of the Project and all other persons who shall at any time use the Project.

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1. Definitions.

The terms used herein shall have the meanings given to them in the Declaration and in Chapter 514B, Hawaii Revised Statutes ("H.R.S."), as amended from time to time (the "Act"), except as otherwise expressly provided herein. Unless clearly repugnant to the context, the following terms, whenever used in these By-Laws, shall be given the following meanings:

(A) "Unit" as used herein means collectively the units in the Project, within the meaning of that term as used in the Act, as designated and described in the Declaration.

(B) "Unit owner" or "owner" means a person owning, or the persons owning jointly or in common, a unit and the common interest appertaining thereto, to the extent of such ownership; provided that the purchaser of a unit pursuant to an agreement of sale recorded as aforesaid shall have all the rights of a unit owner, including the right to vote, provided that the seller may retain the right to vote on "matters substantially affecting his security interest in the unit" as that term is used in the Act.

(C) "Association" means the Association of Apartment Owners of the Project.

(D) "Board" means the Board of Directors of the Association.

(E) "Bureau" means the Bureau of Conveyances of the State of Hawaii.

(F) "Commission" means the Real Estate Commission of the State of Hawaii.

(G) "Common elements" means those elements designated in the Declaration as common elements, including limited common elements.

(H) "Common expenses" includes the expenses, costs, and charges designated as common expenses in Section K of the Declaration, including limited common expenses, and all other expenses, costs, and charges designated as common expenses in these By-Laws or the Declaration.

(I) "Developer" means Nauru Phosphate Royalties Development (Honolulu), Inc., a Delaware corporation, its successors, and assigns.

(J) "Director" means any duly elected member of the Board.

(K) "Land" means the Land designated and described in the Declaration.

(L) "Land Court" means the Land Court of the State of Hawaii.

(M) "Limited common elements" means those elements designated in the Declaration as limited common elements.

(N) "Majority of unit owners" means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests, as established by the Declaration, and any other specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of common interests.

(O) "Managing Agent" means the managing agent, if any, employed by the Board pursuant to the provisions of Article V, Section 2 of these By-Laws.

(P) "Occupant" means any owner of any residential unit in the Project, members of the owner's family, and guests, tenants, licensees, and invitees of said owner, any owner of any commercial or retail unit in the Project and any tenants, employees, independent contractors, suppliers, and customers of said owner, and any other person who may in any manner use the Project.

(Q) "President" means that certain officer of the Association described in Article IV, Section 4 of these By-Laws.

(R) "Project" means and includes the Land, the buildings, and all other improvements thereon (including the units and the common elements) and all easements, rights, and appurtenances belonging thereto, and all other property with respect to which a condominium property regime shall exist from time to time pursuant to the Declaration.

(S) "Rules and Regulations" refers to the Rules and Regulations or House Rules for the conduct of owners, tenants, occupants, and guests of units in the Project adopted by the Board as hereinafter provided.

(T) "Secretary" means that certain officer of the Association described in Section IV, Section 6 of these By-Laws.

(U) "Treasurer" means that certain officer of the Association described in Section IV, Section 7 of these By-Laws.

(V) "Vice-President" means that certain officer of the Association described in Article IV, Section 5 of these By-Laws.

Section 2. Gender.

All pronouns used herein shall include the male, female, and neuter genders and shall include the singular or plural numbers, as the case may be.

Section 3. Conflicts.

These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the provisions of the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

Section 4. Application.

All present and future owners, lessees, mortgagees, purchasers under agreements of sale, tenants and occupants of units and their guests, patrons, customers, other business invitees and employees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration, and the Rules and Regulations, as each may be amended from time to time. The acceptance of a unit deed or other conveyance, mortgage, agreement of sale, lease or assignment of lease, or rental agreement of a unit or any interest therein, or the act of occupying a unit, shall constitute an agreement that these By-Laws and the Rules and Regulations, as they may be amended from time to time, are accepted, ratified, and will be strictly complied with.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. Qualification.

All owners of units of the Project shall constitute the Association. The owner of any unit upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such ownership ceases for any reason, at which time membership of such owner in the Association shall automatically cease; provided, however, that to such extent

and for such purposes, including voting, as shall be provided by lease of any unit registered under Chapter 501, H.R.S., or recorded under Chapter 502, H.R.S., the lessee of such unit shall be deemed to be the owner thereof.

Section 2. Place of Meetings.

Meetings of the Association shall be held at the Project or such other suitable place within the State of Hawaii convenient to the unit owners as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State of Hawaii.³

Section 3. Annual Meetings.

The annual meetings of the Association shall be held each year at a time as determined by the Board.⁴

Section 4. Special Meetings.

Special meetings of the Association may be held at any time upon the call of the President, a majority of the board, or by a petition signed by at least twenty-five percent (25%) of the unit owners and presented to the Secretary or managing agent; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the Association's expense in accordance with the requirements of these By-Laws and of Chapter 514B, H.R.S.; provided further that a special meeting based upon a petition to the Secretary or Managing Agent shall be set no later than sixty (60) days from receipt of the petition.⁵

Section 5. Notice of Meetings.

The Secretary shall give written or printed notice of each annual and special meeting to every unit owner according to the Association's record of ownership, and to every holder of a first mortgage on a unit, as shown in the Association's record of ownership or who has given the Board notice of their interest through the Secretary or the Managing Agent, at least fourteen (14) days before the date set for such meeting. The notice of the meeting shall state whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting, the items on the agenda for such meeting, and a standard proxy form authorized by the Association, if any. The notice shall be given in any of the following ways: (a) by delivering it personally to the unit owner; or (b) if the unit owner resides in the Project, by leaving it at such owner's unit in the Project; or (c) by mailing it, postage prepaid, addressed to the unit owner at the address of such owner as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any unit owner or mortgagee to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings at the meeting. The presence of a unit owner or first mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner or first mortgagee unless such owner or first mortgagee shall at the opening of the meeting object to the holding of such meeting because of the failure to give notice in accordance with these provisions.⁶

Section 6. Quorum.

The presence at any meeting in person or by proxy of thirty-three percent (33%) of unit owners shall constitute a quorum. The acts of a majority of the votes cast by persons entitled to vote, excluding blanks, abstentions, and quorum only proxies at any meeting at which a quorum is present shall be the acts of the Association unless otherwise provided in these By-

Laws or the Declaration.⁷

Section 7. Voting.

Voting shall be on a percentage basis. Each unit shall be entitled to a vote equal to the percentage of the common interests assigned to such unit in the Declaration. Votes may be cast in person or by proxy by the respective unit owners as shown in the record of ownership of the Association. A personal representative, guardian, or trustee may vote in person or by proxy (as provided in Article II, Section 8) at any meeting of the Association as the "Owner" of any unit owned or controlled by such person in such capacity, whether or not the Association's record of ownership shows such ownership or control by the personal representative, guardian, or trustee, as long as evidence satisfactory to the Secretary that such person owns or controls such unit in such capacity has been presented. The vote for any unit owned of record by two (2) or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other owner(s), and in case of protest each co-tenant shall be entitled to a share of such vote equal to the share of such co-tenant's ownership in such unit. The purchaser of a unit pursuant to an agreement of sale recorded in the Bureau or filed in the Land Court shall have all of the rights of a unit owner, including the right to vote, except as to those matters expressly retained by the seller under such agreement of sale, and as permitted by law. Votes allocated to any area which constitutes a common element, as defined in H.R.S. §514B-38 shall not be cast at any meeting of the Association, whether or not the area is designated as a common element in the Declaration.⁸ No votes allocated to a unit owned by the Association may be cast for the election or reelection of directors, except as provided in Section 514B-123(c) of the H.R.S., as amended.⁹

Section 8. Proxies and Pledges.

The authority given by any unit owner to another person to represent him at meetings of the Association shall be in writing, and shall comply with the specifications provided in the Condominium Property Act.¹⁰

Section 9. Solicitation of Proxies; Restrictions Applicable to Solicited Proxies.

No resident manager or Managing Agent shall solicit, for use by such resident manager or Managing Agent, any proxies from any unit owner of the Association which employs the resident manager or Managing Agent, nor shall the resident manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or re-election of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or re-election of Board members and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least twenty-one (21) days prior to its solicitation of proxies;¹¹ 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 either:

(A) Mail to all owners a proxy form containing the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

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

The owner's statement, which 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 or reasons for wanting to receive proxies.¹² No member of the Board, as an individual, shall use Association funds to solicit proxies; provided that this shall not prevent a Board member from exercising the Board member's right as an owner under this Section 9.¹³ The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements by Owners; provided that the Board may adopt rules regulating reasonable time, place and manner of such solicitations or distributions, or both.¹⁴

Section 10. Adjournment.

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

Section 11. Order of Business.

The order of business at all meetings of the Association shall be as follows:

- (A) Roll call.
- (B) Proof of notice of meeting.
- (C) Reading of minutes of preceding meeting.
- (D) Report of officers.
- (E) Report of committees.
- (F) Election of inspectors of election.
- (G) Election of directors.
- (H) Unfinished business.
- (I) New business.

Section 12. Conduct of Association Meetings.

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

Section 13. Minutes of Association Meetings.

Minutes of Association meetings shall be approved at the next succeeding regular meeting or by the Board of Directors, within sixty (60) days after the meeting, if authorized by the

Unit Owners at an annual meeting. If approved by the Board of Directors, Unit Owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty (30) days after approval. Minutes of all meetings of the Association shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting. A Unit Owner shall be allowed to offer corrections to the minutes at an Association meeting.¹⁵

Section 14. Records of the Association.

The Association shall make available records as required by the Condominium Property Act, including but not limited to Sections 514B-152, 514B-153, 514B-154, and 514B-154.5 of the Hawai'i Revised Statutes, as amended, and by Article V, Section 6 of these By-Laws.

No unit owner who requests legal or other information from the Association, the Board, the Managing Agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the Association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The Association shall notify the unit owner in writing at least ten (10) days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the Association's governing documents.

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.¹⁶

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number and Qualifications.

The affairs of the Association shall be governed by a Board composed of nine persons. All members of the Board shall be owners, co-owners, vendees under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member or other person authorized to act on behalf of any other legal entity which owns a unit. No tenant, resident manager, or employee of a condominium shall serve on the Board. There shall not be more than one (1) representative on the Board from any one (1) unit. The Directors shall serve without compensation, unless such compensation is specifically authorized by the Association at a regular or special meeting. The resident manager of the Project, if any, may not serve on the Board. Each Director shall owe the Association a fiduciary duty in the performance of the Director's duties.¹⁷

Section 2. Powers.

The Board shall have all powers necessary for the operation of the Project and for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration, or these By-Laws directed to be exercised or done only by the unit owners.

Section 3. Election and Terms.

