

LAND COURT SYSTEM

REGULAR SYSTEM

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**BYLAWS OF THE  
ASSOCIATION OF UNIT OWNERS OF  
KA'ULU BY GENTRY I**

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**BYLAWS OF THE  
ASSOCIATION OF UNIT OWNERS OF  
KA'ULU BY GENTRY I**

**1. INTRODUCTORY PROVISIONS**

1.1 Definitions. Defined terms appear throughout these Bylaws with the initial letter of each such term capitalized. Unless the context clearly requires otherwise, the terms used in these Bylaws are defined in accordance with the following. Each of the defined terms contained in Section C and elsewhere in that certain Declaration of Condominium Property Regime of Ka'ulu by Gentry I, Recorded as Document No. A-86560580, as amended from time to time (the "**Declaration**"), unless separately defined in this Section 1 or elsewhere in these Bylaws, is incorporated into these Bylaws by this reference. In the event any of the terms defined in the Declaration are otherwise defined in these Bylaws, the definition contained in these Bylaws will control in the interpretation of these Bylaws (but will not affect the Declaration) notwithstanding any other provision to the contrary. Terms used in these Bylaws without initial capital letters will have the meaning they have in common usage; provided, however, that where legal, technical or trade terms are used and the context in which such terms are used indicates that such terms are to be given their legal, technical or trade meanings, such terms will be given such legal, technical or trade meanings. In the event of a conflict between the definition of a term used in these Bylaws versus the definition of a term used in the Declaration, the definition given in the Declaration will control.

"**Act**" means the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended, and, as applicable, the rules of the Real Estate Commission promulgated pursuant thereto, as amended.

"**Applicable Laws**" means any and all federal, state and local laws, statutes (including the Act and the ADA), ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, permits, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments of any local, county, state or federal government or agency thereof, which now or in the future may be applicable to the Project (or any portion thereof), to any Improvements on the Project, and to any possession, development, improvement, operation, occupancy, use, enjoyment and other activities relating to the Project.

"**Association**" means the Association of Unit Owners of Ka'ulu by Gentry I, consisting of all Unit Owners acting as a group in accordance with the Declaration, these Bylaws and the Act; provided that if the Project is merged with another condominium project or other condominium projects in accordance with the Declaration of Intent to Develop and Merge, then all references to the Association will mean and refer to the merged association of unit owners of the entire project, as reconstituted by any such merger or mergers.

"**Board of Directors**" or "**Board**" means the board of directors of the Association.

"**Bureau**" means the Bureau of Conveyances of the State of Hawaii, being the place where conveyances of land are Recorded.

"**Bylaws**" means these Bylaws of the Association Recorded concurrently with the Declaration, as amended from time to time. These Bylaws are subject to and must comply with the Act and applicable provisions of the Declaration.

**"Common Assessments"** means the mandatory fees to be assessed by the Association against the Residential Unit Owners for the payment of the common expenses, limited common expenses and other expenses allocable to the Owners' Residential Units in such manner as set forth in the Declaration and these Bylaws.

**"Condominium Map"** means the plans showing the layout, location, unit numbers, dimensions and elevations of the Units in the Project, as further described in the Declaration.

**"Condominium Property Regime"** has the meaning set forth in the Act.

**"County"** refers to the City and County of Honolulu of the State of Hawaii.

**"C.P.I. Adjusted"** means that the figure will be increased or decreased as the C.P.I. Index changes. The amount of the increase or decrease will be equal to the percentage change between (a) the C.P.I. Index published for December of 2022, and (b) the most recent December C.P.I. Index figure.

**"C.P.I. Index"** means the U.S. Department of Labor Consumer Price Index for All Urban Consumers – Honolulu. If the U.S. government stops publishing that index, then the most similar index available will be used in its place. The Board will choose the replacement index.

**"Declarant"** refers to Gentry Kalaeloa, LLC, a Hawaii limited liability company, the owner in fee simple of the land described in **Exhibit "1"** attached to these Bylaws, its successors and assigns. All references to "Declarant" in this document include the successors and assigns. A Person will be deemed a successor or assign of Declarant for purposes of the Declaration and these Bylaws only if specifically so designated in a duly Recorded written instrument as a successor or assign of Declarant under the Declaration, and will be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under the Declaration that are specifically designated in the Recorded written instrument. It is understood that Declarant may collaterally assign to its mortgage lender Declarant's interest as "Declarant" under the Declaration and the other Project Documents.

**"Declaration"** is defined in the first paragraph above.

**"Detached Single-Family Unit"** means a Residential Unit that is within a building that contains just one Residential Unit.

**"Director"** means a member of the Board.

**"HCDA"** means the Hawaii Community Development Authority, a body corporate and a public instrumentality of the State of Hawaii (or its successor entity).

**"HCDA Equity Sharing Requirements"** is described in Section V.4 of the Declaration.

**"HCDA Occupancy Requirements"** is described in Section V.2 of the Declaration.

**"HCDA Sale and Transfer Restrictions"** is defined in Section V.3 of the Declaration.

**"Insurance Trustee"** means the Association or, at the option of the Board, a corporate trustee designated by the Board which will be a bank or substantial trust company doing business in the State of Hawaii, designated to hold and administer insurance proceeds for the Project.

**"Kalaeloa Design Guidelines"** means the Kalaeloa: Design Guidelines, dated December 6, 2021, as may be amended from time to time.

**"Kalaeloa Reserved Housing Rules"** means Kalaeloa Community Development District Rules, Chapter 216 of Title 15, Hawaii Administrative Rules, administered by the HCDA.

**"Land"** means the real property described in **Exhibit "1"** attached to and incorporated into these Bylaws, including all easements and other rights appurtenant thereto, but excludes any land that is subdivided and withdrawn after the Recording of the Declaration. Declarant has reserved the right to amend the description of the real property in Exhibit "A" to the Declaration, so, if the description of the Land contained in Exhibit "A" to the Declaration is revised or amended, then that revised or amended description will be deemed to apply to these Bylaws as well.

**"Majority of the Owners"** and **"Majority of Unit Owners"** means the Owners of Units to which are appurtenant more than fifty percent (50%) of the total common interests in the Project. Similarly, references to a certain percentage of the Unit Owners means the Owners of Units to which are appurtenant that percentage of the total common interests in the Project. For example, "at least 75% of the Unit Owners" means Owners representing Units to which are appurtenant at least 75% of the common interests in the Project.

**"Majority of the Units"** means those Units to which are appurtenant more than fifty percent (50%) of the total common interests in the Project. Similarly, references to a certain percentage of the Units means the Units to which are appurtenant that percentage of the total common interests in the Project. For example, "at least 75% of the Units" means Units to which are appurtenant at least 75% of the common interests in the Project.

**"Management Agreement"** means that certain agreement entered into or to be entered into between Declarant or the Association and the Managing Agent for the management and administration of the Association, the common elements, and the property of the Association, if any. The Management Agreement may also state that the Managing Agent provides certain services to Owners.

**"Manager"** refers to the individual, if any, retained by or on behalf of the Board or the Managing Agent to manage the day-to-day operations of the Project.

**"Managing Agent"** means the entity engaged by Declarant, the Association or the Board of Directors from time to time pursuant to the Management Agreement, as described in the Declaration.

**"Master Assessments"** are the assessments, if any, assessed against, among others, Ka'ulu, the Project and/or the Residential Unit Owners by or on behalf of the Master Association, if any.

**"Master Association"** is defined in the Declaration.

**"Master Declaration"** is defined in the Declaration.

"**Member**" means every person who is entitled to membership in the Association, as provided in the Declaration.

"**Membership**" means a membership in the Association.

"**Mortgage**" means any Recorded or otherwise perfected security instrument in real property, which is not a fraudulent conveyance under Hawaii law, and which is given in good faith and for valuable consideration as security for the performance of an obligation, but will not include any instrument creating or evidencing solely a security interest arising under the Hawaii Uniform Commercial Code (Hawaii Revised Statutes Chapter 490, as amended). "**Mortgagor**" means the party executing a Mortgage as obligor. "**Mortgagee**" means the holder, insurer or guarantor of a note or other interest secured by a Mortgage. "**First Mortgage**" means a Mortgage in first lien position under Hawaii's Recording laws. "**First Mortgagee**" means the holder, insurer or guarantor of a First Mortgage. "**Eligible Holder of a First Mortgage**" means a First Mortgagee who notifies the Association in writing, which notice states the name and address of the First Mortgagee and the address of the affected real property; provided that any required approval to be obtained from an Eligible Holder of a First Mortgage under the provisions of these Bylaws will be deemed to have been given if such Eligible Holder of a First Mortgage does not respond in writing to the Association's written request for approval within sixty (60) days after the date such written request is delivered to the Eligible Holder of a First Mortgage by certified mail, return receipt requested.

"**Occupant**" means and includes an Owner, occupant, tenant, family member, lessee, guest, resident and any other person who occupies or otherwise uses a Residential Unit or any other part of the Project on more than an occasional or temporary basis.

"**Officer**" means an officer of the Association.

"**Owner**" has the same meaning as Unit Owner.

"**Parking Stall Unit**" means a parking stall that is identified as a Unit in Section D and **Exhibit "B"** to the Declaration and is depicted on the Condominium Map.

"**Parking Stall Unit Owner**" means the Owner of a Parking Stall Unit.

"**Person**" refers to an individual, corporation, partnership, limited liability entity, association or other legal entity.

"**Project**" means Ka'ulu by Gentry I condominium project, created by the Recording of the Declaration and the filing of the Condominium Map in the Bureau, which project is located on the Land and includes the buildings, landscaping, improvements and structures thereon and all easements, rights and appurtenances belonging thereto.

"**Project Documents**" means the Declaration, these Bylaws, the Condominium Map, the Project Rules, and the Declaration of Intent to Develop and Merge, as each may be amended from time to time.

"**Project Rules**" or "**Rules**" means the administrative rules and regulations promulgated by the Board that govern the operation and use of the Project, as the same may be amended or supplemented from time to time; provided, however, that Declarant has the right to adopt the initial Project Rules on behalf of the Association, and, during the Declarant Control Period, to amend and repeal the initially adopted Project Rules.



**"Real Estate Commission"** refers to the Real Estate Commission of the Department of Commerce and Consumer Affairs of the State of Hawaii, or any successor entity.

**"Record," "Recorded," "Recording," "Recordable," or "Recordation"** means an instrument of record, or the act of recording or causing to be recorded an instrument, in the Bureau.

**"Residential Units"** refers to Attached Multi-Family Units and Detached Single-Family Units.

**"Storm Water Operation and Maintenance Plan"** means the Operation and Maintenance Plan for Permanent Storm Water BMPs (dated September 2022), accepted by the Department of Planning and Permitting of the City and County of Honolulu on October 13, 2022.

**"Unit"** means a unit (as that term is defined in the Act) within the Project, as described in Section D of the Declaration and as shown on the Condominium Map, including the common interest appurtenant to the unit. The Units included in the Project are listed in **Exhibit "B"** to the Declaration. The types of Units in the Project are Attached Multi-Family Units, Detached Single-Family Units and Parking Stall Units.

**"Unit Deed"** means the legal instrument signed by Declarant conveying an interest in a Unit and an undivided interest in the common elements, in fee simple, to an Owner, subject, however, to the encumbrances and reservations identified in the Unit Deed.

**"Unit Owner"** has the meaning ascribed to it in the Act. For so long as Declarant owns unsold Units in the Project (or to the extent that Declarant reacquires any Units in the Project), Declarant will have the rights of an Owner, including the right to vote, and will assume the duties of an Owner as said rights and duties relate to said unsold Units (or reacquired Units), subject, however, to the provisions of the Act.

1.2 Adoption of Bylaws. Declarant has established a condominium property regime by (a) the execution and Recordation of the Declaration affecting the Land described in the Declaration and (b) the filing of the Condominium Map. Declarant declares that the property constituting such condominium property regime is owned and will be owned, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions, and conditions set forth in these Bylaws, all of which are declared to be in furtherance of the plan set forth in the Declaration, and are established for the purpose of enhancing and preserving the value, desirability and attractiveness of the Property and the Project. These Bylaws constitute equitable servitudes, liens and covenants running with the Property and all Units and will be binding on and inure to the benefit of all Persons having or acquiring any right, title or interest in any portion of the Property.

1.3 Application. All Persons who use any part of the Project in any manner, including, without limitation, present and future Owners, Occupants, guests, invitees, as well as those claiming by or through such Persons (including Mortgagees), are subject to the Project Documents. The acceptance of a Unit Deed or other conveyance, the entry into a lease or rental agreement of a Unit or a portion of the common elements, or the act of occupying a Unit, constitutes an agreement that the Project Documents are accepted, ratified and will be strictly complied with.