Election of Directors shall be by cumulative voting by secret ballot, at each annual meeting and any special meeting called for that purpose; provided that election by acclamation

shall be permitted if the number of nominees is equal to or less than the number of open positions on the Board of Directors. A plurality vote shall be sufficient for the Association to elect a Director. Directors shall hold office for a period of three (3) years and until their respective successors have been elected, subject to removal as herein provided.¹⁸

Section 4. Vacancies.

Vacancies in the Board caused by any reason other than removal of a Director by the Association shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association or duly called special meeting of the Association. Notice of a special meeting to fill vacancies shall include notice of the election. Any special Association meeting to fill vacancies shall be held on a date that allows sufficient time for owners to declare their intention to run for election and to solicit proxies for that purpose. Death, incapacity, or resignation of a Director, or if a Director ceases to qualify for office as set forth above, shall cause the office to become vacant.¹⁹

Section 5. Removal of Directors.

At any regular or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by vote of a majority of unit owners and a successor may then and there or thereafter be elected by a majority of unit owners²⁰ for the remainder of the term to fill the vacancy thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in these By-Laws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. Any Director whose removal has been proposed by the unit owners shall be given an opportunity to be heard at such meeting. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership; provided that if the Secretary or Managing Agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-Laws. Except as otherwise provided herein, such meeting and the procedures adopted for the removal and replacement from office of Directors shall be scheduled, noticed, and conducted in accordance with these By-Laws.

Section 6. Annual Meetings.

The Board shall meet at least once each year. An organizational meeting of the Board shall be held at the place of and immediately following each annual meeting of the Association. Notice of the annual Board meeting shall be posted by the managing agent, resident manager, or member of the Board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the Board. The notice shall include a list of business items expected to be on the meeting agenda. At such meeting the Board shall elect the officers of the Association for the ensuing year.²¹

Section 7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall

be given to each Director, personally or by mail, telephone, or messenger service, at least three (3) days prior to the date of such meeting.

Section 8. Special Meetings.

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

Section 9. Additional Notice Posted.

Notice of all Board meetings shall be posted by the Managing Agent, resident manager of the Project, or a member of the Board, at prominent locations within the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board. The notice shall include a list of business items expected to be on the meeting agenda. At such meeting the Board shall elect the officers of the Association for the ensuing year.²²

Section 10. Waiver of Notice.

Before or at any meeting of the Board any Director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the Directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 11. Quorum of Board.

At all meetings of the Board a majority of the total number of Directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors voting, excluding abstentions, at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn and reconvene the meeting from time to time. At any such reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.²³

Section 12. Fidelity Bonds.

The Board shall obtain and maintain adequate fidelity bonds as required by Chapter 514B, H.R.S., as amended, to cover the Managing Agent, Managing Agent's employees, and all Directors, officers, employees, and agents of the Association handling or responsible for funds belonging to or administered by the Association furnish adequate fidelity bonds in favor of the Association. In addition:

(A) The Association shall procure, at its expense, a fidelity bond in an amount equal to \$500.00 multiplied by the number of units in the Project; provided that the amount of the bond shall not be less than \$20,000.00 nor greater than \$200,000.00;

(B) A Managing Agent employed by the Association shall provide evidence of a fidelity bond in an amount equal to \$500.00 multiplied by the aggregate number of units covered by all of the Managing Agent's condominium management contracts; provided that the amount of the bond shall not be less than \$20,000.00 nor greater than \$200,000.00.²⁴

Every such fidelity bond shall:

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

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

Section 13. Conflict of Interest.

A Director shall not cast a proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which such Director has a conflict of interest. The Director shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. "Conflict of interest," as used in this subsection, means an issue in which a director has direct personal or pecuniary interest not common to other members of the Association.²⁵ The determination of whether a conflict of interest exists as to a particular Director or Directors shall be made by a majority of the Directors (excluding the Director or Directors alleged to be involved in a conflict of interest), which determination shall be conclusive and binding on all parties.

Section 14. Copies of Project Documents to be Provided to Board

Members.

The Association, at its expense, shall provide all Board members with a current copy of the Declaration, By-Laws, Rules and Regulations, and, annually, a copy of the Act, with amendments.

Section 15. Conduct of Meetings.

(A) All meetings of the Board (whether organizational, annual, or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order. All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions pursuant to rules established by the Board pursuant to Section 514B-125(b), H.R.S.

(B) Following any election of board members by the Association, the Board may, at the Board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. If the Board establishes such rules pursuant to this subsection, then the Board:

(i) Shall notify all owners of these rules; and

(ii) May amend these rules at any regular or duly noticed special meeting of the Board; provided that all owners shall be notified of any adopted amendments.

(C) The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

(i) concerning personnel;

- involved;
- (ii) concerning litigation in which the Association is or may become involved;
 - (iii) necessary to protect the attorney-client privilege of the Association;
- or
- (iv) necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session.²⁶

Section 16. Proxy.

A Director shall not vote by proxy at Board meetings.²⁷

Section 17. Telephone Meetings.

Unless otherwise provided in these By-Laws or Declaration, the Board may permit any meeting to be conducted by any means of communication through which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the Board, any Unit Owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the Unit Owner pay for the costs associated with the participation.²⁸

Section 18. Meeting Minutes.

(A) Minutes of meetings of the Board shall include the recorded vote of each Board member on all motions except motions voted on in executive session.

(B) Minutes of meetings of the Board shall be approved no later than the second succeeding regular meeting.

(C) Minutes of all meetings of the Board shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within thirty (30) 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.

(D) If requested by an Owner or the Owner's authorized agent, meeting minutes of the Board may be transmitted to the requesting person within fifteen (15) days of receipt of the request; provided that:

- (i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Owner or Owner's authorized agent, if the Owner or Owner's authorized agent indicated a preference at the time of the request; and

- (ii) The Owner or Owner's authorized agent shall pay a reasonable fee for administrative costs associated with handling the request, subject to Section 514B-

105(d) of the H.R.S., as amended.²⁹

Section 19. Documents to Be Given to Directors.

The Association, and its own expense, shall provide all Board members with a current copy of the Declaration, these By-Laws, the House Rules, and annually, a copy of Chapter 514B, H.R.S., with amendments.³⁰

Section 20. Duty of Directors.

Each Director and Officer 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, H.R.S., as amended, in the performance of the Director's or the Officer's duties. Any violation by the Board or its officers or members of the mandatory provisions of Section 514B-161 or 514B-162, H.R.S., may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a Board member may avoid liability under this subsection by indicating in writing the Board member's disagreement with such Board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.³¹

ARTICLE IV

OFFICERS

Section 1. Designation.

The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by, and in the case of the President from, the Board. The Board may appoint an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be necessary. A unit owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association. Any Owner who is a Board member of the Association and an employee of the Managing Agent retained by the Association 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 property manager will be discussed.³²

Section 2. Election and Term.

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

Section 3. Removal.

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

Section 4. President.

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

Section 5. Vice President.

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

Section 6. Secretary.

The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these By- Laws, maintain and keep a continuous and accurate record of ownership of all units, have charge of such books, documents, and records of the Association as the Board may direct, keep the minute book wherein resolutions shall be recorded, and in general perform all the duties incident to the office of secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated by the Board to the Managing Agent.

Section 7. Treasurer.

The Treasurer shall supervise the Managing Agent's custody of all funds of the Association, maintenance of accounts and financial records, and preparation of financial reports.

Section 8. Audit.

The Association shall require an annual audit of the Association's financial accounts and no less than one (1) annual unannounced verification of the Association's cash balance by a public accountant or accounting firm; provided that if the Association is comprised of less than twenty (20) unit owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all unit owners taken at an Association meeting. In the event that the requirement of an annual audit is not so waived, the Board shall make available a copy of the annual audit to each unit owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. If the annual audit has not been completed by that date, the Board shall make available (a) an unaudited year end financial statement for the fiscal year to each unit owner at least thirty (30) days prior to the annual meeting, and (b) the annual audit to all unit owners at the annual meeting, or as soon as the audit is completed, but not later than six (6) months after the annual meeting. If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

The Board shall provide upon all official proxy forms a box wherein the unit owner may indicate that the unit owner wishes to obtain the annual audit report. The Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the unit owner if the proxy form is not marked. At the request of any institutional holder of a first mortgage on a unit, the Association shall provide said mortgagee with a copy of the annual audited financial statement (if any) within ninety (90) days following the end of any fiscal year of the Association.³³

Section 9. Indemnification.

The Association shall indemnify every Director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit, or proceedings to which he may be made a party by reason of being or having

been a Director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit, or proceeding to be liable for negligence or willful misconduct; and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

ARTICLE V

ADMINISTRATION

Section 1. Management.

The Board shall at all times manage and operate the Project, including the common elements of the Project; provided, however, that so long as the Developer owns any interest in the Project and until the election of the Board, the Developer may, but shall not be obligated to, exercise all of the powers of the Board. The Board (or the Developer, so long as the Developer owns any interest in the Project and until the election of the Board) shall have all powers and duties as may be necessary or proper therefor including without limitation the following:

- (A) Supervision of its immediate management and operation;
- (B) Maintenance, repair, replacement, and restoration of the common elements and any additions and alterations thereto; provided, however, that the owner of any Communications Equipment and Connections constructed or installed on or affixed to the common elements pursuant to Paragraph F.9 of the Declaration shall be responsible for the maintenance, repair, replacement and restoration of its Communications Equipment and Connections;
- (C) Purchase, maintenance, and replacement of any equipment and provision of all water and utility services required for the common elements, and bi-monthly testing of the Project's emergency generator;
- (D) Provision at each unit of all water, sewer, electricity, and such other utility services and utilities as the Board shall deem necessary either at the expense of such unit or as a common expense or limited common expense as determined by the Board;
- (E) Employment, supervision, and dismissal of such personnel as may be necessary for the maintenance, repair, and replacement of the common elements and the operation of the Project, including but not limited to a resident manager;
- (F) Preparation and adoption of an annual operating budget in accordance with H.R.S. §514B-148, and an annual schedule of assessments;³⁴
- (G) Determination of the common expenses, collection of all installments of assessments and common expenses levied on unit owners, and payment of all common expenses authorized by the Board;
- (H) Purchase and maintenance in effect of all policies of hazard and liability insurance for the Project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

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

(J) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(K) Purchasing or leasing or otherwise acquiring in the name of the Board or its designee, corporate or otherwise, on behalf of all unit owners, units in the Project offered for sale or lease, but only with prior approval of unit owners having not less than seventy-five percent (75%) of the common interests;

(L) Purchasing of units at foreclosure or other judicial sale in the name of the Board or its designee, corporate or otherwise, on behalf of all unit owners, but only with prior approval of unit owners having not less than seventy-five percent (75%) of the common interests;

(M) Selling, subleasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), or otherwise dealing with units acquired by the Board or its designee, corporate or otherwise, on behalf of all unit owners;

(N) Organizing or forming corporations or trusts, including land trusts, to act as designees of the Board in acquiring title to or leasing of units on behalf of all unit owners;

(O) Making of repairs, additions, and improvements to or alterations of the Project, and repairs to and restoration of the Project in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(P) Borrowing money for any purpose authorized by these By-Laws or the Declaration, upon such terms and conditions as are approved by the Board, and granting a security interest in personal property owned by the Association as security for any such loan shall be approved pursuant to Article V, Section 12 of these By-Laws.³⁵

(Q) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these By-Laws;

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

(S) Notification in writing to all institutional holders of first mortgages on units, or on condominium conveyance documents demising the same, as shown in the Association's record of ownership or of which the Secretary has been given written notice, of any loss to, or taking of, the common elements of the Project if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00);

(T) Notification in writing to the institutional holder of the first mortgage on any unit, or on the condominium conveyance document demising the same, as shown in the

Association's record of ownership or of which the Secretary has been given written notice, of any loss to such unit which exceeds ONE THOUSAND DOLLARS (\$1,000.00);

(U) Establishment of such penalties and fines as it deems appropriate with respect to violations of the covenants, conditions, or restrictions set forth in the Declaration, these By-Laws, or the Rules and Regulations; provided such penalties and fines are not inconsistent with the law or the provisions herein. In the event such penalties and fines are established, the Board may authorize the Managing Agent or resident manager to impose them upon unit owners, tenants and employees of a unit owner, and any other persons using the property for any purpose whatsoever;

Appeal Procedure. The person penalized (herein called the "offender") may appeal from the penalty imposed by the Board, the Managing Agent, or the resident manager, as follows:

(i) Notice of Appeal. The offender may appeal such penalty within thirty (30) days after receiving notice thereof, by filing with the Secretary a written notice of his or her appeal and the reasons therefor. The filing of a notice of appeal shall not halt the accrual of any ongoing penalties imposed for the violation which is the subject of the appeal. However, the Board may waive or rescind all or part of the aforesaid penalties at the time of the hearing of such appeal.

(ii) Time for Hearing Appeal. All appeals shall be heard at a meeting of the Board within ninety (90) days after the notice of appeal has been filed with the Secretary.

(iii) Procedure. The cause of the penalty shall be reported in writing by the Board, the Managing Agent, or the resident manager at such meeting, with a statement of the facts on which the penalty was based, a copy of which shall be furnished to the appellant at least ten (10) days before the meeting, at which time a copy thereof shall also be filed with the Secretary. The appellant shall then present his or her defense, in writing, to which the Board or its designee may reply orally. The appellant or any one owner or other person on his or her behalf may then respond, and the Board or its designee may again speak in support of the penalty imposed. Thereafter, no further discussion, except among the Board itself, shall be allowed.

(iv) Disposition of Appeal. The Board shall vote as to whether the penalty shall be affirmed. If a majority of those present vote in the affirmative, the penalty shall stand and shall be remitted by the offender in full, within seven (7) days of the date of such meeting, if less than a majority of those present vote in the affirmative, then the penalty shall thereby be rescinded.

Section 2. Managing Agent.

The Board may employ a responsible Hawaii Managing Agent to manage and control the Project subject at all times to direction by the Board, with all of the administrative functions specifically set forth in the preceding Section 1 and with such other powers and duties and at such compensation as the Board may establish from time to time. Any Managing Agent employed by the Board shall be either a real estate broker licensed in compliance with Chapter 467, H.R.S., as amended, and the rules of the Commission, or a corporation or limited liability company that is authorized to do business under Article 8, Chapter 412, H.R.S., as amended. Any such employment contract with a Managing Agent shall provide: (a) that it may be terminated by the Board for cause on no more than thirty (30) days' written notice and without cause on no more than ninety (90) days' written notice; (b) that in no event shall a termination fee be due and

owing the Managing Agent in the event of such termination; and (c) in no event shall such employment contract be for a fixed term exceeding one (1) year.³⁶

The Managing Agent shall from time to time provide evidence satisfactory to the Board that the Managing Agent maintains a fidelity bond in the minimum amount required by H.R.S. §514B-132, as amended, or such higher amount as the Board may require.³⁷

Section 3. Representation.

The President or the Managing Agent, acting on behalf of and subject to the direction of the Board, shall represent the Association or any two (2) or more unit owners similarly situated as a class in any action, suit, hearing, or other proceeding concerning the Association, the common elements, or more than one unit, and on its or their behalf may institute, defend, intervene in, prosecute, and settle any such action, suit, hearing, or other proceeding, without prejudice to the rights of any unit owner individually to appear, sue, or be sued. Service of process on two (2) or more unit owners in any such action, suit, hearing, or other proceeding may be made on the Managing Agent.

Section 4. Execution of Instruments.

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

Section 5. Books of Receipts and Expenditures; Unpaid Assessments; Availability for Examination.

The Managing Agent or the Board shall 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 the Board shall also keep monthly statements indicating the total current delinquent dollar amount of assessments for common expenses. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board and shall be available for examination by the unit owners at convenient hours of weekdays. Copies of documents governed by this section shall be provided to any unit owner or owner's authorized agent upon the owner's or owner's authorized agent's request; provided that the owner or owner's authorized agent pays a reasonable fee for duplication, postage, stationary, and other administrative costs associated with handling the request. The requested documents shall be provided no later than thirty (30) days after receipt of a unit owner's or owner's authorized agent's written request, unless a lesser time is provided in §514B-152, §514B-153, §514B-154, or §514B-154.5, H.R.S. Any documents, records, and information required to be provided under this section may be made available electronically to the unit owner or the owner's authorized agent if the owner or owner's authorized agent requests such in writing. No person shall knowingly make any false certificate, entry, or memorandum upon, or knowingly alter, destroy, mutilate, or conceal any of the books or records of the Managing Agent or the Association. The Managing Agent may dispose of any records of the Association which are more than five (5) years old without liability if the Managing Agent first provides the Board with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board within sixty (60) days, which notice shall include an itemized list of the records which the Managing Agent intends to dispose of.³⁸

Section 6. Availability of Association Documents.

Notwithstanding any other provision in the Declaration, these By-Laws, or the House Rules, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to Sections 514B-152, 514B-153, 514B-154, or 514B-154.5 of the H.R.S., as amended, shall be made available to any Unit Owner and the Owner's authorized agents by the Managing Agent, the resident manager, the Board through a Board member, or the Association's representative:³⁹

(A) The Association's most current financial statement and minutes of the Board's meetings, once approved, shall be available to any unit owner at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board.

(B) Minutes of meetings of the Board shall be available within seven (7) calendar days after approval, and unapproved final drafts of the Minutes of a meeting shall be available within thirty (30) 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 shall be available for examination by unit owners at no cost or on twenty-four-hour loan at a convenient place designated by the Board or be transmitted to any apartment owner making a request for the minutes by the Board, the managing agent, or the Association's representative, within fifteen (15) days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request. Costs incurred by unit owners pursuant to this section shall be subject to §514B-105(d), H.R.S. Minutes of meetings shall include the recorded vote of each Board member on all motions except motions voted on in executive session.⁴⁰

(C) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by unit owners at convenient hours at a place designated by the Board, and unit owners shall be permitted to view proxies, tally sheets, ballots, unit owners' check-in lists, and the certificate of election for a period of thirty (30) days following any Association meeting; provided:

(1) That the Board may require 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 interests of the Association or its members or both; and

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

Proxies and ballots may be destroyed following the ninety-day (90) period; provided that in the event of a contested election, the documents shall be retained until a contested election is resolved. Copies of tally sheets, unit owners' check-in lists, and certificates of election from the most recent Association meeting shall be provided to any unit owner at the unit owner's request; provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.⁴¹

(D) Unit owners may file a written request with the Board to examine other documents pursuant to 514B-154(f) and 514B-154.5(a)(14), H.R.S. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request for documents pursuant to this Subsection 6(D).

(E) Notwithstanding any provision in the Declaration, these By-Laws, or the House Rules providing for another period of time, all documents, records, and information listed under Subsection 6(E) whether maintained, kept, or required to be provided pursuant to this Section 6(E) or Sections 514B-152, 514B-153, 514B-154, or 514B-154.5 of the H.R.S., as amended, shall be provided no later than thirty (30) days after receipt of a Unit Owner's or Owner's authorized agent's written request, unless a lesser time is provided pursuant to this Section 8 or Sections 514B-152, 514B-153, 514B-154 or 514B-154.5 of the H.R.S., and except as provided in Subsection 6(D) above.

(i) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or elsewhere within the State as determined by the Board, subject to Section 514B-152 of the H.R.S., as amended.⁴²

(ii) All signed and executed agreements for managing the operation of the property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments.⁴³

(iii) Subject to Sections 514B-153(e), (f) and (g) of the H.R.S., an accurate and current list of members of the Association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any Unit Owner or Owner's authorized agent who furnishes to the Managing Agent, resident manager, or the Board a duly executed and acknowledged affidavit stating that the list:

(1) Shall be used by the Unit Owner or Owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other Unit Owners with respect to Association matters;

(2) Shall not be used by the Unit Owner or Owner's authorized agent or furnished to anyone else for any other purpose.⁴⁴

(iv) A copy of the management contract from the entity that manages the operation of the property before the organization of the Association.⁴⁵

(v) A copy of any contract, written job description, and compensation between the association and any person or entity retained by the association to manage the operation of the property on-site, including but not limited to the general manager, operations manager, resident manager, or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law.⁴⁶

Section 6.1. Reasonable Fee.

(A) Subject to Section 514B-105(d), H.R.S., as amended, copies of the items in Section 6 of this Article V shall be provided to any unit owner or owner's authorized agent upon the owner's or owner's authorized agent's written request; provided that the owner or owner's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.⁴⁷

(B) Any fee charged to a unit owner or owner's authorized agent to obtain copies of the Association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to Article V, Section 6 of these By-Laws or Sections 514B-152, 514B-153, 514B-154, or 514B-154.5, H.R.S., as amended, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed the amount stated in Sections 514B-154(j) and 514B-154.5(f), H.R.S., as amended.⁴⁸

Section 6.2. Availability via the Internet.

(A) Any documents, records, and information, whether maintained, kept, or required to be provided pursuant to Section 1 of this Article V or Sections 514B-152, 514B-153, 514B-154, or 514B-154.5, H.R.S., as amended, may be made available electronically to the unit owner or owner's authorized agent if the owner or owner's authorized agent requests such in writing.⁴⁹

(B) The Association may comply with Section 1 of this Article V and Sections 514B-152, 514B-153, 514B-154, or 514B-154.5, H.R.S., as amended, by making the required documents, records, and information available to unit owners or owners' authorized agents for download through an internet site, at the option of each unit owner or owner's authorized agent and at no cost to the unit owner or owner's authorized agent.⁵⁰

Section 7. Availability of Project Documents.