## 2. ASSOCIATION OF OWNERS

2.1 Membership. All Owners constitute the Association. Each Owner (including Declarant) will be a Member of the Association upon acquiring or holding fee simple title to a Unit. The Owner of a Unit will automatically be the holder of the Membership in the Association, which Membership is appurtenant to the Unit. There will be one Membership in the Association for each Unit owned in the Project, provided that when more than one Person owns a Unit, all such Persons will be considered Members. Membership terminates only when the Person is no longer an Owner of a Unit, and will terminate automatically upon such transfer of the ownership in the Unit.

### 2.2 Meetings of the Association.

(a) First Annual Meeting. Declarant or the Managing Agent will call the first meeting of the Association, which meeting will be held not later than 180 days after Recordation of the first Unit Deed, if at that time forty percent (40%) or more of the Units in the Project have been sold and recorded. If forty percent (40%) or more of the Units in the Project are not sold and recorded at the end of one year after Recordation of the first Unit Deed, then the first annual meeting will be called and held as soon as practicable upon the request in writing of at least ten percent (10%) of the Owners. At such meeting, a Board of Directors will be elected or appointed to serve until the next annual meeting. The term "sold and recorded" means the sale of a Unit and the Recording of the Unit Deed. Notwithstanding anything to the contrary contained in these Bylaws, Declarant will control the Association and appoint and remove the Officers and Directors until expiration of the "Declarant Control Period", which will be the earlier of: (a) 60 days after conveyance of 75% of the Units to Unit Owners other than Declarant or an affiliate of the Declarant; (b) two years after Declarant has ceased to offer Units for sale in the ordinary course of its business; (c) two years after any right to add new Units was last exercised by Declarant; or (d) the day Declarant, after giving written notice to Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association; provided, however, that, pursuant to Section 514B-106(e) of the Act, not later than the termination of the Declarant Control Period, the Unit Owners will elect the Board. Declarant may voluntarily surrender the right to control the Association and appoint and remove Officers and Directors before termination of the period set forth above; provided, however, that, in such event, Declarant may require that, for the balance of the period set forth above, specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. Thereafter, Declarant, as the Owner of any unsold Units, will be entitled to vote the interest of each such Unit.

(b) Annual Meetings. Other than the first annual meeting of the Association, annual meetings of the Association will be held within 180 days following the close of the fiscal year of the Association on such date as the president of the Association (herein the "**President**") may designate. If the President fails to designate such date by the 90th day following the close of the fiscal year, then the annual meeting will be held on the third Tuesday in the sixth calendar month following the close of the fiscal year. Each annual meeting will be a general meeting and any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration or these Bylaws. The Board (by resolution) or a Majority of Owners (by petition) may establish meetings in addition to annual meetings at semi-annual, quarter-annual or other regular intervals.

(c) Special Meetings. Special meetings of the Association may be called by the President, a majority of the Board, or by a petition to the secretary of the Association (the "**Secretary**") or the Managing Agent signed by not less than 25% of the Owners. Upon receipt of

the petition calling for a meeting, the Secretary or the Managing Agent will send notice of the meeting to all Owners. If the Secretary or Managing Agent does not send out the notices for the special meeting within 14 days after receipt of the petition calling for a meeting, then the person or petitioners calling for the meeting 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 in accordance with the requirements of these Bylaws and the Act. The meeting will be held at the time and place specified in such call, or if unspecified, at any reasonable time within 45 days after the date the call was received. Except as provided otherwise in these Bylaws or by Applicable Law, only such business will be transacted at any special meeting as will have been indicated by a specific or general description in the notice of the meeting. Any special meeting for the purpose of the removal and replacement of directors will be called and conducted in accordance with applicable provisions of these Bylaws and the Act pertaining to the removal, replacement and election of Directors.

(d) Special Meeting Upon Merger. Any other provision in these Bylaws to the contrary notwithstanding, if the Project is merged with another increment or increments in accordance with the Declaration of Intent to Develop and Merge, then a special meeting of the Association will be called and held within one hundred twenty (120) days following the date of any such merger. At such meeting, a new Board of Directors for the Association, as reconstituted by any such merger, will be elected to replace the existing Board.

(e) Adjournment. Any meeting of the Association may be adjourned to such place, date and time (but not later than immediately preceding the next annual meeting of the Association) as may be determined by vote of a majority of Unit Owners present at the meeting, either in person or by proxy, and whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

(f) Place of Meetings. All meetings of the Association will be held at the address of the Project or elsewhere within the State of Hawaii convenient to the Owners as determined by the Board; provided that in the event of a natural disaster, such as a hurricane, Association meetings may be held outside the State.

(g) Participation. Association meetings may be conducted by any means that allow participation by all Unit Owners in any deliberation or discussion.

2.3 Notice of Meetings. The notice of every meeting of the Association will state whether it is an annual or special meeting, the date, time and place of the meeting, the items on the agenda for the meeting, and will include a standard proxy form authorized by the Association, if any, and any other information permitted or required to be given by these Bylaws. The agenda for the meeting will include the general nature and rationale of any proposed amendment to the Declaration or these Bylaws and any proposal to remove a member of the Board; provided that this will not preclude any Unit Owner from proposing an amendment to the Declaration or these Bylaws or to remove a member of the Board at any annual Association meeting. Notice of each meeting, whether annual or special, will be given by the Secretary or the Managing Agent at least 14 days but no more than 45 days before the date of the meeting and will be given (a) by hand delivery, (b) by prepaid United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner, or (c) at the option of the Unit Owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the Unit Owner. If notice is given pursuant to the provisions of these Bylaws, then the failure of

any Owner to receive actual notice of a meeting will not invalidate the meeting or any proceedings taken at the meeting. The presence of an Owner or Mortgagee, in person or by proxy, at any meeting will constitute a waiver of any required notice to that Owner or Mortgagee, unless an Owner, at the opening of such meeting, objects to the holding of the meeting because of the failure to comply with the provisions of this Section.

2.4 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Unit Owners will constitute a quorum at all meetings of the Association.

2.5 Acts of the Association; Consent in Lieu of Meeting. Except as otherwise provided in the Declaration or these Bylaws, the vote of a majority of Unit Owners present at a meeting at which a quorum is present will constitute an act of the Association, which will be binding upon all Owners for all purposes unless the Declaration or these Bylaws requires a different percentage; provided, however, that whenever the vote of the Owners at a meeting thereof is required or permitted to be taken in connection with any action permitted by the Declaration or these Bylaws, the meeting and vote of Owners may be dispensed with if all of the Owners who would have been entitled to vote upon the action if the meeting were held, consent in writing to the action being taken.

2.6 Duties of the Association. Subject to the rights and responsibilities with respect to the limited common elements as set forth in the Declaration, administration of the Project will be governed by the Act, the Project Documents, and any agreements, decisions and determinations lawfully made by Declarant, the Association, the Board of Directors or the Managing Agent. The right and duty to administer and operate the Project is vested in the Association and the Board of Directors in accordance with the Declaration and these Bylaws. In addition to such duties as are set forth in the Act and the Declaration, but subject to the Act and the Declaration, the Association has the following duties:

(a) To make, build, maintain and repair all fences, sewers, drains, retaining walls, roads, curbs, sidewalks, street lights, parking areas and other such improvements that are part of the common elements of the Project and that may be required by Applicable Laws to be made, built, maintained and repaired upon, adjoining, in connection with or for the use of the Project or any portion thereof.

(b) To observe and perform all Applicable Laws.

(c) To observe, perform and comply with all covenants, conditions, restrictions, encumbrances, agreements, and easements encumbering the title to and/or affecting the use of the Property, as such covenants, conditions, restrictions, encumbrances, agreements, and easements may be amended or otherwise revised from time to time.

(d) To observe and comply with all the terms and conditions of the Project Documents.

(e) To require the Managing Agent or the Manager to make sure that the Association observes and satisfies the Association's and the Project's obligations under the HIBOR Warranty program as it relates to lumber and plywood used in the construction of the Attached Multi-Family Units, which obligations include having a licensed termite inspector perform periodic termite inspections of the buildings in which the Attached Multi-Family Units.

(f) To require the Managing Agent or the Manager to make sure that the Association observes and satisfies the Association's and the Project's obligations under the various other warranty programs pertinent to the common elements, applicable limited common elements and the buildings housing the Attached Multi-Family Units, which obligations include having periodic inspections, maintenance, repairs and replacements performed.

(g) To abide by and comply with the Management Agreement, which must be with a responsible, professional corporate managing agent, experienced in the operation of condominium projects and duly registered with the Real Estate Commission of the State of Hawaii.

(h) To delegate to the Managing Agent the right to hire personnel, including the Manger, on behalf of the Association for the operation of the Project.

(i) Except as otherwise provided in the Project Documents, to repair, replace, maintain, preserve and keep all common elements in good order and a strictly clean and sanitary condition, and maintain and keep the Land in a neat and attractive condition and all common element trees, shrubs, grass and other landscaping in good cultivation and replant the same as may be necessary, and repair all defects in the common elements required to be repaired by the Association. Any and all defects in the common elements of the Project must be repaired by the Association within thirty (30) days after any Unit Owner gives notice of such defect, or within such additional time as may be reasonably necessary to complete such work diligently.

(j) To observe any setback lines affecting the Project and not place or maintain any building or structure, except fences or walls approved or permitted in accordance with the Project Documents and by law, between any boundary of the Project and the setback line along such boundary.

(k) To not make or suffer any waste or unlawful, improper or offensive use of the Project.

(l) Except as otherwise provided in the Project Documents, to not erect or place on or within the Project any building or structure, including fences and walls, nor make additions or structural alterations or exterior changes to any common elements of the Project, except in accordance with plans and specifications, including a detailed plot plan prepared by a licensed architect, if so required by the Board of Directors, first approved by such Owners as may be required by the Act or the Declaration, and complete any such improvements with due diligence.

(m) Except for renovations or other improvements to the Project being undertaken by Declarant, before commencing or permitting construction of any improvement on or to the Project having a cost in excess of \$100,000.00 (C.P.I. Adjusted), or such other amount as may from time to time be reasonably deemed appropriate by the Board, to obtain or cause the contractor to be obtained a performance and payment bond (or other form of security acceptable to the Board) naming as obligees, the Association, the Board and all Owners and their respective Mortgagees as their interests may appear, in a sum not less than one hundred percent (100%) of the estimated cost of such construction and with a corporate surety authorized to do business in Hawaii assuring performance of such construction free and clear of all mechanics' and materialmen's liens, and all claims in lieu of mechanics' and materialmen's liens arising under the Act.

(n) To be bound by all waivers, if any, of claims, rights of action and suits against any Person contained in the Declaration or in the Unit Deeds, and the Association is not authorized to bring against any Person any claim or right of action or suit relating to any of the matters waived by Owners via the Declaration or by their Unit Deeds.

(o) To pay the taxes and assessments, if any, that may be levied by any governmental authority on the common elements or any part thereof.

(p) To maintain a bank account or accounts for operating and reserve funds coming under the control of the Association, which is to be maintained in accordance with the Act and other Applicable Laws, and which maintenance obligation is to be delegated to the Managing Agent.

(q) To determine and establish Common Assessments and other assessments and collect Common Assessments and other assessments from Owners and to pay the common expenses, limited common expenses and other expenses of the Association from such collected assessments or to delegate such obligations to the Managing Agent.

(r) To timely perform all routine maintenance and maintenance inspections of the common elements required by any maintenance manual(s) provided to the Association by Declarant or Declarant's contractors, and to make such repairs and maintenance as may be called for pursuant to such maintenance and inspections.

(s) Regularly inspect, maintain and/or paint the exterior surfaces of all fences located within the common elements.

(t) To indemnify and hold harmless other Persons (including, but not limited to, Declarant, Declarant's contractors (including the subcontractors of such contractors), and their respective agents, principals, consultants, subconsultants, and employees) from and against any and all claims arising out of or resulting from the Association's or the Board's failure or refusal to fully perform the maintenance and inspection obligations required by the maintenance manual(s) referenced in subsection (q) above.

(u) To waive any and all claims the Association or the Board may have against other Persons (including, but not limited to, Declarant, Declarant's contractors (including the subcontractors of such contractors), and their respective agents, principals, consultants, subconsultants, and employees) arising out of or resulting from the Association's or the Board's failure or refusal to fully perform the maintenance and inspection obligations required by the maintenance manual(s) referenced in subsection (q) above.

(v) To rent or lease real and personal property rented or leased to it by Declarant (or Declarant's assignee) and to accept title to real and personal property conveyed to it by Declarant (or Declarant's assignee), together with any improvements thereon, including any Unit owned by Declarant (or Declarant's assignee), as a Unit or a common element (as applicable), together with the responsibility to perform any and all duties associated therewith, which, upon rental or lease by or conveyance to the Association, the Association will maintain at its expense for the benefit of the Owners. Property interests transferred to the Association by Declarant (or Declarant's assignee) may encompass fee simple title, easements, leasehold interests, and licenses to use. The conveyance of a fee simple interest by Declarant (or Declarant's assignee) to the Association may be by quitclaim deed. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association "as-is", "where-is", without warranty of any kind, and without the benefit of an escrow or title insurance,

provided, however, the Association may purchase such title insurance, at the Association's expense, as the Association may desire. In connection with any transfer of a property interest, Declarant reserves the right to include in the transfer instrument such terms, conditions and requirements as are typical to instruments for the transfer of real or personal property, as applicable, between unrelated parties, including, without limitation, the right to require the Association to indemnify Declarant (or Declarant's assignee) against claims arising after such transfer from the Association's use of or exercise of rights with respect to such property. Subject to the foregoing, the transfer will be free and clear of all liens and encumbrances except for the following: (i) the lien for property taxes and assessments not then due and payable; (ii) the terms of the Declaration and these Bylaws; (iii) easements, rights-of-way, reservations, covenants, conditions, restrictions, and equitable servitudes, or other non-financial encumbrances as Declarant in its discretion may deem appropriate; and (iv) such financial encumbrances as may be reasonably accepted and assumed by the Association and specifically approved by resolution of the Board. Each Owner, by accepting title to a Unit and becoming an Owner, is deemed to approve and accept the acquisition by the Association of Units and common elements as provided herein, and any common expenses that may relate thereto.

(w) To accept and assume Declarant's and the Association's obligations under, and to accept assignments of, agreements entered into by Declarant on behalf of the Association, including, without limitation, the Management Agreement with the initial Managing Agent.

(x) To enter into and comply with such agreements and/or arrangements with the Master Association (if any) and/or such other parties as may be required under the Project Documents, the Master Declaration (if any) or otherwise to facilitate (i) the payment of the Master Assessments (if any) and/or (ii) the fulfillment of the Association's and/or Unit Owners' obligations under the Project Documents and/or the Master Declaration.

(y) To accept and assume Declarant's and the Association's obligations under the Storm Water Operation and Maintenance Plan, as described in the Declaration and/or the Storm Water Operation and Maintenance Plan, and to accept and assume responsibility (financial and otherwise) for the operation and maintenance of the permanent source control BMPs set forth in the Storm Water Operation and Maintenance Plan. The Association must indemnify, defend and hold Declarant harmless from any loss incurred by Declarant as a result of any claim made against Declarant (after expiration of the Declarant Control Period) regarding the Association's obligations under the Storm Water Operation and Maintenance Plan.

(z) To accept and assume Declarant's obligations under and/or to accept assignments of agreements entered into by Declarant relating to the Association or the Project.

(aa) To cooperate with a withdrawal of land from the Project resulting from a governmental agency's street or road widening, whether such withdrawal occurs during or after the Development Period and whether or not the road widening is along Franklin D. Roosevelt Avenue. Such cooperation includes agreeing to amendments to the Declaration, these Bylaws and the Condominium Map and/or to any other documents that the governmental agency or Declarant deems necessary or convenient to effect such withdrawal.

Nothing in this Section 2.6 or in Section 2.7 below is intended or will be deemed to relieve any Owner of its responsibility for such Owner's Unit, or the limited common elements appurtenant thereto, pursuant to and in accordance with the Project Documents, including the Owner's obligation to pay taxes associated with the Owner's Unit. Further, nothing in this Section 2.6 or in Section 2.7 below will prohibit the delegation by the Association of any of its powers according to these Bylaws or is intended to impose limitations on the power of the

Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other Persons.

2.7 Rights and Powers of the Association. In addition to such rights and powers as are set forth in the Act and the Declaration, the Association, in its sole and absolute discretion, but subject to the Act and the Declaration, has the right and power to perform the following acts:

(a) The Association may take any and all lawful action that may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts that may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

(b) To impose monetary penalties upon Owners (i) as a disciplinary measure for failure of an Owner to comply with the Project Documents or the Master Declaration, (ii) as a means of reimbursing the Association for costs incurred by the Association to repair damage to the Project for which the Owner is allegedly responsible, or (iii) to bring an Owner or the Owner's Unit into compliance with the Project Documents or the Master Declaration.

(c) To levy and enforce payment of (monthly or otherwise) allocated Common Assessments and other assessments, including special assessments. (Any fee to be paid by Unit Owners for the electricity (or other utility) used by the Owner's Unit, as well as the fee to a vendor measuring such electricity (or other utility) usage, will be an ongoing special assessment charged by the Association against each Unit Owner.)

(d) To grant permits, licenses and easements over, under and across the Project for utilities, pedestrian and vehicular access and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

(e) To perform such acts and enter into such agreements as will be necessary to allow Declarant to exercise rights reserved to Declarant in the Project Documents.

(f) To adopt, amend, repeal and enforce Project Rules not inconsistent with the provisions of the Declaration or these Bylaws, whether in conjunction with the Board or not, provided such action requires the affirmative vote or written consent of at least sixty-seven percent (67%) of the Owners.

(g) To enforce the provisions of the Project Documents, subject, however, to the provisions of the Project Documents, provided that this will not be construed as prohibiting enforcement of the Project Documents by Declarant or any Owner, as authorized under the Project Documents.

(h) To amend these Bylaws in accordance with the Declaration and subject to the Act.

(i) To enter into the Management Agreement with the Managing Agent.

(j) To contract, provide and pay for (i) maintenance, utility, gardening and other services benefiting the Project that are not metered or charged to individual Units; (ii) persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.



(k) To contract for the purchase of tools, equipment, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the common elements.

(l) To contract and pay for reconstruction of any portion or portions of the common elements damaged or destroyed.

(m) To employ such personnel as are hired by the Managing Agent on behalf of the Association for the operation of the Project.

(n) To delegate its rights, powers and duties to others, including the Managing Agent, where such delegation is proper.

(o) To prosecute or defend, and to perform any act reasonably necessary to resolve by alternative dispute resolution proceedings, under the name of the Association, any action affecting or relating to the Project, or any action in which all of the Owners have an interest in the subject of the action.

(p) Subject to the vote or written consent therefor from a Majority of Owners, the Association may borrow money, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(q) To do any and all things that a nonprofit corporation organized under the laws of the State of Hawaii may lawfully do, and generally may do and perform any and all other acts that may be either necessary for, or incidental to, the exercise of any of the foregoing rights and powers, and any other such powers as are granted by the provisions of the laws of the State of Hawaii to such a corporation.

(r) To acquire by gift, purchase or otherwise, to own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association must not acquire, sell or convey any real property by purchase or lease without first obtaining the vote or written consent therefor from a Majority of Owners; provided further, however, that, notwithstanding the foregoing, the Association will be obligated to accept from Declarant, without any vote or written consent of the Board or the Owners, the conveyance or transfer of any Unit, property or interest within or relating to the Project conveyed to transferred to the Association by Declarant.

(s) Subject to any applicable restrictions and procedures in the Act and/or the Declaration, to suspend a Member's voting rights and/or the right of an Occupant to use the common elements for any period during which any assessment against the Member's or Occupant's Unit remains unpaid and delinquent.

(t) To lease portions of the common elements to an entity for the following purposes relating to the Project and to Owners and Occupants within the Project: administrative offices; management offices; and/or storage, sales, leasing and marketing offices; provided, however, that, so long as Declarant owns a Unit in the Project, any such lease and any use of any portion of the common elements for a purpose other than as described above shall require the prior written consent of Declarant, which consent may be given or withheld in Declarant's sole discretion; provided, further, that if such other use requires the approval of, or a permit from, any governmental agency, then the Association shall obtain such required approval or permit.

2.8 Voting. Each Owner will be entitled to that percentage of the total vote of all the Owners equal to the percentage of the common interest appurtenant to the Owner's Unit. Votes may be cast in person or by proxy. A personal representative, guardian, conservator, trustee, officer of a corporation, general partner of a partnership, limited liability partnership or limited partnership, member of a member-managed limited liability company, or manager of a manager-managed limited liability company may vote the percentage of vote for any Unit owned or controlled by such person in such capacity, provided that such person has first presented evidence satisfactory to the Association that such person owns or controls the Unit in such capacity. When a Unit is owned of Record by two or more Persons, if only one of them is present at any Association meeting, then that Owner is entitled to cast all the votes allocated to the Unit. If more than one of the Owners is present at the Association meeting, then the votes allocated to that Unit may be cast in proportion to each co-Owner's share of ownership in the Unit. Declarant, as the Owner of any unsold Units, is entitled to vote the interest of each such Unit. Although there will be no common expenses allocated to the Parking Stall Units, each Parking Stall Unit Owner is entitled to vote based on the percentage of the common interest appurtenant to the Owner's Parking Stall Unit. If the Parking Stall Unit Owner's Residential Unit is in the same condominium property regime as the Owner's Parking Stall Unit or is in a condominium property regime that has been merged with the condominium property regime where the Owner's Parking Stall Unit is located, then the Owner would be entitled to vote the percentage of the common interest appurtenant to the Owner's Residential Unit and the percentage of the common interest appurtenant to the Owner's Parking Stall Unit.

2.9 Proxies and Pledges.

(a) Requirements. The proxy or authority given by any Owner to another person to represent the Owner at meetings of the Association must (i) be in writing and be delivered to the Secretary of the Association or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; (ii) contain at least the name of the Association, the date of the meeting of the Association, the printed names and signatures of the persons giving the proxy, the numbers of the Units for which the proxy is given, the printed name of the person to whom the proxy is given and the date that the proxy is given; and (iii) if it is a standard proxy form authorized by the Association, it must contain boxes wherein the Owner has indicated that the proxy is given: (A) for quorum purposes only; (B) to the individual whose name is printed on a line next to this box; (C) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the Directors present at the meeting; or (D) to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage (proxy forms which are not marked shall be considered a choice by the Owner that the vote be made on the basis of the preference of the majority of the Directors present at the meeting). The proxy form shall also contain a box wherein the Owner may indicate that the owner wishes to obtain a copy of the annual audit report required by Section 514B-150 of the Act. A proxy may designate any person or the Board of Directors as an entity as proxy and may be limited as the Unit Owner indicates.

A proxy given by a co-Owner or co-Owners for only a share of a Unit's vote may be exercised to cast the entire vote for such Unit in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner. In case of a protest, each co-Owner or holder of a proxy from a co-Owner, as the case may be, shall be entitled to only a share of such Unit's vote in proportion to the respective shares of ownership in such Unit. Any provision hereof to the contrary notwithstanding, the standard proxy form, if any, which accompanies a notice of meeting: (i) shall be valid only for the meeting to which such notice pertains and its adjournments, if any; (ii) may designate any person as proxy; and (iii) may be limited to the Unit Owner's desires as

indicated; provided that no proxy shall be irrevocable unless coupled with a financial interest in the Unit represented.

(b) Limitations On Proxy Votes. If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 2.3 above, the Board must first post notice of its intent to distribute proxies in prominent locations within the Project at least 21 days prior to its distribution of proxies. If the Board receives within seven days after the date the Board posts the notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, then the Board must mail to all Owners a proxy form containing either (i) the names of all Owners who have requested the use of Association funds to solicit proxies, together with their statements, or (ii) no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements. The statement shall be limited to black text on white paper, shall not exceed one single-sided 8.5" x 11" page, indicating the Owner's qualifications to serve on the Board and the reasons for wanting to receive proxies.

A Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, then the Board member shall proceed as a Unit Owner under the previous paragraph.

No Managing Agent or Manager, or employees of either, is allowed to solicit, for use by the Managing Agent or the Manager, any proxies from any Unit Owner, nor can the Managing Agent or the Manager cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. Voting rights transferred or pledged in a Mortgage, deed of trust, lease or agreement of sale of any Unit or interest therein, a true copy of which is filed with the Secretary, shall be exercised only by the person designated in such instrument unless a written release or other termination signed by the parties is filed with the Secretary. A director shall not cast any proxy vote at any Board meeting.

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

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 Unit Owners; provided that the Board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

(c) Termination. Unless limited by this Section or the terms of the proxy, a proxy shall continue until revoked by a writing filed with the Secretary or the Managing Agent or by the death or incapacity of the Owner. Any one of two or more Persons owning a Unit may give or revoke a proxy for the entire vote of such Unit or, if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the Person or Persons giving such proxy. A proxy given by a co-Owner for only a share of a Unit's vote in proportion to the share of ownership of such co-Owner shall be revocable only by such co-Owner.

2.10 Order and Conduct of Business. The order of business at all meetings of the Association will be generally as follows:

- (a) Determination of quorum;

- (b) Proof of notice of meeting;
- (c) Adoption of meeting rules (if applicable);
- (d) Approval of minutes of preceding meeting;
- (e) Reports of officers, if any;
- (f) Report of Board of Directors, if any;
- (g) Reports of committees, if any;
- (h) Election of members of the Board of Directors (when required);
- (i) Unfinished business;
- (j) New business; and
- (k) Adjournment.