An accurate copy of the Declaration, these By-Laws, the Rules and Regulations, if any, the master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of those documents to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs. In the event that the Project is not managed by a Managing Agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association, to whom this function is delegated.

Section 8. Access to Units and Limited Common Elements.

The Association, unit owners, employees, independent contractors, or agents of the Association or other unit owners, shall have the right to have access to each unit and any limited common elements appurtenant thereto from time to time during reasonable hours as may be necessary for the operation of the property. The Association shall have the irrevocable right, to be exercised by the Board, to have access to each unit at any time for making emergency repairs therein necessary to prevent damage to the unit or common elements or to another unit or units.⁵¹

Section 9. Restriction on Association's Employees' Ability to Sell or Rent Units.

The Association's employees shall not engage in selling or renting units in the Project, except units owned by the Association, unless such activity is approved by the affirmative vote of sixty-seven percent (67%) of all unit owners.⁵²

Section 10. Use of Association Funds by Directors.

Directors shall not expend the funds of the Association for their travel, Directors' fees, if any, and per diem expenses unless unit owners are informed and a majority of unit owners approve of these expenses. Directors may expend Association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of this paragraph and H.R.S. §514B-107(f).⁵³

Section 11. Handling and Disbursement of Association Funds.

The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations (except to the extent permitted in accordance with H.R.S. §514B-149), nor shall the Managing Agent commingle any Association funds with the Managing Agent's own funds. All funds collected by the Association or by the Managing Agent shall be (a) deposited in a financial institution, including a federal or community credit union, located in the State of Hawaii, pursuant to a resolution adopted by the Board, and whose deposits are insured by an agency of the United States government, (b) held by a corporation authorized to do business under Article 8, Chapter 412, H.R.S., (c) held by the United States Treasury, (d) purchased in name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation, (e) placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States. All funds collected by the Association, or by the managing agent for the Association shall be invested only as authorized under §514B-149(c)(2), H.R.S.

Records of deposits and disbursements shall be disclosed to the Real Estate Commission of the Department of Commerce and Consumer Affairs of the State of Hawaii upon request. All funds collected by the Association shall only be disbursed by employees of the Association under the supervision of the Board. All funds collected by the Managing Agent from the Association shall be held in a client trust fund account and shall be disbursed only by the Managing Agent or the Managing Agent's employees under the supervision of the Board. The Managing Agent or the Board shall not transfer Association funds by telephone between accounts, including, but not limited to, the general operating account and reserve fund account. The Managing Agent shall keep and disburse funds collected on behalf of the unit owners in strict compliance with any agreement made with the unit owners, Chapter 467, H.R.S., the rules of the Commission, and all other applicable laws. Any person who embezzles or knowingly misapplies Association funds received by the Managing Agent or the Association shall be guilty of a class C felony.⁵⁴

Section 12. Borrowing of Money.

Subject to any approval requirements and spending limits contained in the Declaration or these By-Laws, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations, and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project; provided that owners representing fifty per cent (50%) of the common interest give written consent to such borrowing, having been first notified of the purpose and use of the funds.⁵⁵

Section 13. Budgets and Reserves.

(A) The Board shall prepare and adopt an annual operating budget and distribute it to the unit owners. At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the Association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the property based on a reserve study performed by the Association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to section (4) above.⁵⁶

(B) The Association shall assess the unit owners in proportion to their respective interests in the common and limited common elements of the Project (as set forth in the Declaration) to fund a minimum of fifty percent (50%) of the estimated replacement reserves or one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan beginning in the fiscal year which begins after the Association's first annual meeting. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, except that the Association may fund in increments, over three (3) years, estimated replacement reserves which have been substantially depleted by an emergency.⁵⁷

(C) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major

maintenance required for each part of the property. The estimated replacement reserves shall include:

(1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(D) The Association, unit owners, Directors, Officers, Managing Agent, or any employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall not be liable if the estimate subsequently proves incorrect.

(E) 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 or with the approval of a majority of the unit owners. Prior to the imposition or collection of an assessment under this paragraph that was not approved by a majority of the unit owners, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members of the Association with the notice of assessment.⁵⁸

(F) Subject to the procedures of H.R.S. §514B-157 and any rules adopted by the Commission, any unit owner may enforce compliance by the Board with this Section and H.R.S. §514B-148. In any proceeding to enforce compliance, the Board, if it has not prepared an annual operating budget and reserve study, shall have the burden of proving its compliance.⁵⁹

(G) As used in this section:

"Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of an Association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.⁶⁰

"Emergency situation" means any extraordinary expenses:

(1) Required by an order of a court;

(2) Necessary to repair or maintain any part of the property for which the Association is responsible where a threat to personal safety on the property is discovered;

(3) Necessary to repair any part of the property for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

(4) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget.

(5) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.

"Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including, but not limited to roofs, walls, decks, paving, and equipment, that the Association is obligated to maintain.

Section 14. Disposition of Unclaimed Possessions.

(A) When personalty in or on the common elements of the Project has been abandoned, the Board may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(1) The Board notifies the owner in writing of:

(i) The identity and location of the personalty, and

(ii) The Board's intent to sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested to the owner's address as shown by the records of the Association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or

(2) If the identity or address of the owner is unknown, the Board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

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

ARTICLE VI

OBLIGATIONS OF UNIT OWNERS

Section 1. Assessments.

All unit owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective units for common expenses of the Project in accordance with the Declaration. No unit owner may exempt such unit owner from liability for contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of such unit owner's unit, nor shall any unit owner withhold any assessment claimed by the Association. The Board, either directly or through the Managing Agent or resident manager, shall notify the unit owners in writing of maintenance fee increases at least thirty days prior to such an increase.⁶¹ Any unit owner who receives a demand for payment from the Association and disputes the amount of an assessment may request from the Board a written statement pursuant to Section 514B-146(c), H.R.S., clearly indicating:

(A) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(B) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment; and

(C) The amount of attorneys' fees and costs, if any, included in the assessment.⁶²

A unit owner who disputes the information in the written statement received from the Association pursuant to this section, may request a subsequent written statement pursuant to Section 514B-146(d), H.R.S., that additionally informs the owner that:

(1) Under Hawai'i law, a unit owner has no right to withhold common expense assessments for any reason;

(2) A unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's common expense assessment; provided that the unit owner immediately pays the common expense assessment in full and keeps the common expense assessments current;

(3) Payment in full of the common expense assessment shall not prevent the owner from contesting the common expense assessment or receiving a refund in amounts not owed; and

(4) If the unit owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the unit owner may demand mediation as provided below prior to paying those charges.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt procedures mandated under federal and state law.⁶³

Subject to the limitations contained in Section 514B-146(a) of the H.R.S, as amended, all sums assessed by the Association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except: (i) liens for real property taxes and assessments lawfully imposed by governmental authority against the unit, and (ii) except as provided in Section 514B-146(j) H.R.S., as amended, all sums unpaid on any mortgage of record which was recorded prior to the recordation of a notice of a lien by the Association, and costs and expenses, including attorneys' fees provided in such mortgages. Action to recover a money judgment for unpaid common expenses, penalties, and fines shall be maintainable without foreclosing or waiving the lien securing the same.⁶⁴

A unit owner who pays the Association the full amount of the common expenses claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the unit owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Section 514B-162, H.R.S.; provided that a unit owner may only file for arbitration if all amounts claimed by the Association as common expenses are paid in full on or before the date of filing. If the unit owner fails to keep all Association common expense assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all Association common expense assessments within thirty (30) days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the unit owner fails to pay all Association common expense assessments by the end of the thirty (30) day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the Association which are not owed.⁶⁵

A unit owner who contests the amount of any attorney's fees and costs, penalties or fines, late fees, lien filing fees, or any other charges except common expense assessments, may make a demand in writing for mediation on the validity of those charges. The unit owner has thirty days from the date of the subsequent written statement requested pursuant to Section 514B-146(d), H.R.S., as discussed above, to file demand for mediation on the disputed charges, other than common expense assessments. If the unit owner fails to file for mediation within thirty days of the date of the written statement requested pursuant to Section 514B-146(d), H.R.S., as discussed above, the Association may proceed with collection of the charges. If the unit owner makes a request for mediation within thirty days, the Association shall be prohibited from attempting to collect any of the disputed charges until the Association has participated in the mediation. The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the Association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.⁶⁶

In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments, against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Any such grantor or grantee, however, is entitled to a statement from the Board, either directly or through its Managing Agent or resident manager, setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty (30) period immediately preceding the date of such

statement, the grantee shall not be liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.⁶⁷

Subject to Subsections 514B-146(j), (k), and (l), H.R.S., as amended, the Board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the Association to provide at no charge a notice of the Association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.⁶⁸

Section 2. Responsibilities of Unit Owners.

A unit owner shall be responsible for the conduct of his lessee(s), tenant(s), or guest(s) and shall, upon request of the Board or the Managing Agent, immediately abate and remove, at his expense, any structure, thing, or condition that may exist with regard to the occupancy of his unit by his lessee(s), tenant(s), or guest(s) which is a violation hereof, or of the Declaration, or of any rules and regulations adopted by the Board, or, if the unit owner is unable to control the conduct of his lessee(s), tenant(s), or guest(s), the unit owner shall, upon request of the Board or the Managing Agent, immediately remove such lessee(s), tenant(s), or guest(s) from the Project, without compensation for lost rentals or any other loss or damage resulting therefrom.

Section 3. Repair and Maintenance of Units.

(A) Every unit owner shall at his own expense at all times well and substantially repair, maintain, amend, and keep his unit, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, and all other fixtures and accessories belonging to such unit and the interior decorated or finished surfaces of all walls, floors, and ceilings of such unit, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board or the Managing Agent. Every unit owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings, and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

(B) It is intended that the exterior of the building that includes the units of the Project shall present a uniform appearance. To attain that result each unit owner agrees that the Board may require the unit owner at his sole expense to paint or repair his lanai and the Board may regulate the design and appearance of the repairs and replaced items, the type of surface, and the type and color of paint to be used. In the alternative, the Board is authorized to contract for the repairs, painting, or surfacing of all such lanais. If the Board contracts for such items, the Board may either seek reimbursement from the owner thereof (who shall then bear such cost individually) or the Board may make payment therefor out of the maintenance fund.

Section 4. Use of Project.

(A) The units of the Project shall be used only for their respective purposes as set forth in the Declaration and for no other purpose.