All Association meetings are to be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

2.11 Committees. The Association may create, appoint and discharge such standing or special committees as the affairs of the Association may require and define the authority and duties of such committees and any such rules for the conduct of the business thereof as the Association may deem appropriate.

2.12 Candidates for Election to Board of Directors. Each candidate for election or reelection to the Board of Directors may submit to the Board, for distribution to each Member of the Association prior to the election, a personal biography, which shall include a disclosure of any significant business connection, financial or otherwise, with any current insurer or the Managing Agent of the Project.

2.13 Prohibited Acts of Association Employees. No employee of the Association shall engage in selling or renting Units in the Project, except Association-owned Units, unless such activity is approved by an affirmative vote of at least sixty-seven percent (67%) of the Owners.

2.14 Recording Prohibited. No audio taping, videotaping, photography, filming, or other audio or visual recording of meetings of the Association is permitted except by or at the direction of the Secretary for the sole purpose of the production of the minutes of the meeting or as otherwise authorized by the Board. Such recordings shall not be considered records of the Association for any purpose.

### **3. BOARD OF DIRECTORS**

#### **3.1 Number and Qualification.**

(a) Number. The affairs of the Association will be governed by the Board of Directors. Declarant will appoint and remove the Officers and Directors until expiration of the Declarant Control Period. Prior to termination of the Declarant Control Period, an annual or special meeting of the Association will be called and held at which the Unit Owners will elect the Board of Directors. The Board will be composed of at least three (3) persons. If, however, the number of Residential Units in the Project exceeds one hundred (100) after a new phase is added to the Project, or as a result of any merger pursuant to the Declaration, then the number of Directors will increase to nine (9). However, the number of Directors may be reduced (either to three (3) or to five (5) or to seven (7) members) if at least sixty-seven percent (67%) of the Unit Owners vote by mail or at a special or annual meeting to amend these Bylaws to so reduce the number of Directors.

(b) Qualifications. Except with respect to the initial Board members appointed by Declarant, all Directors must either be Residential Unit Owners, co-Owners or vendees of Residential Units under an agreement of sale. A personal representative, guardian, conservator, trustee, officer of a corporation, general partner of a partnership, limited liability partnership or limited partnership, member of a member-managed limited liability company, or manager of a manager-managed limited liability company, and the fiduciary or officer of a fiduciary Residential Unit Owner, respectively, will be deemed to be Owners for the purposes of this Section, as well as for purposes of the Declaration and these Bylaws. There cannot be more than one representative on the Board of Directors from any one Residential Unit; provided, however, that this will not prevent representatives of Declarant from holding more than one Director position if Declarant owns more than one Unit. No Manager or employee of the Association or employee, shareholder, member, manager, partner, or owner of the Managing Agent is allowed to serve on the Board. No Owner who is in default, as provided in Section 6.8 of these Bylaws, in the payment of any assessments or other amounts charged to the Owner's Unit as of 4:30 p.m. on the second business day prior to the date of the annual meeting of the Association or of any special meeting of the Association called for the purpose of electing Directors shall be qualified to be elected or appointed to serve on the Board.

3.2 Election and Term of Office. Except with respect to the initial Board members appointed by Declarant, the election of Directors will be by secret written ballot at each annual meeting and any special meeting called for that purpose, provided that if the number of candidates nominated is equal to or less than the number of vacancies to be filled, then the candidates will be deemed to be elected. At the first annual or special meeting of the Association after expiration of the Declarant Control Period when the Unit Owners are to elect the Board, the candidate who receives the largest number of votes will be elected for terms of three (3) years, the candidate who receives the next largest number of votes will be elected for a term of two (2) years, and the candidate who receives the next largest number of votes will be elected for a term of one (1) year. At the expiration of the term of office of each Director, each Director's successor will be elected to serve a term of three (3) years and each Director must be a member in good standing of the Association, subject to removal as provided below. Each Director will continue to exercise the powers and duties of the office until the Director's successor has been elected by the Association in case of delay in the election of a successor. In the event of a merger of the Project as provided in the Declaration, there will be a special election of directors for the association for the project as then constituted upon such merger.

A Director or officer is in "good standing" when he or she is not delinquent by more than ninety (90) days in the payment of any maintenance fee or assessment or other amount due to the Association and is not in violation of the Declaration, these Bylaws, the Project Rules or the Act. Any Director or officer not in good standing is subject to removal by the Board or by a vote of a majority of Unit Owners present at any regular, annual or special meeting of the Association where there is a quorum.

3.3 Nomination for Election to the Board. Each person nominated for a seat on the Board must be placed on the ballot at the meeting. At the meeting, any Owner present may nominate any other qualified person (including themselves) for Director, and the person so nominated must be added to the ballot.

3.4 Removal. At any regular or special meeting of the Association duly called, any one or more Directors may be removed with or without cause by a vote of a majority of the Unit Owners present at the meeting and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that if such removal and

replacement is to occur at a special meeting, the call for such meeting shall be by the President of the Association or by a petition to the Secretary or Managing Agent signed by not less than 25% of the Unit Owners; and provided further that if the Secretary or Managing Agent does not send out the notices for the special meeting within 14 days after receipt of the petition, then the petitioners shall send out the notices for the special meeting, which notices shall set forth the time, date and place for the special meeting. Any Director whose removal has been proposed by an Owner shall be given an opportunity to be heard at the meeting. Any Director who fails to attend three (3) consecutive meetings of the Board may be removed by vote of a majority of the remaining Directors, even though they may constitute less than a quorum; provided, however, that this right of removal shall be without prejudice to the Unit Owners' right to remove Directors as provided above in this Section. Upon removal of a Director by the remaining Directors of the Board, the President shall schedule a special Association meeting to elect a replacement Director within 60 days from the date of the former Director's removal. If the President fails to so schedule a special Association meeting, then the call for such meeting shall be made by a petition to the Secretary or Managing Agent signed by not less than 25% of the Unit Owners. The replacement of the Director removed by the Board shall be in accordance with all applicable requirements and procedures in these Bylaws for the replacement of Directors. Any Director removed by the Board shall not be eligible for reelection to the Board for a period of one year after such Director's removal.

3.5 Vacancies. Individual vacancies on the Board (i.e., where just one Director's position is vacant at a time) caused by any reason other than the removal of a Director by the Association or by the Board shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board held for that purpose, even though the Directors present at such meeting may constitute less than a quorum. An individual vacancy on the Board may also be filled, and multiple vacancies on the Board (i.e., where more than one Director's position is vacant at a time) shall be filled, at a special meeting of the Association whether or not called for that purpose. Each person so elected shall be a Director for the remainder of the term of the Director whose vacancy is filled (unless sooner removed) or until a successor is elected at the next annual meeting of the Association. The death, incapacity or resignation of any Director, or such Director's ceasing to be qualified to serve as a Director in accordance with Section 3.1 of these Bylaws shall cause such office to be vacant.

### 3.6 Meetings of the Board of Directors.

(a) Organizational Meeting. The initial organizational meeting of the Board of Directors will be held at the place of and immediately following the first annual meeting of the Association; provided, however, that the Directors appointed by Declarant may, in their sole discretion, hold meetings and take actions prior to the date of the first annual meeting of the Association and the Board's initial organizational meeting. No separate notice other than the notice of the annual meeting of the Association shall be necessary for such initial organizational meeting. At such meeting, the Board shall elect the Officers of the Association for the ensuing year; provided, however, that the Directors appointed by Declarant may, in their sole discretion, elect or appoint the initial Officers of the Association prior to the date of the initial organizational meeting of the Association.

(b) Regular Annual Meetings. The Board must meet at least once a year. Regular annual meetings of the Board of Directors must be held at the place of and immediately following each annual meeting of the Association. At such meetings, the Board must elect the Officers of the Association for the ensuing year.

(c) Additional Regular Meetings. The Board is authorized to have meetings in addition to the annual meeting of the Board that follows the annual meeting of the Association. The Board of Directors may fix dates, times and places of additional regular meetings of the Board of Directors.

(d) Special Meetings. Special meetings of the Board may be called by the President and will be called by the Secretary promptly upon the written request of at least two directors.

(e) Open and Executive Sessions. All meetings of the Board, other than executive sessions, must be open to all Owners, and Owners who are not Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. 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: concerning personnel; concerning litigation in which the Association is or may become involved; necessary to protect the attorney-client privilege of the Association; or necessary to protect the interests of the Association while negotiating contracts, leases, and other transactions. The general nature of any business to be considered in executive session shall first be announced in open session.

(f) Attendance By Telephone or Other Means of Communication. Members of the Board or of any committee may participate in a meeting by conference telephone or other means of communication through which all Directors participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting. Subject to subparagraph (e) above, the Board will allow Unit Owners to participate in Board meetings conducted by means of communication through which all participants can hear each other at the same time, provided that the Unit Owner must pay for the costs associated with the Owner's participation.

(g) Conduct of Meetings. All meetings of the Board will be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. No audio taping, videotaping, photography, filming, or other audio or visual recording of meetings of the Board is permitted except by or at the direction of the Secretary for the sole purpose of the production of the minutes of the meeting or as otherwise authorized by the Board. Such recordings shall not be considered records of the Association for any purpose.

3.7 Notice. Fourteen days prior notice of regular meetings of the Board, and, if practicable, at least three business days prior written notice of special meetings of the Board shall be given to each Director, either personally or by telephone, United States mail, electronic mail ("email"), facsimile transmission ("fax") or any other means reasonably calculated to reach the recipient, and shall state the time, place and purpose of such meeting. Notice of all Board meetings shall be posted by the Managing Agent, the Manager or a member of the Board in prominent locations within the Project no later than 72 hours prior to the meeting or simultaneously with notice to the Board. During the Declarant Control Period, the Board may act without a formal meeting, call or notice.

3.8 Waiver of Notice. A Director may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall constitute a waiver of notice of the time, place and purpose of the meeting. If all the Directors are present at a meeting of the Board, then notice shall not be required and any business may be transacted at such meeting.

3.9 Quorum of Board of Directors. At all meetings of the Board, a majority of the total number of Directors established by or pursuant to these Bylaws constitutes a quorum for the transaction of business. The votes of a majority of the Directors present at a meeting at which a quorum is present constitutes the decision of the Board. A Director may not vote by proxy at any Board meetings. Whether or not a quorum is present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

3.10 Conflicts of Interest. A Director may not vote at any meeting on any issue in which such Director has a conflict of interest. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest to the Board prior to a vote on that issue at the meeting of the Board, and the minutes of the meeting shall record the fact that a disclosure was made. As used herein, "conflict of interest" means an issue in which a Director has a direct personal or pecuniary interest not common to other members of the Association. The determination of whether a conflict of interest exists as to a particular Director or Directors shall be determined by a majority of the non-interested Directors, which determination shall be conclusive and binding on all parties. If abstentions for such a reason would result in less than a majority being able to vote, then the Directors who are not required to abstain shall constitute a quorum for the purpose of voting on the matter in question. A Director who is a plaintiff (or the equivalent) in any action brought against the Association or the Board or a defendant (or the equivalent) in any action brought by the Association or the Board shall be conclusively deemed to have a conflict of interest as to that matter. In the event that all Directors have a conflict of interest on a matter, the President shall appoint a committee of not less than three disinterested Residential Unit Owners who shall make recommendations to the Board on the matter in question, which said recommendations shall be binding upon the Board unless a majority of the entire Board votes to reject or modify such recommendations.

3.11 Compensation. Directors will not receive any compensation from the Association for acting as such, other than a reasonable fee, if any, for attendance at the meetings of the Board as may be set by the Owners at the annual meeting.

3.12 Fidelity Bonds. The Board will require that the Managing Agent obtain and keep a fidelity bond that at least meets the requirements of the Act, provided that the Board may require that the fidelity bond have greater coverage and be for a higher amount than is required by the Act. If other people besides the Managing Agent and its employees handle funds belonging to or administered by the Association, then the Board must obtain and keep one or more fidelity bonds covering such other people, which bonds shall be in such amount as deemed reasonable by the Board. The premiums on such bonds, if paid by the Association, will constitute a common expense. Every such bond must, to the extent reasonably obtainable, as determined by the Board:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least 60 days prior written notice to the Board and every Person with a financial interest in the Project who shall have requested notice of such action;

(b) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar term, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered; and

(c) Name the Association as an obligee.



3.13 Availability of Documents. The Association must, at its expense, provide all Board members with a current copy of the Declaration, these Bylaws, the Project Rules, the Declaration of Intent to Develop and Merge, the Management Agreement and, annually, a copy of the Act.

3.14 Fiduciary Duty. In the performance of their duties, Officers and Directors 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 Haw. Rev. Stat. Chapter 414D.

3.15 Action by Directors Without a Meeting. Any action required or permitted under any of the Project Documents to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such actions do not involve a meeting and, thus, Unit Owners need not be allowed the opportunity to participate in such actions or writings.

#### **4. OFFICERS**

4.1 Designation and Qualification. The principal Officers of the Association will be the President, the Secretary and a treasurer (the "**Treasurer**"), all of whom are to be elected or appointed by the Board; provided, however that Declarant will appoint all of the Officers until the end of the Declarant Control Period. The Board may elect or appoint such other Officers as in its judgment may be necessary. The President must, but no other Officers need, be a member of the Board. One individual may hold no more than one office; provided, however, that multiple offices filled by Declarant may be held by the same person. An Owner must not act as both an Officer of the Association and an employee of the Managing Agent retained by the Association. Any Owner who is on the Board and is an employee of the Managing Agent retained by the Association must not participate in any discussion regarding the Management Agreement at a Board meeting and must be excluded from any executive session of the Board where the Management Agreement or a property manager for the Project will be discussed.

4.2 Election of Officers. The Officers of the Association are to be elected or appointed annually by the Board and shall hold office at the pleasure of the Board; provided, however that Declarant shall appoint all of the Officers until the end of the Declarant Control Period.

4.3 Removal/Vacancies. Any Officer may be removed with or without cause by the affirmative vote of a majority of the Board. Vacancies may be filled by the Board at any regular meeting or at a special meeting of the Board called for such purpose.

4.4 President. The President will be the chief executive officer of the Association and will preside at all meetings of the Association and of the Board. Subject to the control of the Board, the President will have all the general powers and duties that are incident to the office of president of a nonprofit corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among Owners as the President may, in his or her discretion, decide to be appropriate to assist in the conduct of the affairs of the Association. The President will also have such other powers and duties as may be provided by these Bylaws or assigned from time to time by the Board.

4.5 Secretary. The Secretary will attend and keep the minutes of all meetings of the Owners and the Board, shall maintain and keep a continuous and accurate record of the ownership of all Units, shall have charge of such books and papers as the Board may direct, keep the minute book wherein resolutions shall be recorded, and shall, in general, have all of the powers and perform all of the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Hawaii. The Secretary shall also have such other powers

and duties as may be assigned from time to time by the Board. The powers and duties of the Secretary may be delegated to the Managing Agent or to an assistant secretary subject to the Secretary's supervision.

4.6 Treasurer. The Treasurer shall be responsible for the keeping of full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data and reports. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; and shall, in general, have all of the powers and perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Hawaii. The Treasurer shall also have such other powers and duties as may be assigned from time to time by the Board. The Board or the President may decide that the powers and duties of the Treasurer shall be delegated to the Managing Agent or to an assistant treasurer subject to the Treasurer's supervision.

4.7 Compensation. No person will receive any compensation from the Association for acting as an Officer, but may be reimbursed for actual expenses incurred in the course of performing such Officer's duties, provided that any such expenses are approved in advance by the Board.

## **5. ADMINISTRATION**

5.1 Management. The Board of Directors has the rights, powers and duties necessary for the management and operation of the Project and administration of the affairs of the Association and may do all acts and things except those that may not be delegated by the Association to the Board of Directors by the Act, the Declaration or these Bylaws.

5.2 Duties of the Board. Subject to such limitations, if any, that are set forth in the Act and the Declaration, the duties of the Board of Directors include, without limitation, such duties as are set forth in the Declaration and these Bylaws, as well as the following:

- (a) To have custody and control over all funds of the Association and open bank accounts on behalf of the Association, which shall be delegated to the Managing Agent;
- (b) To designate the signatories of bank accounts;
- (c) To keep books of accounts and records with respect to the Project as provided in the Act and these Bylaws;
- (d) To maintain, preserve, repair, replace and restore the common elements (including all utilities and utility systems) and make any necessary additions and alterations thereto;
- (e) To make additions, alterations and improvements to the Property, including utilities and utility systems that are part of the common elements, and to repair and restore the Property in accordance with the provisions of the Act, the Declaration or these Bylaws after damage or destruction by fire or other casualty or as a result of condemnation;
- (f) To purchase, maintain and replace any equipment and provide all water and utility services required for the common elements;

(g) To cause to be kept a complete record of all of the Board's acts and corporate affairs and to present a statement thereof to the Members at any meeting of the Association when such statement is requested in writing by at least 25% of the Owners;

(h) To contract for and maintain such insurance as the Association is required to maintain or as the Association deems appropriate to maintain, including, without limitation, fire, casualty, liability and workers' compensation insurance insuring Owners, Directors, Officers, and other persons;

(i) To employ, supervise, and dismiss a Managing Agent, independent contractors, employees, and such personnel, including a Manager, as the Board deems necessary, and, subject to existing contracts with such entities, to prescribe their respective duties and compensation;

(j) To keep, or cause the Managing Agent to keep, an accurate and current list of Members of the Association and their current addresses and names and addresses of the vendees under agreements of sale, if any;

(k) To accept the conveyance of, to rent or lease from Declarant, or to otherwise acquire from Declarant (or Declarant's assignee) one or more Units or other real or personal property in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association, for such use by a Manager or as the Board otherwise deems appropriate;

(l) To cause any and all necessary or prudent repairs to the common elements to be undertaken and completed without delay in a manner and to an extent necessary to prevent avoidable deterioration or damage;

(m) For a period of five years after the date that these Bylaws are Recorded, to promptly deliver to Declarant informational copies of all written inspections and reports rendered pursuant to the Board's maintenance and repair responsibilities (without any obligation whatsoever on or of Declarant to review such documents or to take any action in connection therewith);

(n) To cause the timely performance of all required routine maintenance and maintenance inspections of the common elements, and to make such repairs and maintenance as may be called for pursuant to such maintenance and inspections;

(o) To provide each Unit with all water, sewer, electricity and other utility services the Board deems necessary, either at the expense of such Unit, as a common expense or as a limited common expense, as determined by the Board;

(p) To purchase or provide all other materials, supplies, labor and services required by these Bylaws or by law, or which the Board, in its discretion, deems necessary or appropriate for the proper operation and maintenance of the Property, or which are used in common or jointly by the common elements and Units, in each case to the extent such goods and services shall not be otherwise provided;

(q) To cause to be prepared and to approve an annual budget covering the itemized estimated income of the Project, if any, from all sources and the estimated cost of maintaining and operating the Project during the ensuing fiscal year, including reserves required

by the Act, the Declaration and these Bylaws and any other reasonable reserves for such purposes, less any surpluses from the operation of prior years, if any;

(r) To prepare and approve a schedule of Common Assessments against each Owner for such Owner's proportionate share of the estimated common expenses and/or limited common expenses to be incurred to maintain and operate the Project and the Property for such ensuing year and to levy and collect all Common Assessments and special assessments of the common expenses, limited common expenses and other charges payable by the Owners;

(s) To pay all common expenses that the Association is required to pay pursuant to these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation and maintenance of the Project or for the enforcement of these Bylaws, provided that if any such payment is required because of the particular actions of negligence by any Owner, the cost thereof shall be specially assessed to that Owner;

(t) To pay and discharge any lien, encumbrance, tax, or assessment levied against all or any portion of the Property that may in the opinion of the Board constitute a lien against the Property or against the common elements or limited common elements rather than merely against the interest of particular Owners. If one or more Owners are responsible for the existence of any such lien, then they shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Board by reason of such lien;

(u) To cause the Association to assume its obligations under the Storm Water Operation and Maintenance Plan;

(v) When appropriate or otherwise directed to by Declarant, to cause the Association to accept and assume Declarant's and the Association's obligations under and/or to accept assignments of agreements entered into by Declarant on behalf of the Association, including, without limitation, the Management Agreement with the initial Managing Agent; and

(w) To conduct regular, periodic inspections of all common elements and limited common elements to determine if any Owner is affecting the structural (as determined by an independent consultant retained by the Board) or aesthetic integrity of the Project or is otherwise in violation of the Act, the Declaration, these Bylaws or the Project Rules. The Board has the authority to require Owners who are affecting the Project in such a manner or are in such violation to cease such action or to take any remedial action or enforcement measures as authorized by these Bylaws;

(x) To file all tax returns for the Association as may be required under Internal Revenue Code and Hawaii Revised Statutes. Any gross or net income taxes required to be paid to a taxing authority will be a common expense. The income, expenditures and net earnings of the Association will be monitored by the Board so as to maintain an exemption from general excise taxation under Applicable Laws.

5.3 Rights and Powers of the Board. Subject to such limitations, if any, that are set forth in the Act, the Declaration and elsewhere in these Bylaws, the rights and powers of the Board of Directors include, without limitation, the following; provided, however, that the Board has no power to impair, in a manner inconsistent with the Declaration or these Bylaws, the use and enjoyment of a Unit or the limited common elements appurtenant thereto:

(a) To contract and incur liabilities in connection with the exercise of any of the rights, powers and duties of the Board and the Association, and to exercise for the Association all

powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws or the Declaration;

(b) To have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance or operation of the Property, for the installation, repair, maintenance or replacement of any common elements or for inspection or testing of a Unit and/or the common elements (including the limited common elements) when the Association is the claimant under Hawaii Revised Statutes, Chapter 672E (Contractor Repair Act) or otherwise, or for making emergency repairs therein necessary to prevent damage to the common elements or to another Unit or Units;

(c) To maintain and repair any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements, the limited common elements or any other portion of the Property and if the Owner or Owners of the Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of maintenance or repair shall have been delivered by the Board to the Owner or Owners. The Board is to levy a special assessment against such Unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(d) To employ and dismiss such personnel, including a Manager, as may be necessary or desired for the maintenance, operation, repair and replacement of the common elements;

(e) To conduct (or direct another responsible party to conduct) background checks and drug tests on applicants applying for employment as security guards or managers or for a position that would allow such employees access to the keys of or entry into the Units or access to Association funds, provided that applicants sign an authorization to conduct such background checks and drug tests;

(f) To procure legal, accounting, and management services necessary or proper for the operation of the Property or the interpretation, enforcement or implementation of the Project Documents and any other material documents affecting the Property;

(g) To review and oversee and obtain and maintain in effect, and review annually, all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws, the Board or the Act;

(h) To enforce the provisions of the Project Documents, as well as any agreement of the Association, and establish, assess and collect such assessments, penalties and fines and any interest as the Board deems appropriate with respect to such enforcement, including penalties, fines and interest for failure or refusal to pay to the Association on demand all costs and expenses required to be paid pursuant to the Project Documents, provided that such penalties, fines and interest are not inconsistent with the Applicable Laws or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Owner will constitute a lien against the Owner's interest in the Owner's Unit, which lien may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Act for the foreclosure of a lien for the nonpayment of common expenses; provided, however, that the lien for such penalties and fines will be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Unit and to the liens established by the use, sale and transfer restrictions of the HCDA Sale and Transfer Restrictions, the HCDA Occupancy

Requirements and/or the HCDA Equity Sharing Requirements in favor of HCDA, as established and/or set forth in the Kalaeloa Reserved Housing Rules;

(i) To notify all Persons having any interest in any Unit who have requested such notice, as set forth in the Association's records, of delinquency exceeding thirty days in the payment of any assessment against such Unit;

(j) From time to time to adopt, amend, repeal and enforce Project Rules that govern the details of the operation and use of the Project, and establish penalties for infractions related thereto, provided, however, that the Project Rules may require Owner approval to amend certain of the Project Rules. Unless the Project Rules require otherwise with respect to one or more specific rules, no such Project Rules will be effective if disapproved by vote of a majority of the Unit Owners present at an annual meeting or at a meeting duly called for such purpose. Nothing herein will be construed to require that a meeting of the Association be called for the purpose of approving or disapproving Project Rules adopted by the Board of Directors;

(k) To deal with the common elements as permitted under the Act;

(l) Subject to any approval requirements and spending limits contained in the Declaration, these Bylaws and the Act, to purchase, lease or otherwise acquire any Unit in the Project in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association, for use by a Manager or otherwise, and thereafter sell, lease, mortgage, vote the common interests appurtenant to and otherwise hold or deal with such Unit. The Board of Directors may organize corporations and/or limited liability entities to act as nominees of the Board of Directors in acquiring title to or leasing of Units on behalf of the Association;

(m) Subject to any approval requirements and spending limits contained in the Declaration and these Bylaws, to purchase any Unit in the Project at foreclosure or other judicial sales in the name of the Board of Directors or its nominee, corporate, trust or otherwise, on behalf of the Association;

(n) Subject to any approval requirements and spending limits contained in the Declaration and these Bylaws, to borrow money and incur indebtedness with or without security to be used by the Association for the repair, replacement, maintenance, operation or administration of the Project and/or the common elements, or for making any additions, alterations or improvements thereto and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, Mortgages, pledges, hypothecations or other evidences of debt and securities therefor. 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 a Majority of Owners vote for or give written consent to such borrowing, having been first notified of the purpose and use of the funds;

(o) To appoint committees consisting of members, Directors and, in the case of a design review committee, non-member design professionals who may be compensated in a manner determined by the Board, and to delegate to such committees such of the Board's powers as is necessary and appropriate to effectively manage the Association, subject, however, to oversight by the Board;