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

(C) No unit owner or occupant shall 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 such common elements; provided, however, that to the extent permitted by applicable law, the owners of the retail units of the Project shall be entitled to park vehicles in the areas located on Level 1 of the Platform and designated on the Condominium Map as limited common elements appurtenant to the retail units.

(D) Every unit owner and occupant shall at all times keep his unit in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules, and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Project.

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

(F) No unit owner shall alter, paint, resurface, or modify his lanai. No unit owner shall apply any tinting or other treatments to the windows to his unit which may affect the exterior appearance thereof. Further, no draperies shall be installed in the units the exterior side of which is anything but an unpatterned, uniform white color.

(G) Except as otherwise provided by the Federal Fair Housing Act (42 U.S.C. §3601 et seq.), as amended by the Fair Housing Amendment Act of 1988, Chapter 515, H.R.S., and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future, and except as otherwise permitted by the provisions of the Declaration, no unit owner or occupant shall erect or place in the Project any building or structure including fences and walls, nor make any additions or alterations to any common elements of the Project, nor place or maintain thereon any signs, posters, or bills whatsoever, except in accordance with plans and specifications, including a detailed plot plan, prepared by a licensed architect if so required by the Board, and approved by the Board and a majority of unit owners (or such larger percentage required by law or the Declaration), including all owners of units thereby directly affected.⁶⁹

(H) No unit owner shall decorate any entrance of his unit or any other portion of the Project except in accordance with standards therefor established by the Board or specific plans approved in writing by the Board.

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

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

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

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

(M) No livestock, poultry, or other animals whatsoever shall be allowed or kept in any part of the Project, except that a dog, a cat, or other typical household pet ("pet"), such as a guinea pig, a rabbit, fishes, or birds may be kept by occupants in their respective units subject to the conditions and restrictions contained herein, but shall not be kept, bred, or used therein for any commercial purpose.

(1) Except for fishes and birds, no more than one (1) pet shall be allowed per unit. No more than two (2) birds shall be allowed per unit.

(2) No pet may exceed forty (40) lbs. in weight. No infant or juvenile pet of a type or breed which, when fully grown, is likely to exceed forty (40) lbs. in weight, may be kept in the Project.

(3) No animal described as pests under H.R.S. §150A-2 or prohibited from importation under H.R.S. §141-2, §150A-5, or §150A-6, may be kept in the Project.

(4) Every occupant keeping a pet shall register said pet with the Managing Agent, who shall maintain a register of all pets kept in the Project.

Notwithstanding any provision to the contrary contained herein, service animals (as identified below) and other such animals necessary to assist disabled individuals (hereinafter collectively referred to as "assistance animals") shall be permitted at the Project subject to the following restrictions:

(i) Such assistance animals shall not be kept, bred, or used at the Project for any commercial purpose;

(ii) Such assistance animals shall be permitted on the common elements (including but not limited to the recreation areas) provided the assistance animal is on a leash.

Any pet or assistance animal causing a nuisance or unreasonable disturbance to any other occupant of the Project shall be permanently removed therefrom promptly upon notice given by the Board or the Managing Agent; provided, however, that any such notice given with respect to a assistance animal shall provide that before such animal must be removed, its owner shall have a reasonable time to acquire a replacement assistance animal unless the Board determines that such animal poses an imminent serious threat of physical harm to other occupants of the Project. A tenant of a unit owner must obtain the written consent of the unit owner to keep a pet in the unit. Notwithstanding such consent, a tenant may keep only that type of pet which may be kept by a unit owner. Any occupant who keeps a pet pursuant to these By-Laws may, upon the death of the animal, replace the animal with another and continue to do so as long as the occupant continues to reside in the unit or another unit in the Project subject to these same By-Laws. The Board may from time to time promulgate such rules and regulations

regarding the continued keeping of pets and specially trained animals as the circumstances may require or the Board may deem advisable.

The term "service animal" means any dog that is individual trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual, or other mental disability, as defined in H.R.S. §347-2.5.⁷⁰

(N) Except as permitted under Section 207 of the Telecommunications Act of 1996 and the rules adopted by the Federal Communications Commission pursuant to that section, as amended, and the Declaration, no unit owner or occupant shall without the written approval of the Board install any wiring for electrical or telephone installations, television antenna, machines, or air-conditioning units, or other equipment or appurtenances whatsoever on the exterior of the Project or protruding through the walls, windows, or roof of the Project.⁷¹

(O) Except as permitted under Section 207 of the Telecommunications Act of 1996 and the rules adopted by the Federal Communications Commission pursuant to that section, as amended, and the Declaration, no unit owner or occupant shall place or maintain any television or other antennas on the Project visible from any point outside of any unit, nor install awnings, shades, blinds, screens, or other similar objects on the exterior lanai of any unit.⁷²

(P) Nothing shall be allowed, done, or kept in any unit or common elements of the Project which would overload or impair the floors, walls, or roofs of the Project, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(Q) No unit owner shall enclose any exterior lanai within a unit in the Project.

(R) All furniture which is placed or maintained on the exterior lanai of any unit and which is visible from any point outside such unit shall meet the design and color standards prescribed by the Board.

(S) Notwithstanding anything to the contrary in this Section 4 or elsewhere in these By-Laws (with the exception of Section 4(P) of these By-Laws, which shall at all times remain operative), the owners of the retail units in the Project may, without the consent of the Board or the Association, but subject to all applicable laws and necessary government approvals, (i) place and maintain signs on the exterior perimeter walls of their respective retail units, (ii) place and maintain signs in their respective retail units that are visible from the exterior of the Project, (iii) make any other change to the exterior appearance of the Project that is permitted under the Declaration or these By-Laws, and (iv) conduct their business operations in their respective units, even though such operations may be visible from the exterior of the Project, as permitted by the Declaration and these By-Laws.

(T) Access to the roofs of the Project shall be strictly limited to persons granted such access under the Declaration for the purposes of constructing, installing, operating, repairing, maintaining and/or relocating equipment thereon, and to persons designated by the Board for purposes of performing necessary inspections, maintenance or repairs on such roofs.

(U) Smoking. No smoking of any substance (including but not limited to cigarettes, pipes, and cigars, and the use of devices that simulate the act of smoking if the device discharges smoke or vapor, such as certain electronic cigarettes) is permitted throughout the

Project, including in the units and on lanais; provided that the Board of Directors shall have the authority to designate certain areas for smoking outside the building. The Board of Directors shall have the authority to adopt or amend House Rules and policies pursuant to Article VI, Section 5 of these By-Laws, to fully implement this provision.

For purposes of this section, "smoking" includes the inhaling, exhaling, burning or carrying of any lighted cigarette, cigar or other tobacco product, marijuana or other substances (including medical marijuana), the use of electronic devices that aerosolize and deliver nicotine or other substances to the person inhaling from the device, and any other activity that is included in the definition of "smoking" under Hawai'i law (Section 328J-1 of the Hawai'i Revised Statutes, as amended).⁷³

Section 5. Rules and Regulations.

The Board, upon giving notice to all unit owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend, or repeal any supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration, or these By-Laws; provided, however, that the rules and regulations shall not apply to the owners of the retail units without their consent, and provided, further, that the initial rules and regulations governing the operation and use of the common elements of the Project shall be adopted by the Developer.

Section 6. Expenses of Enforcement.

(A) Every unit owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments against such unit, foreclosing its lien therefor, or enforcing any provisions of the Act, the Declaration, these By-Laws, the Rules and Regulations, or the rules of the Hawai'i Real Estate Commission against such owner or any occupant of such unit; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.⁷⁴

(B) If any claim by an owner is substantiated in any action against the Association, any of its officers or directors, or its Board to enforce any provision of the Declaration, these By-Laws, the House Rules, or Chapter 514B, H.R.S., as amended, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

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

If any claim by an owner is not substantiated in any court action against the Association, any of its officers or directors, or its Board to enforce any provision of the Declaration,

these By-Laws, the House Rules, or Chapter 514B of the H.R.S., as amended, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under Sections 514B-161 and 514B-162 of the H.R.S., as amended, and made a good faith effort to resolve the dispute under any of those procedures.⁷⁵

Section 7. Membership List.

The resident manager or the Managing Agent or the Board shall keep an accurate and current list of the members of the Association and their addresses, including the names and addresses of all vendees under any agreement of sale on a unit in the Project, if any. This list shall be maintained at a place designated by the Board and a copy thereof shall be available, at cost, to any member of the Association, as provided in the Declaration or By-Laws or Rules and Regulations or, in any case, to any member who furnishes to the resident manager or the Managing Agent or the resident manager, or the Board a duly executed and acknowledged affidavit stating that the list (a) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters, and (b) shall not be used by such owner or furnished to anyone else for any other purpose. The Board may prohibit commercial solicitations. Every unit owner shall promptly cause to be duly recorded or filed of record the deed, lease, agreement of sale, assignment, or other conveyance to him of such unit or other evidence of his title thereto and shall file a copy of such document(s) with the Board through the Secretary or the Managing Agent. The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the Board. All membership lists are the property of the Association and any membership lists contained in the managing agent's or resident manager's records are subject to subject to this section and Section 514B-153(e), (f) and (g), H.R.S., as amended. A managing agent, resident manager or Board may not use the information contained in the lists to create any separate list for the purpose of evading this section.⁷⁶

Section 8. Mortgages.

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

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

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

(D) Examination of Books. Each unit owner and each mortgagee shall be permitted to examine the books and records of the Association at reasonable times on business

days, and each mortgagee shall have the right to require the submission of annual reports and other financial data.

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

(1) Any first mortgagee who obtains title to a unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or conveyance in lieu of foreclosure will not be liable for the share of the common expenses or assessments by the Association chargeable to the unit which became due prior to the acquisition of title to the unit by such acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments as stated in Section 514B-146(b), H.R.S., as amended.⁷⁷

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

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

(4) Notwithstanding any other provision of these By-Laws, no amendment of this Section 8(e) shall affect the rights of the holder of any mortgage who has notified the Association of its interest unless such mortgagee consents to the filing of such amendment.

(F) Subject to Subsections 514B-146 (j), (k), and (l), H.R.S., as amended, the Board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the Association to provide at no charge a notice of the Association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.⁷⁸

ARTICLE VII

MISCELLANEOUS

Section 1. Amendment.