(p) To delegate its powers and duties to the Managing Agent, and to committees, agents, officers, representatives, and employees, subject to the supervision of and direction by the Board;

(q) To designate and grant permits, licenses and easements over, upon, across, through and/or under the common elements, or to receive permits, licenses, and easements over, upon, across, through and/or under any property in the vicinity of the Project, for any "reasonable purpose", which term includes, but is not limited to, those purposes that are necessary or convenient for the operation, care, upkeep, maintenance and repair of the Project, including any Unit, the common elements or any limited common elements in the Project, and, on behalf of the Association, to enter into one or more agreements or contracts for or relating to such purposes (including for parking purposes);

(r) To be the beneficiary of a grant of easement and holding such easement for purposes necessary or convenient for the operation care, upkeep, maintenance and repair of the Project;

(s) To arrange and contract for the submetering or "check-metering" of utilities for some or all of the Units and to assess the respective Unit Owners for costs related thereto;

(t) To adopt, amend, repeal and enforce construction and architectural guidelines relating to improvements to the Units and to establish such procedures as it deems appropriate to process any Owner-initiated request for modification or alterations of Units, all of which would be subject and subordinate to the construction and architectural guidelines in the Kalaeloa Design Guidelines;

(u) To enforce, on behalf of the Association, the obligations and responsibilities of the Association under the Master Declaration and to act as liaison between the Association and the Master Association;

(v) To employ a Manager or to cause the Managing Agent to do so. In either case, the Board will set the compensation of any Manager. The Board may delegate to the Manager any of its powers and duties except those that, by law or under the Project Documents, it cannot delegate;

(w) All limitations to operation of family child care homes within the Project allowed under Haw. Rev. Stat. Chapter 502C will apply. If operation of a family child care home is required by appropriate judicial or arbitration authority to be allowed in the Project, then the Board, having received proper authority from the Association, may:

(i) Impose conditions on the establishment or operation of a family child care home that are necessary for Association immunity from liability under the law including: (A) requiring the family child care home to comply with the Americans with Disabilities Act; (B) limiting the number of Units used as a family child care home to no less than one percent and no more than three percent of the total number of Residential Units in the Project; (C) limiting family child care homes that may be established to those operated by an owner-occupant; (D) restricting family child care homes to certain levels of the buildings; and (E) imposing all appropriate limitations applicable under Haw. Rev. Stat. Chapter 502C.

(ii) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to: (A) indemnify, hold harmless and defend the Association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home, as well as to common elements that are traversed by persons going to and from the family child care home; (B) reimburse the Association for the amount of any increase in the Association's liability insurance premiums attributable by the insured to the operation of the family child care

home; (C) require the parent, guardian and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the Association; and (D) obtain liability insurance to cover the family child care home and the common elements that meets the approval of the Association and the names the Association as an additional named insured, for liability claims arising solely from the operation of the child care business; provided that policy limits will be determined in accordance with the Declaration and these Bylaws and the liability policy of the family child care home must be the sole remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian or caretaker of a child subject to the care of the family child care home.

(iii) Prohibit the establishment of the family child care home in the event that coverage for the family child care home is excluded from the Association insurance policy and an alternative source of liability coverage for the same risk or risks is unavailable.

(iv) Require that any family child care home be in compliance with all covenants, conditions and restrictions applicable to the Property.

(x) To prohibit the operation of a family child care home that does not meet the requirements of Haw. Rev. Stat. Chapter 502C, including, but not limited to, the requirements that the family child care home be operated by the owner-occupant of the Unit in which the family child care home is located, that it be operated in a ground floor Unit with a ground floor entry, and that it comply with Haw. Rev. Stat. Sections 502C-2(b) and (c); and

(y) To review proper requests made by Owners for alterations or additions to Units, for aesthetic, structural impact and other reasons, and approving or disapproving such requests; and

(z) To enter into a contract with a qualified, responsible Manager and (i) give the Manager such powers and duties as the Board deems necessary or appropriate and/or (ii) delegate to the Manager such of the Board's and/or the Managing Agent's powers as the Board deems necessary or appropriate pursuant to the Declaration or these Bylaws;

(aa) To spend Association funds for necessary travel, directors' fees and per diem on behalf of the Board members, if the Unit Owners are informed in advance and the expenses are approved by a Majority of the Unit Owners; provided, however, that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association, and the Board's meeting minutes shall reflect in detail the items and amounts of the reimbursements;

(bb) To cause the Association to assume its obligations under the Storm Water Operation and Maintenance Plan; and

(cc) To suspend the voting rights and participation rights of any Director or Officer that is cited by the Board for a violation of the Declaration, these Bylaws, the Project Rules or the Act, which suspension shall last until a final determination is made by the Board with respect to the violation.

#### 5.4 Employment of a Managing Agent.

(a) Unless seventy-five percent (75%) or more of the Owners vote or give their written approval otherwise, the Board (on behalf of the Association) must employ, as Managing Agent, a responsible, professional corporate managing agent, experienced in the operation of



condominium projects, duly registered with the Real Estate Commission and licensed to do business in the State of Hawaii to manage and control the Project, with such administrative functions as will be delegated by the Board, subject at all times to (i) supervision of and direction by the Board, (ii) the primary rights and responsibility of the Association, and (iii) the relevant provisions of the Project Documents and the Management Agreement. Except as otherwise provided in the initial Management Agreement with respect to the initial Managing Agent, the compensation of the Managing Agent will be determined by the Board. The initial Managing Agent will be designated by Declarant and the compensation of the initial Managing Agent will be as set forth in the initial Management Agreement.

(b) The Managing Agent will have such powers and duties as may be necessary or proper in connection with (i) the supervision of the immediate management and operation of the Project, (ii) the maintenance, repair, replacement and restoration and any additions to or alterations of the common elements, (iii) the purchase, maintenance and replacement of any equipment for the common elements, (iv) providing utility services to the various Units, (v) hiring, supervision and dismissal of such personnel (including a Manager) as it deems necessary for the maintenance and operation of the Project, (vi) contracting with others for the furnishing of such services as it deems proper for the Project, (vii) preparation of a proposed budget and schedule of assessments, (viii) administration of Association functions, (ix) collection of assessments and payment of bills to third parties, (x) overseeing the purchase of such insurance as is required and/or contemplated by the Act, the Declaration or these Bylaws, (xi) collection, custody, control and disbursement of all funds of the Association and the maintenance of books and records with respect thereto, (xii) the preparation and filing of financial reports, (xiii) the filing of any other applications or reports that may be required by governmental and non-governmental entities and (xiv) all such other delegable rights, duties and obligations as the Board and the Managing Agent will agree. The Board may, in its discretion, limit any of the powers granted herein to the Managing Agent or grant additional powers to the Managing Agent.

(c) In addition to complying with the termination provisions in the Management Agreement, before the Board can decide to terminate professional management of the Project, the Board must receive the affirmative vote or prior written approval of at least 75% of the Owners.

(d) The Board of Directors may, upon the affirmative vote or prior written approval of at least 75% of the Owners, limit any of the powers granted to the Managing Agent in these Bylaws. The Board may, in its discretion, grant additional powers to the Managing Agent.

5.5 Execution of Instruments. After the first annual meeting of the Association, all checks, drafts, notes, acceptances, conveyances, contracts, and other instruments of the Association, including any amendments to the Declaration or these Bylaws, whether signed by Officers of the Board, the Managing Agent or employees of the Association or the Managing Agent, must be signed by two people, unless the Board, by resolution, decides to allow certain types of checks, drafts, notes, acceptances, conveyances, contracts, and other instruments to be signed by just one person; provided, however, that instruments signed by Officers appointed by the Board when controlled by Declarant need only be signed by one person. In the absence of a resolution applicable to such instrument or instruments, if checks, drafts, notes, acceptances, conveyances, contracts, and other instruments are to be signed by Officers of the Board, then they must be signed by any two Officers. The Managing Agent and employees of the Association or the Managing Agent have the authority to sign checks, drafts, notes, acceptances, conveyances, contracts, and other instruments on behalf of the Association, provided such signing authority will be under the general supervision of the Board.

5.6 Deposits of Association Funds. The funds of the Association are to be invested as provided in Section 514B-149(c) of the Act.

5.7 Books and Records of Account.

(a) Financial Records. The Board of Directors will maintain or cause to be maintained accurate and complete books of account and other financial records on a cash basis (unless the Board votes to use an accrual basis) in accordance with recognized accounting practices. The records must include, without limiting the generality of the foregoing, detailed and accurate records in chronological order of all receipts and expenditures of the Association, specifying and itemizing all expenses paid or incurred in connection with the maintenance, repair, restoration and replacement of the common elements and any other expenses incurred, all vouchers authorizing payment of such expenses and statements showing the total current delinquent amount of unpaid assessments for Common Assessments.

(b) Annual Statements. Within 90 days after the end of each fiscal year of the Association during which an annual meeting of the Association took place, the Board will render or cause to be rendered to each Owner a balance sheet and a statement of all receipts and disbursements, including assessments received and receivable, during the preceding year.

5.8 Record of Ownership. The Secretary or the Managing Agent under the direction and supervision of the Board must keep an accurate and current record of the names and addresses of the Unit Owners, their Occupants, Mortgagees, and vendees under agreements of sale, as well as the common interest appurtenant to each Owner's Unit, which information must be promptly provided to the Secretary or the Managing Agent by each Owner. Each Owner must also promptly file with the Secretary or the Managing Agent a true and complete copy, as Recorded, of each Unit Deed, lease, Mortgage, agreement of sale, assignment or other instrument whereby such Owner acquires, encumbers or disposes of an interest in a Unit. The records and information required under this Section will be maintained at a place designated by the Board. A copy of the list of Owners will be available at cost to any Member of the Association as may be provided in the Project Rules or, in any event, to any Member who furnishes to the Managing Agent or the Secretary an affidavit stating that the list will be used by the Member personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and that the list will not be used or furnished to any other Person for any other purpose. Each Owner must pay the Association or the Managing Agent on demand a service charge in a reasonable amount fixed from time to time by the Board for the registration on the records of the Association of a change in the ownership or occupancy of a Unit.

5.9 Minutes of Meetings.

(a) Association Meetings. Minutes of meetings of the Association must satisfy the obligations of Section 514B-122 of the Act.

(b) Board Meetings. Minutes of meetings of the Board must satisfy the obligations of Section 514B-126 of the Act.

5.10 Location and Inspection of Books and Records.

(a) Location. All of the Association's books and records must be kept at the Project or at such other convenient place within the State of Hawaii as the Board designates, and in accordance with the requirements of the Act. The Board of Directors must establish reasonable

rules with respect to notice to be given to the custodian of the records by an Owner desiring to make inspection, the hours and days of the week when such inspection may be made and the payment of the cost of reproducing copies of documents so requested.

(b) Inspection of Financial Records. The availability, disposal and requirements with respect to the Association's financial records are to satisfy the Act, including Section 514B-154 of the Act. Every Director has the right at any reasonable time and upon reasonable advance notice to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association, provided that if the Director is a plaintiff (or the equivalent) in any action brought against the Association or the Board or a defendant (or the equivalent) in any action brought by the Association or the Board, then such books, records and documents shall only be produced or such inspection of physical properties conducted in accordance with the rules of discovery applicable to that action, and provided further, that if a Director has a conflict of interest as to any matter to which such books, records and documents are related or involving a physical property owned or controlled by the Association, then such inspection may be refused or limited to the extent required by such conflict of interest. The right of inspection by a Director includes the right to make extracts or copies of the documents at the Director's own expense.

5.11 Representation. Subject to the limitations set forth in the Declaration, the Board may represent the Association or any two or more Owners in any matter or in any action, suit, hearing or other proceeding affecting the Association, the common elements or more than one Unit. Subject to the limitations set forth in the Declaration, the Board, on its behalf or on behalf of the Association or any two or more Owners, may institute, defend, intervene in, prosecute and settle any such matter, actions, suits and proceedings, without prejudice to the rights of any Owners individually to appear, to sue or be sued. Service of process on two or more Owners in any such action, suit or proceeding may be made on the President. It is not a breach of fiduciary duty if the Board determines, in good faith, not to prosecute or bring a particular action, suit or proceeding.

5.12 Liability and Indemnity of the Board of Directors and Officers. The Directors and Officers of the Association will not be liable to the Owners for any mistake of judgment or otherwise except for their own gross negligence, recklessness or willful misconduct. The Association will indemnify each Director and Officer of the Association against all costs, expenses and liabilities that may be incurred by or imposed on him or her in connection with any claim, action, proceeding, investigation or inquiry made, instituted or threatened in which such person may be involved as a party or otherwise by reason of such person being or having been a Director or Officer of the Association, or by reason of any past or future action taken, authorized or approved by such Director or Officer or any omission to act as a Director or Officer, whether or not such person continues to be such Director or Officer at the time of the incurring or imposition of such costs, expenses or liabilities. Such costs, expenses or liabilities will include judgments, amounts paid in compromise, settlements and amounts paid for services of counsel and other related expenses, except those costs, expenses and liabilities as shall relate to matters as to which such Officer or Director is finally adjudged to be, or is, liable by reason of gross negligence, recklessness or willful misconduct toward the Association in the performance of such person's duties as a Director or Officer. In the absence of a final adjudication of the existence or nonexistence of a Director's or Officer's liability to the Association, the determination of whether a Director or Officer has acted with gross negligence, recklessness or willful misconduct may be made (a) by the Board of Directors by a majority vote or a quorum consisting of disinterested Directors, or (b) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel selected by the Board of Directors, or (c) if a

quorum of disinterested Directors so directs, by a Majority of Owners. The foregoing right of indemnification shall not be exclusive of other rights that any Director or Officer may have and shall inure to the benefit of the heirs and personal representatives of each Director or Officer.

5.13 Audit. With respect to any audits of the Association's financial accounts, the Board and the Association are authorized to be guided by Section 514B-150 of the Act.

## **6. BUDGETS, RESERVES AND ASSESSMENTS**

### **6.1 Budget.**

(a) Unless the Board decides otherwise, the calendar year will be the fiscal year of the Association. Before the start of each fiscal year of the Association, the Board must prepare, or have prepared, and adopt and distribute to all Owners an annual operating budget in accordance with Sections 514B-144(a) and -148 of the Act. In addition to the minimum requirements set forth in Section 514B-148(a) of the Act, the budget must also include the following:

(i) An estimate of the maintenance reserves the Association must collect in accordance with applicable provisions in the Declaration and in the Act;

(ii) An amount that the Board deems appropriate to make up all or a portion of any deficiency from a prior year; and

(iii) The amount of surplus from the prior year, if any, which must be used to pay common expenses in the upcoming year.

(b) As required by Section 514B-148(a)(4) of the Act, the budget must include the estimated replacement reserves that the Association will require to maintain the Project based on a reserve study performed by the Association; provided that the reserve study must be reviewed by an independent reserve study preparer; provided further that the reserve study must be reviewed or updated at least every three years.

(c) Neither Declarant, the Association, the Managing Agent, any Unit Owner, nor any Director, Officer or employee of the Association who makes or participates in a good faith effort to calculate the estimated replacement reserves for the Association shall have any liability (personal or otherwise) if such estimate subsequently proves to be incorrect.

(d) Upon review and adoption by the Board, the budget must be distributed to the Owners and will constitute the basis of the Association's common expenses and limited common expenses for the year that will be collected from the Owners by payment of Common Assessments. The budget must be sent to each Owner, and, if practical, each year's budget must be sent at least thirty (30) days before the annual meeting of the Association, provided that the budget for the first fiscal year of the Association need not be sent. The Association's annual financial statement must also be sent out as the Board directs, and, if practical, must be sent out at least thirty (30) days before the annual meeting of the Association. Such financial statement must include a statement of all receipts and expenditures determined on a cash basis (unless the Board votes to use an accrual basis) and a statement of all Association funds and other assets, including, without limitation, all reserve accounts.

(e) The Board may, but is not required to, adjust the budget during any year in the event of surplus funds or projected surplus funds, but no Owner will have a right to a refund

of any assessment already paid or the right not to pay any assessment due but unpaid as a result of any such adjustment in the budget. At the annual meeting each year, the Association must adopt a resolution that any surplus funds collected from the Owners for common expenses but left over after the end of the previous year is to be used to pay common expenses, excluding any capital improvements, in the next year. For this purpose, each Owner irrevocably appoints the President such Owner's proxy and attorney-in-fact to adopt such a resolution.

(f) At the end of any calendar year, if there is any excess assessments, then such excess is to be used or applied by the Board, in its sole discretion, (i) to pay common expenses in the following year or (ii) to be placed in the replacement reserves, and, if such funds are qualified to be treated as "exempt function income", as that term is defined by Internal Revenue Code, then the Association may file such documents as may be required to have such income treated as tax exempt.

(g) A copy of the Association's annual operating budget must be furnished to the Real Estate Commission upon the Real Estate Commission's request as part of the Association's registration with the Real Estate Commission under Section 514B-103 of the Act.

6.2 Notice of Increase in Maintenance Fees or Special Assessment. The Board may, from time to time during any year, increase the Common Assessments or impose a special assessment to make up any existing deficiency whenever, for any reason, the assessments then in effect prove inadequate. If there is to be such an increase or imposition, then the Board is to direct the Managing Agent to send to all Owners thereby affected written notice of any increase in the Common Assessment or any other assessment and any special assessment, at least thirty (30) days before the effective date of such increase or special assessment. No Owner who requests legal or other information from the Association, the Board, the Managing Agent, or their employees or agents, will be charged for the reasonable cost of providing the information unless the Association notifies the Owner that it intends to charge the Owner for the reasonable cost. The notice from the Association, the Owner's response (if any) to that notice and the Association's actions thereafter (if any) are subject to the requirements of Section 514B-105(d) of the Act.

6.3 Payments for Common Expenses. Each Residential Unit Owner is severally liable for and must pay, via Common Assessment, a share of the common expenses, which share is roughly related to the common interest appurtenant to such Owner's Unit; provided it is possible the Association's budget will call for Residential Units of the same Plan or Unit Type (e.g., 1 and 1-R; 2 and 2-R; 3 and 3-R; 4; and 5) to pay the same share of the common expenses even if their respective common interests differ from one another. Common Assessments, for limited common expenses and otherwise, and special assessments arising from any supplemental budget will be charged to each Owner accordingly. Each assessment duly made by the Board pursuant to the Declaration or these Bylaws will be the separate, distinct and personal obligation of each Owner assessed as of the date of assessment and will constitute a lien on the Owner's Unit as provided in the Declaration, these Bylaws and/or the Act. When a Residential Unit is owned by more than one Person, the obligation will be joint and several among the co-Owners. Each Owner must pay the assessments against such Owner's Unit at such times and in such amounts as established pursuant to the Declaration, these Bylaws and the Act, provided, however, that Owners who are required by the terms of a First Mortgage to make payments to the Mortgagee for transmittal to the Association are permitted to do so. Each Owner is also liable for and must pay all other amounts chargeable to such Owner in accordance with the Declaration and these Bylaws, and all such amounts will be charged to such Owner as a special assessment, and will constitute a lien on the Owner's Unit as provided in the Declaration, these Bylaws and the Act. No Unit Owner may be exempt from liability for the Unit Owner's share of the common expenses by waiver of the

use or enjoyment of any of the common elements or by abandonment of the Owner's Unit. The foregoing notwithstanding, if the Association owns a Unit for the purpose of housing the Manager or for another legitimate Association-related purpose, then common expenses will be charged to and divided among only those Residential Units that are not owned by the Association in the proportion that the common interest appurtenant to each such Unit bears to the total common interest of all such Units that are not owned by the Association; provided, however, that the Board may vote to levy assessments against Association-owned Residential Units and include such assessments in the common expenses to be charged to the Residential Unit Owners according to their respective common interests, and provided, further, that Residential Units of the same Plan or Unit Type may be assessed the same common expenses even if their respective common interests differ from one another. There will be no common expenses allocated to the Parking Stall Units.

6.4 Payments for Limited Common Expenses. Unit Owners will be charged for limited common expenses in the manner set forth in the Declaration.

6.5 Benefited Assessments. The Board has the power and authority to specifically assess Units receiving benefits, items, or services provided to less than all Units within the Property (the "**Benefited Assessments**"). Costs and expenses of the Association that are incurred upon the request of an Owner for specific items or services relating to or benefiting such Owner or such Owner's Unit, or that are incurred pursuant to the Project Documents for specific items or services relating to or benefiting certain Units, will be specifically assessed as Benefited Assessments against the Unit(s) benefited.

6.6 Payment as Agent. Each Owner, as principal, is liable for the Owner's proportionate share of the common expenses. The Board, on behalf of the Owners, will pay or cause to be paid all common expenses and will be responsible, as agent for each Owner, only to collect the funds for the payment of the common expenses and transmit the payments to third persons to whom such payments must be made.

6.7 Commencement and Due Date of Assessments. Unless otherwise determined by the Board, Common Assessments are payable in monthly installments in advance, on the first day of each month. Subject to the right (but not the obligation) of Declarant to initially and temporarily assume all actual common expenses of the Project pursuant to Section 514B-41(b) of the Act, all common profits and common expenses of the Project will be allocated to and shared among only those Units for which a certificate of occupancy (temporary or otherwise) has been issued by the County, proportionate to the common interests appurtenant to such Units; provided, however, that if the County does not require certificates of occupancy for Units, then the relevant event will be the County inspector's conclusion of the final inspection of the applicable Units by signing off on the building permit that permits occupancy of the respective Units, and provided, further, that Residential Units of the same Plan or Unit Type may be assessed the same common expenses even if their respective common interests differ from one another. Special assessments may be made payable in a lump sum or in installments as the Board shall determine. Special assessments and other assessments and charges to an Owner will be due on the date the next Common Assessment is due or on such other date as the Board determines.

6.8 Taxes and Assessments. Each Owner is obligated to have the real property taxes and other governmental assessments for the Owner's Unit and appurtenant common interest, as well as any other taxes or assessments that now are or may hereafter be assessed by law on each Unit and its limited common elements or the personal property or other interest of the Owner, separately assessed against the Unit by the proper governmental authority, provided such

governmental authority is ready and able to make such separate assessment. Each Owner is obligated to pay the amount of the taxes and assessments so determined. Each Owner must execute such documents and take such actions as may be reasonably specified by the Board to facilitate compliance with the proper governmental authority regarding such taxes and assessments. Each Owner must pay the Owner's proportionate share of any assessment by the Board for any taxes or assessments, if any, assessed against the Property as a whole or any part of the common elements as a whole and not separately. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Property or any part of the common elements, then the Board may pay such taxes or assessments and assess the same to the Owners in their proportionate share as determined by the Board.

6.9 Default in Payment of Assessments. Any assessment (including any Common Assessment) not paid within ten (10) days after the due date thereof will be subject to a late charge as may from time to time be established by the Board to defray the costs to the Association of additional record keeping and reporting, and will accrue interest at the rate of 12% per annum from the due date until paid. Any unpaid assessment will constitute a lien on the Unit for which the assessment was made, which lien will have the priority and standing in regard to other liens as provided by Applicable Law, including the Act, the Declaration and these Bylaws.

In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies the Board may have under the Project Documents or by law, the Board may enforce each such obligation as follows:

(a) By suit to enforce such assessment obligations provided that each such suit must be authorized by a majority of a quorum of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Managing Agent, if the latter is so authorized in writing. Each such action is to be brought in the name of the Board, and the Board will be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action will include all costs and expenses incurred by the Association in collecting the assessment, including reasonable attorneys' fees. Upon full satisfaction of any such judgment, it will be the duty of the Board to authorize any two Directors, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time after the occurrence of the default, the Board or the Managing Agent (the latter acting upon the authorization of the majority of the Board at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the Mortgagee of such Owner if required by the Declaration, these Bylaws or otherwise by the Mortgagee) stating the date of the delinquency, the amount of the delinquency and making demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, then the Board may prepare and Record on behalf of the Association a claim of lien against the Unit of such delinquent Owner, which lien will be prior to all liens except (1) all sums unpaid to the HCDA under the HCDA Equity Sharing Requirements pursuant to the Kalaeloa Reserved Housing Rules, (2) liens established by the use, sale and transfer restrictions of the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements and/or the HCDA Equity Sharing Requirements in favor of HCDA, as established and/or set forth in the Kalaeloa Reserved Housing Rules, (3) liens for taxes and assessments lawfully imposed by governmental authority against the Unit, and (4) all sums unpaid on any Mortgage that was Recorded prior to the Recordation of a notice of lien by (or on behalf of) the Association, and costs and expenses (including attorneys' fees) provided in such Mortgage. Such claim of lien shall state (i) the name of the delinquent Owner; (ii) a designation of the Unit against which the claim of lien is made; (iii) the amount claimed to be due and owing (after the allowance of any proper offset); (iv) that the claim of lien is made pursuant to the terms

of these Bylaws and the Act; and (v) that a lien is claimed against such Unit in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of collection, including attorneys' fees, if any. Such claim of lien shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board or by the Managing Agent and shall be dated as of the date of execution. Upon Recordation of a duly executed original or copy of such claim of lien, the Board shall have and may exercise all available remedies. Said remedies include, but are not limited to, foreclosure of the lien in a like manner as to the foreclosure of a Mortgage of real property, and any manner of enforcement permitted by law, including non-judicial or power of sale foreclosure procedures authorized by Hawaii Revised Statutes, Chapter 667, as amended. The Owner of a Unit against which the lien of the Association is foreclosed shall pay a reasonable rental for such Unit and the plaintiff in such a foreclosure shall be entitled to a receiver to collect such rental. Each default shall constitute a separate basis for a claim of lien, but a single claim of lien may be filed with respect to more than one default.