These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration by the vote or written consent of not less than sixty-seven percent (67%) of all unit owners; provided that each one of the items set forth in H.R.S. §514B-108, as amended, shall always be embodied in these By-Laws, and provided, further that no amendment to these By-Laws that increases the obligation of an owner of a retail unit in the Project or directly affects the use of a retail unit shall be effective without the consent of the owner of such retail unit. Any

amendment to the By-Laws that is adopted in accordance with the provisions of this section shall be effective upon the recording of the amendment in the Bureau, or the Land Court, as the case may be. Proposed By-Laws with the rationale for the proposal may be submitted by the Board or by a volunteer unit owners' committee. If submitted by such a committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the unit owners as shown in the Association's record of ownership. The proposed by-law, rationale, and ballots for voting on the proposed By-Law shall be mailed by the Board to the owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed by-law shall be sixty-seven per cent (67%) of all unit owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the proposed by-law is duly adopted, then the Board shall cause the by-law amendment to be recorded in the Bureau or filed in the Land Court, as the case may be. The volunteer unit owners' committee shall be precluded from submitting a petition for a proposed by-law which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board. These provisions shall not preclude any unit owner or voluntary unit owners' committee from proposing any by-law amendment at any annual Association meeting.

Material changes to these By-Laws relating to matters set forth in sections (a) through (n), inclusive of Paragraph R.8 of the Declaration ("Material Amendments") shall require the approval of Eligible Holders of First Mortgages (as defined in Paragraph R.8 of the Declaration) holding mortgages on Units to which are allocated at least fifty-one percent (51%) of the votes of the Units subject to mortgages held by Eligible Holders of First Mortgages. Any amendment to these By-Laws which would allow any action to terminate the condominium property regime created by the Declaration for reasons other than substantial destruction or condemnation shall require the prior written approval of not less than sixty-seven percent (67%) of the Eligible Holders of First Mortgages.

In the event that an Eligible Holder of a First Mortgage fails to appear at a meeting of the Association at which Material Amendments are proposed and considered, or fails to file a written response with the Association within thirty (30) days after receipt of proper notice of the proposed amendments, delivered by certified or registered mail, with a return receipt requested, then and in any such event such amendments shall conclusively be deemed approved by such Eligible Holder of a First Mortgage.⁷⁹

Section 2. Owners May Incorporate.

All of the rights, powers, obligations, and duties of the unit owners imposed by these By-Laws may be exercised and enforced by a nonprofit membership corporation formed by the owners under the laws of the State of Hawaii for the purposes herein set forth. The formation of such corporation shall in no way alter the covenants, conditions, and restrictions set forth in the By-Laws, and the Articles of Incorporation and by-laws of such corporation shall be subordinated to and controlled by these By-Laws. Any action taken by such corporation in violation of any or all of the covenants, conditions, and restrictions contained in these By-Laws shall be void and of no effect.

Section 3. Subordination.

These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto, and the laws of the State of Hawaii, including but not limited to the Act, and Title 16, Chapter 107, of the Hawaii Administrative Rules, which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same

meaning as in the Declaration or the Act.

Section 4. Interpretation.

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

Section 5. Annual Registration.

The Association shall register the Project with the Commission within thirty (30) days after the Association's first meeting, and annually thereafter in accordance with H.R.S. §514B-103.⁸⁰

Section 6. Discrimination Prohibited.

Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the House Rules, disabled occupants shall:

(a) be permitted to make reasonable modifications to their Units and/or the common elements if such modifications are necessary to enable them to use and enjoy their Units and/or the common elements, as the case may be; and

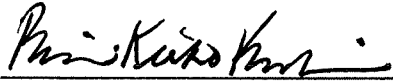
(b) be allowed reasonable exemptions from the Declaration, these By-Laws, and the House Rules, when necessary to enable them to use and enjoy their Units and/or the common elements, provided that any disabled occupant desiring such an exemption shall so request, in writing. That request shall state, with specificity, and in detail, the nature of the request and the reason that the requesting party needs to make such modification or to be granted such an exemption.⁸¹

Each of the undersigned officers of the Association warrants and represents that he or she is legally authorized to sign this Amendment and Restatement of the By-Laws of the Association of Apartment Owners of Hawaiiki Tower on behalf of the Association. The officers of the Association agree that this Amendment and Restatement of the By-Laws of the Association of Apartment Owners of Hawaiiki Tower may be executed in counterparts, each of which shall be deemed an original, and those counterparts shall together constitute one and the same instrument, binding all the Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

(The remaining portion of this page is intentionally left blank; signature pages follow.)


23rd day of MAY, 2022. IN WITNESS WHEREOF, the undersigned have executed this instrument on this

ASSOCIATION OF APARTMENT OWNERS
OF HAWAII TOWER, INC.

By: 
(Print name: PATRICIA KEIKO KAWAKAMI)
Its: PRESIDENT

(Signatures continued on next page)

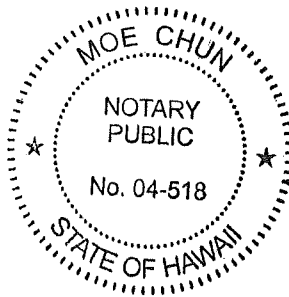
ASSOCIATION OF APARTMENT OWNERS
OF HAWAII TOWER, INC.

By 
(Print name: Nike Elmer Chapman)
Its: Treasurer

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

On this 23rd day of MAY, 2022, in the First Circuit of the State of Hawai'i, before me personally appeared Patricia Keiko Kawakami, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the President of the Association of Apartment Owners of Hawaiki Tower, Inc., a Hawai'i nonprofit corporation, that said person executed the foregoing instrument identified or described as "Amendment And Restatement Of By-Laws Of The Association Of Unit Apartment Owners Of Hawaiki Tower," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated MAY 23., 2022 and contained 59 pages at the time of this acknowledgment/certification.



[Signature]
Print Name: Moe Chun
Notary Public, State of Hawai'i

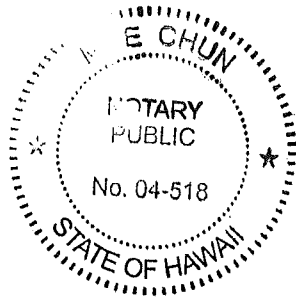
My Commission Expires: Sept. 12, 2024

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Amendment And Restatement Of By-Laws Of The Association Of Apartment Owners Of Hawaiki Tower</u>	
Document Date: <u>MAY 23, 2022</u>	
No. of Pages: <u>59</u>	Jurisdiction: <u>First</u> Circuit (in which notarial act is performed)
<u>[Signature]</u> Signature of Notary	<u>MAY 23, 2022</u> Date of Notarization and Certification Statement
<u>Moe Chun</u> Printed Name of Notary	 (Official Stamp or Seal)

STATE OF HAWAI'I)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 23rd day of May, 2022, in the First Circuit of the State of Hawai'i, before me personally appeared MIKE ELMAR CHAPMAN, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the Treasurer of the Association of Apartment Owners of Hawaiki Tower, Inc., a Hawai'i nonprofit corporation, that said person executed the foregoing instrument identified or described as "Amendment And Restatement Of By-Laws Of The Association Of Unit Apartment Owners Of Hawaiki Tower," as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated May 23, 2022 and contained 59 pages at the time of this acknowledgment/certification.



Moe Chun
Print Name: Moe Chun
Notary Public, State of Hawai'i
My Commission Expires: Sept 12, 2024

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Amendment And Restatement Of By-Laws Of The Association Of Apartment Owners Of Hawaiki Tower</u>	
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<u>Moe Chun</u> Signature of Notary	<u>May 23, 2022</u> Date of Notarization and Certification Statement
<u>Moe Chun</u> Printed Name of Notary	 (Official Stamp or Seal)

ENDNOTES

The following endnotes correspond to provisions in the By-Laws which have been restated to conform to Chapter 514B, H.R.S. ("HRS"), as amended, the Federal Fair Housing Act, as amended (Title 42, Chapter 45 of the United States Code), the Americans With Disabilities Act, as amended (Title 42, Chapter 126 of the United States Code) and its State counterpart, HRS Chapter 489, as amended, and to integrate all amendments made to the By-Laws. This Amendment and Restatement of By-Laws correctly sets forth without change the corresponding provisions of the original By-Laws, as amended, and supersedes the original By-Laws and all prior amendments thereto. This Amendment and Restatement was made solely for the purpose of information and convenience. In the event of a conflict, the Amendment and Restatement shall be subordinate to the cited statute.

¹ Act 164 (SLH, 2004) recodified Chapter 514A as Chapter 514B, H.R.S. ("HRS"). Therefore, throughout this restatement, references to the previous usage have been amended to reflect present terminology.

² Sections 514B-3 and 514B-22 of the HRS replaced the word "apartment" with the word "unit." Therefore, the word "apartment" has been changed to "unit" throughout this restatement. Nevertheless, the official name of the Association remains Association of Apartment Owners of Hawaiiki Tower, Inc.

³ Article II, Section 2 of the By-Laws has been restated to conform to Section 514B-121 (f), HRS, which authorizes the Association meetings to be held outside the State in the event of a natural disaster.

⁴ Article II, Section 3 of the By-Laws has been amended to remove the requirement that the annual meeting be held within three (3) months of the end of the fiscal year. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

⁵ Article II, Section 4 of the By-Laws has been restated to conform to 514B-121 (c), HRS, which authorizes a special meeting to be called by a majority of the Board, and adds that if a petition is received, the notice of special meeting must be sent within fourteen (14) days and the meeting must take place within sixty (60) days.

⁶ Article II, Section 5 of the By-Laws has been amended to remove previous language preventing the Board from noticing meetings more than thirty days before the date set for the meeting. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners. This section has also been restated to conform with Section 514B-121 (d), HRS.

⁷ Article II, Section 6 of the By-Laws has been amended to change the quorum requirement from a majority of owners to thirty-three percent (33%) of owners. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

⁸ This sentence in Article II, Section 7 of the By-Laws has been restated to replace reference to Section 514A-13 (h), HRS, which was recodified as Section 514B-38, HRS.

⁹ The last sentence has been added to Article II, Section 7 of the By-Laws to conform to Section 514B-123 (c), HRS, which prohibits the use of votes held by the Association for the election or reelection of directors.

¹⁰ Article II, Section 8 has been amended to remove specific requirements for proxies and require the proxies comply with the Condominium Property Act. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

¹¹ This sentence has been restated to change the period for posting of notice of intent to distribute proxies from at least thirty (30) days to at least twenty-one (21) days prior to distribution of proxies, consistent with HRS § 514B-123(i)(1).

¹² This sentence of Article II, Section 9 of By-Laws has been restated to conform to Section 514B-123 (i) (1), HRS, which states the requirements for owners' statements submitted for the solicitation of proxies.

¹³ This sentence in Article II, Section 9 of the By-Laws has been restated to conform to Section 514B-123 (i) (2), which states that if a Board member, not just an officer, intends to use Association funds to solicit proxies, he must do so as an owner requesting to do the same.

¹⁴ This sentence has been added to Article II, Section 9 to conform to Section 514B-123 (k), HRS, which prohibits the Board from adopting rules prohibiting the solicitation of proxies or distribution of materials relating to Association matters on the common elements.

¹⁵ Article II, Section 13 has been added to conform to Section 514B-122, HRS, regarding the minutes of Association meetings.

¹⁶ Article II, Section 14 has been added to conform to Section 514B-105 (d), HRS, regarding advance notice of the cost of providing information to owners.

¹⁷ Article III, Section 1 of the By-Laws has been restated to conform to Section 514B-107 (a), HRS, which authorizes trustees of a trust which owns a unit to serve on the Board, as well as a partner, member or other person authorized to act on behalf of any other legal entity which owns a unit. This section has also been restated to conform to Section 514B-107 (b), HRS, which prohibits a tenant, resident manager or employee of the Association from serving on the Board.

¹⁸ Article III, Section 3 of the By-Laws has been amended to authorize election of Directors by acclamation in lieu of secret ballot, where the number of nominees is equal to or less than the number of open positions. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

¹⁹ Article III, Section 4 of the By-Laws has been restated to conform to Section 514B-106 (b), HRS, regarding the term of Directors who are filling a vacancy and the requirements for a special Association meeting to fill a vacancy.

²⁰ Article III, Section 5 of the By-Laws has been restated to conform to Section 514B-106 (f), HRS, which clarifies that a majority of owners must both remove and replace the directors.

²¹ Article III, Section 6 of the By-Laws has been restated to conform to Section 514B-125 (e), HRS, regarding the posting of notices of Board meetings.

²² Article III, Section 9 of the By-Laws has been restated to conform to Section 514B-125 (e), HRS, regarding the posting of notices of Board meetings.

²³ Article III, Section 11 of the By-Laws has been amended to specify that, at all meetings, so long as a quorum of Directors is present, a decision made by a majority of the Directors present, excluding any abstentions, shall be acts of the Board. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

²⁴ Article III, Section 12 of the By-Laws has been restated to conform to Section 514B-143 (a) (3), HRS, regarding the requirements of a fidelity bond.

²⁵ Article III, Section 13 of the By-Laws has been restated to conform to Section 514B-125 (g), HRS, which includes the definition of "conflict of interest."

²⁶ Article III, Section 15 has been restated to add subsections and to conform to Sections 514B-125 (b) (regarding rules for owner participation in Board meetings) and (c) (regarding executive sessions), HRS.

²⁷ Article III, Section 16 of the By-Laws has been added to conform to Section 514B-125 (f), HRS.

²⁸ Article III, Section 17 of the By-Laws has been added to conform to Section 514B-125 (d), HRS, which authorizes Board meetings conducted by means of communication through which all directors may simultaneously hear each other.

²⁹ Article III, Section 18 of the By-Laws has been added to conform to Sections 514B-126 and 514B-154.5 (a) (9), HRS, regarding minutes of Board meetings.

³⁰ Article III, Section 19 of the By-Laws has been added to conform to Section 514B-107 (e), HRS, regarding the documents to be provided to Board members.

³¹ Article III, Section 20 of the By-Laws has been added to conform to Section 514B-106 (a), HRS, which describes the fiduciary duties of the directors and officers of the Association.

³² Article IV, Section 1 of the By-Laws has been restated to conform to Section 514B-107 (c), HRS, which prohibits employees of the Association's Managing Agent from acting as an officer of the Association.

³³ Article IV, Section 8 of the By-Laws has been restated to conform to Section 514B-150 (b), HRS, regarding the Association's obligation to provide the annual audit report.

³⁴ Article V, Section 1.F has been restated to replace reference for Section 514A-83.5, HRS, which was recodified as Section 514B-148, HRS.

³⁵ Article V, Section 1(P) of the By-Laws has been amended to reference Article V, Section 12 of the By-Laws regarding borrowing. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

³⁶ Article V, Section 2 of the By-Laws has been restated to conform to Section 514B-132, HRS, which states that limited liability companies may also be managing agents, unless the By-Laws were amended since 2006 to specifically require a corporate managing agent.

³⁷ This sentence in Article V, Section 2 of the By-Laws has been restated to replace reference to Section 514A-95, HRS, which was recodified as Section 514B-132, HRS.

³⁸ Article V, Section 5 of the By-Laws has been restated to conform to Section 514B-154.5, HRS, which states that copies of receipts and expenditures must be made available to owners and an owner's authorized agent. This section was also restated to conform to Section 514B-154.5, HRS, to specify that records can be provided electronically upon request of the owner or owner's authorized agent.

³⁹ Article V, Section 6 of the By-Laws has been restated to conform to Sections 514B-152, 514B-153, 514B-154, or 514B-154.5, HRS, regarding availability of Association records.

⁴⁰ Article V, Section 6 of the By-Laws has been restated to conform to Sections 514B-126 (c), 514B-154, and 514B-154.5, HRS, which state the requirements for providing the meeting minutes of the Board.

⁴¹ Article V, Section 6(C) of the By-Laws has been restated to conform to Section 514B-154 (c), HRS, which states that documents may be destroyed ninety (90) days after the Association meeting, unless the election is contested, in which case, the documents are to be retained until the contested election is resolved. This section has been restated to further conform to Section 514B-154 (c), HRS, regarding the fee that can be charged to owners for duplication and administrative costs.

⁴² Article V, Section 6(e) of the By-Laws has been restated to conform to Section 514B-153 (c), HRS, which requires that all records and the vouchers authorizing the payments and statements be kept and maintained at the project or elsewhere in the state subject to Section 514B-152, HRS.

⁴³ Article V, Section 6(E) of the By-Laws has been restated to conform to Section 514B-154.5 (a) (5), HRS, which requires the documents listed in this section be provided pursuant to Sections 514B-152, 514B-153, or 514B-154, HRS.

⁴⁴ Article V, Section 6(G) of the By-Laws has been added to conform to Section 514B-154.5 (a) (6), HRS, regarding the Association's membership list.

⁴⁵ Article V, Section 6(H) of the By-Laws has been added to conform to Section 514B-154.5 (a) (13), HRS, regarding the management contract from the entity that manages the operation of the property prior to the organization of the Association.

⁴⁶ Article V, Section 6(I) of the By-Laws has been added to conform to Section 514B-154.5 (a) (15), HRS, regarding the Association's contract with the managing agent.

⁴⁷ Article V, Section 6.1(A) has been added to conform to Section 514B-154.5 (b), HRS, regarding fees for providing copies of the documents listed in Article V, Section 1 of the By-Laws.

⁴⁸ Article V, Section 6.1(B) has been added to conform to Sections 514B-154 (j) and 514B-154.5 (f), HRS, regarding the fees that may be charged to obtain copies of Association records.

⁴⁹ Article V, Section 6.2(A) has been added to conform to Section 514B-154.5 (d), HRS, which authorizes the owners or their authorized agents to request that the documents be provided via electronic mail.

⁵⁰ Article V, Section 6.2(B) has been added to conform to Sections 514B-154 (g) and 514B-154.5 (e), HRS, which authorize the Association to make its records available through an Internet site.

⁵¹ Article V, Section 8 of the By-Laws has been restated to conform to Section 514B-137, HRS, regarding access to units by the Association.

⁵² Article V, Section 9 of the By-Laws has been restated to conform to Section 514B-133 (b), HRS, which increases the owner approval necessary for an Association employee to sell or rent units in the condominium, except Association-owned units, from sixty-five percent to sixty-seven percent.

⁵³ Article V, Section 10 of the By-Laws has been restated to replace reference to Section 514A-82 (b) (10), HRS, which was recodified as Section 514B-107 (f), HRS.

⁵⁴ Article V, Section 11 of the By-Laws has been restated to: (1) replace reference to Section 514A-97, HRS, which was recodified as Section 514B-149, HRS; and (2) conform to Section 514B-149, HRS, regarding disbursement of funds received by the Association and Managing Agent.

⁵⁵ Article V, Section 12 of the By-Laws has been amended to reduce the approval requirement for borrowing of \$10,000 or more from 75% to 50% of the unit owners, as provided in Section 514B-105 (e), HRS. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

⁵⁶ Article V, Section 13(a) of the By-Laws has been restated to add a new subsection (7) to conform to Section 514B-148 (a) (7), HRS, which requires that the budget include information as to whether the amount necessary for the replacement reserves was calculated on a per cent funded or cash flow plan.

⁵⁷ Article V, Section 13(b) of the By-Laws has been restated to conform to Section 514B-148 (b), HRS, regarding minimum funding requirements for replacement reserves.

⁵⁸ Article V, Section 13(E) of the By-Laws has been restated to conform to Section 514B-148 (e), HRS, which states that the Board may not exceed its total adopted annual budget by more than twenty-percent (20%) except with the approval of a majority of unit owners, in addition to in emergency situations.

⁵⁹ Article V, Section 13(F) of the By-Laws has been restated to conform to Section 514B-148 (g), HRS, regarding burden of proof to show the Board's failure to comply with the procedures of the condominium law and any rules adopted by the commission.

⁶⁰ Article V, Section 13(G) of the By-Laws has been restated to conform to Section 514B-148 (h), HRS, to include a definition of "Cash Flow Plan."

⁶¹ This sentence has been added to Article VI, Section 1 of the By-Laws to conform to Section 514B-144 (h), HRS, which requires advance notice of maintenance fee increases.

⁶² Article VI, Section 1 of the By-Laws has been restated to conform to Section 514B-146 (c), HRS, which authorizes unit owners to receive a full statement of all amounts owed.

⁶³ Article VI, Section 1 of the By-Laws has been restated to conform to Sections 514B-146 (d) and (e), HRS, which restricts a unit owner's right to withhold common expense assessments; authorizes unit owners to receive an additional full statement of all amounts owed; and permits a

unit owner who pays the common expense assessment amounts claimed by the Association to contest the amounts owed.

⁶⁴ This sentence in Article VI, Section 1 of the By-Laws has been restated to conform to Section 514B-146 (a), HRS, regarding the Association's lien.

⁶⁵ This portion of Article VI, Section 1 of the By-Laws has been restated to conform to Section 514B-146 (f), HRS, which permits a unit owner who pays in full the common expenses claimed by the Association to request mediation or arbitration to resolve any dispute about the amount of common expenses owed.

⁶⁶ This portion of Article VI, Section 1 of the By-Laws has been restated to conform to Section 514B-146 (g), HRS, which permits a unit owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, to make a demand for mediation in writing.

⁶⁷ This paragraph of Article VI, Section 1 of the By-Laws has been restated to conform to Section 514B-144 (f), HRS, regarding the liability of the grantee for unpaid assessments in the case of a voluntary conveyance.

⁶⁸ This paragraph has been added to Article V, Section 1 of the By-Laws to conform to Section 514B-146 (j), HRS, regarding the amounts that the Association may collect after a foreclosure.

⁶⁹ Article VI, Section 4(G) of the By-Laws has been restated to include reference to Chapter 515, HRS, which is Hawaii's state equivalent to the federal fair housing laws.

⁷⁰ Article VI, Section 4(M) of the By-Laws has been restated to conform to the guidance provided by the Federal Government regarding the Federal Fair Housing Amendment Act, which requires the Association to allow residents to keep both service animals and other trained or untrained animals that do work, perform tasks, provide assistance and/or provide emotional support for individuals with disabilities. This section has been restated to remove reference to Section 515-3 (8), HRS, which no longer defines "guide dog" and "signal dog" and replace it with reference to Section 347-2.5, HRS, regarding disabled persons, which provides a definition for "service animal."

⁷¹ Article VI, Section 4(N) of the By-Laws has been restated to include reference to the Telecommunications Act of 1996 and the rules adopted by the Federal Communications Commission implementing Section 207 of the Act, which greatly restricts an Association's authority to limit an owner or resident from installing antennas and small satellite dishes designed to receive video programming.

⁷² Article VI, Section 4(O) of the By-Laws has been restated to include reference to the Telecommunications Act of 1996 and the rules adopted by the Federal Communications Commission implementing Section 207 of the Act, which greatly restricts an Association's authority to limit an owner or resident from installing antennas and small satellite dishes designed to receive video programming.

⁷³ Article VI, Section 4 of the By-Laws has been amended to prohibit smoking throughout the entire project, including in the units and on lanais. This amendment was approved in 2022 via the written consent of at least 67% of all unit owners.

⁷⁴ Article VI, Section 6 of the By-Laws has been restated to add subsections. Article V, Section 5(A) has been restated to conform to Section 514B-157 (a), HRS, which states that other persons who use the project may have to pay expenses of enforcement; that these expenses are not limited to enforcing the Declaration and By-Laws; and that the Association may have to reimburse other persons' expenses if the Association's claims are not substantiated.

⁷⁵ Article VI, Section 6(B) of the By-Laws has been added to conform to Section 514B-157 (b), HRS, regarding claims brought by owners against the Association.

⁷⁶ Article VI, Section 7 of the By-Laws has been restated to conform to Sections 514B-153 (e), (f), and (g), HRS, regarding how the membership list may be used.

⁷⁷ Article VI, Section 8(E)(1) of the By-Laws has been restated to conform to: (1) Section 514B-146 (g), HRS, regarding amounts that the Association may collect after a foreclosure (commonly referred to as "Act 39"), and (2) Section 514B-146 (b), HRS, which explains under which circumstances a purchaser at a foreclosure becomes liable for assessments.

⁷⁸ Article VI, Section 8(G) of the By-Laws was added to conform to Section 514B-146 (j), HRS, regarding amounts that the Association may collect after a foreclosure.

⁷⁹ Article VII, Section 1 of the By-Laws was amended by the "Amendment to By-Laws of the Association of Apartment Owners of Hawaiiki Tower" dated March 10, 1998, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2442736. This section has been restated to: (1) replace reference to Section 514A-82, with Section 514B-108, HRS, regarding contents of the By-Laws; and (2) conform to Section 514B-108 (e), HRS, which now requires approval of 67% of the owners to amend the By-Laws and authorizes a volunteer owners' group to submit a proposal to amend the By-Laws.

⁸⁰ Article VII, Section 5 of the By-Laws has been restated to replace reference to Section 514A-95.15, HRS, with Section 514B-103, HRS, regarding registration with the Real Estate Commission.

⁸¹ Article VII, Section 6 of the By-Laws has been added to outline the rights provided to families with children and disabled occupants and guests of the Project by the Federal Fair Housing Act and its State counterpart, Chapter 515, HRS, as amended.

Exhibit "1"

Hawaiki Tower
Land Court Condominium Map No. 1227

List of Current Transfer Certificate of Title Numbers

<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
301	1159154	703	789909
303	594969	704	1086769
401	1150330	705	1145641
402	1050502	706	716146
403	897701	707	533466
404	1049520	708	1152474
405	1145205	709	1049094
501	533954	710	1092439
502	1226793	711	1217727
503	540480	801	533470
504	1169222	802	1171503
505	533451	803	1187913
601	1067244	804	1085716
602	1161354	805	875357
603	533453	807	628900
604	1154568	808	559903
605	566081	809	1053508
606	713526	810	991219
607	1042025	811	1049704
608	1183256	901	1225642
609	1061058	902	959714
610	535611	903	1130747
611	1210788	904	1024712
701	533461	905	556655
702	818352	907	1113291

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
908	1236159	1201	1011536
909	1173149	1202	533498
910	533480	1203	893788
911	533481	1204	1142621
1001	533482	1205	1174469
1002	992991	1206	1150219
1003	1050525	1207	533500
1004	850186	1208	1197082
1005	1208274	1209	691572
1007	1184874	1210	1108057
1008	861294	1211	1201937
1009	1079721	1301	1206551
1010	1228141	1302	1240485
1011	702909	1303	577053
1101	1203851	1304	973880
1102	533491	1305	1093414
1103	1073062	1306	646412
1104	1232796	1307	775213
1105	541173	1308	1066957
1106	1162859	1309	801562
1107	629603	1310	533506
1108	1092563	1311	965220
1109	1067417	1401	537646
1110	1134202	1402	1038538
1111	1211954	1403	1216832

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
1404	1071916	1607	776719
1405	550547	1608	1218082
1406	1146904	1609	1222557
1407	1102382	1610	1145632
1408	953011	1611	533527
1409	1083130	1701	1048933
1410	638662	1702	957663
1411	1180298	1703	537691
1501	721664	1704	607041
1502	1225375	1705	909943
1503	1036317	1706	1195709
1504	746567	1707	744967
1505	1075747	1708	1160713
1506	889457	1709	1109316
1507	1135306	1710	760118
1508	562344	1711	917024
1509	1181981	1801	899294
1510	1057963	1802	1012720
1511	623000	1803	1227768
1601	533521	1804	820664
1602	1066665	1805	533533
1603	1130611	1807	537627
1604	628529	1808	1139569
1605	1072142	1809	1208760
1606	533524	1810	642862

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
1811	1061334	2104	1059454
1901	1086417	2105	1144953
1902	874928	2106	757891
1903	546067	2107	1131838
1904	1133560	2108	1175764
1905	611489	2109	662194
1907	1235304	2110	1201389
1908	1177627	2111	1159890
1909	974278	2201	533546
1910	1079666	2202	1036750
1911	1210807	2203	1096669
2001	1045733	2204	1031602
2002	1044323	2205	1102485
2003	1021754	2206	1214869
2004	1190179	2207	1144654
2005	1216676	2208	1188091
2006	548766	2209	1104404
2007	1146790	2210	552222
2008	847344	2211	847229
2009	1117489	2301	1056029
2010	1072548	2302	1102694
2011	889860	2303	576601
2101	750418	2304	1236258
2102	533544	2305	786451
2103	1069234	2306	1151265

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
2307	1125479	2510	1133677
2308	1231518	2511	1228018
2309	1066525	2601	1130967
2310	1111124	2602	533554
2311	772618	2603	540508
2401	1193040	2604	1181261
2402	1207582	2605	605579
2403	536763	2606	1193413
2404	547132	2607	569299
2405	1051407	2608	1102170
2406	551677	2609	1158336
2407	1139346	2610	1192874
2408	884417	2611	1211234
2409	1060833	2701	1044304
2410	1225284	2702	554713
2411	1000704	2703	1127369
2501	546772	2704	1064862
2502	1194179	2705	1052212
2503	1027154	2706	1128856
2504	1101649	2707	1141691
2505	1142095	2708	1226941
2506	1033422	2709	1144819
2507	1240084	2710	805386
2508	1071135	2711	645308
2509	533553	2801	1182194

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
2802	724101	3005	1104151
2803	617083	3006	1104152
2804	628741	3007	1094892
2805	1090641	3008	621203
2806	1084346	3009	543224
2807	856884	3010	1137196
2808	1018258	3011	1102671
2809	1227493	3101	695144
2810	1162753	3102	587705
2811	1131606	3103	1176363
2901	1035726	3104	765523
2902	1217854	3105	1001131
2903	1148664	3106	1202312
2904	1139668	3107	1119069
2905	1172205	3108	688417
2906	1179069	3109	1048201
2907	1132428	3110	1090896
2908	1062553	3111	1191615
2909	547733	3201	1181263
2910	1005103	3202	955805
2911	886197	3203	545168
3001	1086141	3204	1117584
3002	1008517	3205	647157
3003	1069125	3206	694817
3004	828252	3207	533557

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
3208	1065382	3411	840105
3209	957252	3501	1114031
3210	575828	3502	1114031
3211	1179546	3503	1154657
3301	1118567	3504	986919
3302	1175356	3505	851685
3303	1082644	3506	1183692
3304	1107433	3507	570759
3305	1052779	3508	1237000
3306	1052778	3509	1116753
3307	1052777	3601	1045752
3308	1080306	3602	1045752
3309	890364	3603	950727
3310	1167038	3604	1072064
3311	1238846	3605	1054588
3401	1097421	3606	735712
3402	1179329	3607	1111212
3403	930449	3608	776720
3404	557702	3609	1084079
3405	1165186	3701	1052765
3406	1165186	3702	1014743
3407	1195117	3703	781968
3408	1237417	3704	1059656
3409	1032578	3705	1075836
3410	617082	3706	1075836

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
3707	1207128	4005	833431
3708	1077771	4006	833431
3709	816160	4007	943466
3801	592935	4008	1111601
3802	1228897	4009	1184232
3803	552223	4101	1191310
3804	1187071	4102	705868
3805	960935	4103	1181891
3806	927188	4104	1193847
3807	892657	4105	956832
3808	1165807	4106	956832
3809	1217081	4107	1172249
3901	590421	4108	1080647
3902	1076042	4109	957469
3903	1162533	4201	1207408
3904	970608	4202	569639
3905	1156362	4203	1175102
3906	729452	4204	555487
3907	559737	4205	558285
3908	841914	4206	1022614
3909	994070	4207	1120463
4001	1193693	4208	533568
4002	1051141	4209	1101428
4003	1095782	4301	1098429
4004	1199003	4302	1098429

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<u>Unit No.</u>	<u>TCT No.</u>	<u>Unit No.</u>	<u>TCT No.</u>
4303	1182990	4407	542243
4304	909267	4408	731605
4305	584954	4409	830796
4306	1184069	4501	1171681
4307	1062924	4502	958891
4308	959010	4503	1178648
4309	1075515	4504	749570
4401	1217901	4505	1084429
4402	1025871	4506	1144954
4403	1060103	4507	1231335
4404	1112243	4508	1002058
4405	1165896	RET 1	1002329
4406	792002	RET 2	1002330