In conjunction with or as an alternative to foreclosure proceedings with respect to unpaid assessments, the Association and the Board may follow any applicable procedures authorized under the Act.

**6.10 Collection from Occupants and Agents.** If a Unit Owner is in default in the payment of any assessment for thirty days or more, the Board may, at its option, so long as such default continues, demand in writing and receive each month from any Occupant of the Owner's Unit the rent as it becomes due or the net amounts due to the Owner under any contract between the Owners and a rental agent up to an amount sufficient to pay all sums due from the Owner, including interest and costs of enforcement, if any, but the amount shall not exceed the Occupant's rent due each month. Any such payment to the Board by an Occupant or rental agent shall be a full and sufficient discharge of the Occupant or agent as between the Occupant or agent and the Owner to the extent of the amount so paid. No such demand or acceptance of rent from any Occupant or agent shall be deemed to be an approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner remaining unpaid or unperformed or an acknowledgment of surrender of any rights or duties hereunder. Neither the Occupant nor the rental agent shall have the right to question the right of the Board to make such demand, but shall be obligated to make such payments to the Board as demanded. The Board may not exercise this right if a commissioner or receiver has been appointed to take charge of a Unit pending a Mortgage foreclosure, if a Mortgagee is in possession pending a Mortgage foreclosure, or if the Occupant is served with a court order directing payment to a third party.

Prior to taking any action under this Section, the Board shall give the delinquent Owner written notice of its intent to collect the rent owed. The notice shall: (a) be sent by both first-class and certified mail; (b) set forth the exact amount the Association claims is due and owing by the Owner; and (c) indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid. Further, before the Board can take the actions permitted under this Section, the Board must adopt a written policy providing for the actions and have the policy approved by a Majority of Owners as evidenced by a vote at an annual or special meeting of the Association or as evidenced by written consent.

**6.11 Certificate of Unpaid Assessments.** Any Owner (and the Owner's Mortgagee or any purchaser of an interest in the Owner's Unit) is entitled to a certificate from the Board or the Managing Agent setting forth the amount of any due and unpaid assessments with respect to the Owner's Unit or setting forth that all assessments due are paid, if such is the case, within fifteen (15) days after written request and upon payment of a reasonable fee. If any claim of lien is Recorded and thereafter the Board receives payment in full of the amount claimed to be due and



owing, including accrued interest and costs of enforcement, then upon demand of the Owner or the Owner's successor, and the payment of a reasonable fee, the Board, acting by any two members, must execute, acknowledge and deliver a release of lien in Recordable form. A certificate regarding unpaid assessments executed and acknowledged or made under penalty of perjury by any two members of the Board or the Managing Agent will be conclusive upon the Board and the Association in favor of any and all Persons who rely thereon in good faith as to the matters therein contained, except as to the amount of subsequently dishonored checks mentioned in such certificate as having been received within the 30-day period immediately preceding the date of such certificate.

6.12 Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner under these Bylaws, or to exercise any right or option contained in these Bylaws, or to serve any notice, or to institute any action or summary proceeding, will not be construed as a waiver or a relinquishment for the future of such covenant or option or right, but such covenant or option or right will continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner with or without knowledge by the Board of the breach of any covenant of these Bylaws will not be deemed a waiver of such breach.

6.13 Late Fees. The Association may deduct and apply portions of Common Assessment payments received from an Owner to unpaid late fees and other costs only in accordance with Section 514B-105(c) of the Act.

## **7. INSURANCE; RESTORATION AFTER CASUALTY**

### **7.1 Residential Unit Owner Insurance**

(a) Insurance for Multi-Family Units. Each Owner of an Attached Multi-Family Unit, at its own expense, must, at all times, purchase, obtain and always maintain, with respect to the Unit, an "HO-6" insurance policy (or its equivalent) with the following minimum provisions or such other provisions as may be required by the Board from time to time: (i) liability insurance of at least \$300,000.00; (ii) dwelling coverage equal to the Association's property insurance deductible and the value of any improvements to the Unit; (iii) personal property coverage; (iv) loss assessment coverage to the extent reasonably available equal to the Association's property insurance deductible; and (v) coverage for water overflow claims. Each Owner of an Attached Multi-Family Unit must provide evidence to the Association, the Board, the Managing Agent or the Manager of the policy or policies required by the terms of this Section by way of a certificate of insurance, policy of insurance or other such verification that such policy will be in effect. If an Owner of an Attached Multi-Family Unit fails to obtain such insurance on the Unit, then the Board is authorized to obtain any insurance required by the terms of the Declaration and/or these Bylaws and charge the expense therefor as an expense to such Owner. Such expense will be secured by a lien on the Unit and may be foreclosed in a like manner to a lien for common expenses

(b) Insurance for Single-Family Units. Detached Single-Family Units will NOT be covered by the property insurance obtained by or for the Association. Each Owner of a Detached Single-Family Unit, at its own expense, must, at all times, purchase, obtain and always maintain, with respect to the Unit, property insurance covering the Owner's Unit, the limited common elements appurtenant to the Unit, the contents of the Unit, the personal property of the Owner, the appliances and the interior finishes of the Unit (including the wall coverings and floor coverings) in a total amount of not less than the full insurable replacement cost of the insured property at time of loss, without deduction for depreciation, less deductibles, but including

coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. At a minimum, the policy must insure against destruction or damage by fire and extended coverage for risk of loss by hurricane. Each Owner of a Detached Single-Family Unit must annually provide evidence to the Association, the Board, the Managing Agent or the Manager of the policy or policies required by the terms of this section by way of a certificate of insurance, policy of insurance or other such verification that such policy will be in effect.

(c) General Requirements for Owner Insurance.

(i) The cost of the premiums for the Residential Unit Owner's insurance will be borne by such Residential Unit Owner, and any and all deductible or co-insurance payments related to a claim by or against a Unit Owner will be the sole responsibility of the Unit Owner.

(ii) In every case of loss or damage, all insurance proceeds must be used as soon as reasonably possible for rebuilding, repairing or otherwise reinstating the same improvement in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect. If such insurance proceeds are insufficient, then the Unit Owner must make up the deficiency.

(iii) An insurance company acceptable to the Board must underwrite all insurance policies. Such insurance company must be authorized to do business in the State of Hawaii and carry an A.M. Best rating of no less than A-VIII.

(iv) Declarant, the Association and the Board will not be responsible or held liable for any claims, losses or injuries or for any damage to or destruction of a Unit Owner's property, including, but not limited to, damage to furniture, equipment, appliances, or any other property used or retained by Owner in the Unit or that occur within the Unit when used, occupied or leased by the Unit Owner or anyone else. To the extent reasonably obtainable, Declarant, the Board and the Association must be named as additional insureds on such policies. The insurance policy must provide a waiver of subrogation in favor of Declarant, the Association and the Board.

7.2 Association Insurance.

(a) The Board, on behalf of the Association, must procure and at all times maintain, or cause to be maintained:

(i) Property insurance covering all of the Attached Multi-Family Units, all of the common elements, and all of the limited common elements appurtenant to the Attached Multi-Family Units, in a total amount of not less than the full insurable replacement cost of the insured property at time of loss, without deduction for depreciation, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. (Property insurance covering the Detached Single-Family Units and their respective limited common elements must be obtained by the respective Owners of those Units.) The Association's insurance must be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form, as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and, at a minimum, the policy (or policies) must insure against destruction or damage by fire and extended coverage for risk of loss by hurricane. Additional coverage for risk of loss by earthquake, flood, tsunami, perils normally insured under a policy of boiler and machinery insurance against rupture or explosion may be obtained at the discretion of the Board. In every case of loss or damage, all

insurance proceeds must be paid to the Association or the Insurance Trustee and used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same improvement in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect. If such insurance proceeds are insufficient, then the Association must make up the deficiency and will charge the same to all Residential Unit Owners as a common expense in the case of damage to the common elements or to all Attached Multi-Family Unit Owners in the case of damage to one or more Attached Multi-Family Units or limited common elements appurtenant to such Units. Each Owner appoints the Association, or any Insurance Trustee, as attorney-in-fact for the collection and appropriate disposition of the proceeds from any insurance policy, the negotiation of losses and execution of releases of liability and the performance of all other acts necessary to accomplish such things. The cost of the portion of the premium for property insurance obtained by or for the Association that covers the Attached Multi-Family Units and the limited common elements appurtenant to the Attached Multi-Family Units is to be assessed to all Attached Multi-Family Unit Owners as a limited common expense. The cost of the portion of the premium for property insurance obtained by or for the Association that covers the common elements is to be assessed to all Residential Unit Owners as a common expense.

(ii) Commercial general liability insurance that must, at a minimum, (A) insure Declarant, the Association, the Board, the Officers, each Unit Owner, the Managing Agent, the Manager and other employees of the Association against claims and liabilities for personal injury, death and property damage arising in connection with the ownership, existence, use, or management of the Project and arising out of the condition of the Project (including the Units and the common elements) or activities thereon or on sidewalks or construction work, (B) include coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds and broad form property damage, and (C) be a Commercial General Liability form. The limits of liability of such insurance must be not less than Two Million Dollars (\$2,000,000) covering claims for injury to person, loss of life and damage to property arising out of any single occurrence and not less than Four Million Dollars (\$4,000,000) for such claims in the aggregate during any policy year, or such higher limits as the Board may from time to time establish with due regard to then-prevailing prudent business practice in the State of Hawaii as reasonably adequate for the protection of the parties to be insured. The above limits may be met by a combination of underlying and excess or umbrella policies. Policies of commercial general liability insurance maintained by or on behalf of the Association must be issued by an insurer having a minimum A.M. Best rating of A- VIII, must name Declarant as an additional insured, and must, upon written request of Declarant, furnish certificates of such insurance or other satisfactory written evidence of such insurance at any time. The cost of any premium for liability insurance obtained by or for the Association is to be assessed to all Residential Unit Owners as a common expense.

(b) All insurance proceeds for any property insurance purchased by the Association are to be for the benefit of the Association, the Owners collectively, and as agents for their respective Mortgagees (if any) as their interests may appear, and must provide that all proceeds covering property losses are to be paid to the Association or to a named Insurance Trustee if the Board so elects. Unless otherwise appointed by the Board, the Insurance Trustee will be the Managing Agent. Any references to an Insurance Trustee in these Bylaws apply to the Managing Agent, unless the Board elects to appoint another entity, including, but not limited to, the Association itself or a qualified bank. Any Insurance Trustee (if other than the Managing Agent, the Association itself or a qualified bank) will be a commercial bank with trust powers authorized to do business in the State of Hawaii or another entity with fiduciary capabilities acceptable to the Board. The Insurance Trustee is not liable for payment of premiums or

deductibles or for the failure to collect any insurance proceeds. The duty of the Insurance Trustee is to receive such proceeds as are paid and hold the proceeds in trust for the purposes stated in these Bylaws for the benefit of the Association, the Owners, and any Mortgagees in the following shares; provided, however, that such shares need not be set forth on the records of the Insurance Trustee: If a Mortgagee endorsement has been issued, then any share for an Owner will be held in trust for the Mortgagee and the Owner as their interests may appear; provided, however, that no Mortgagee has the right to determine or participate in the determination as to whether or not any damaged property is reconstructed or repaired, and no Mortgagee has any right to apply or have applied to the reduction of a Mortgage debt any insurance proceeds except distributions of such insurance proceeds made to the Owner and Mortgagee pursuant to the provisions of these Bylaws. Notwithstanding the foregoing to the contrary, the Mortgagee has the right to apply or have applied to the reduction of its Mortgage debt any or all sums of insurance proceeds applicable to its mortgaged interest if the damaged property is not reconstructed or repaired as permitted under these Bylaws.

(c) Every such Policy must, unless unobtainable at a reasonable cost (as determined by the Board):

(i) Contain a waiver of any right of the insurer to repair, rebuild or replace if the Owners decide pursuant to these Bylaws and the Declaration not to repair, rebuild or restore any damage or destruction;

(ii) Provide that any loss must be adjusted with the Board of Directors;

(iii) Contain a standard Mortgagee clause that will:

(A) Provide that such insurance as to the interest of any Mortgagee will not be invalidated by any act or neglect of the Association, the Board, an Owner, an Occupant or any persons acting under any of them;

(B) Waive (1) any provision invalidating such Mortgagee clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or vacancy, (2) any requirement that the Mortgagee pay any premium (provided that if the Board fails to pay any premium due or to become due under the policy, then the Mortgagee may pay the same prior to the termination of the policy for nonpayment of premiums), (3) any contribution clause, and (4) any right to be subrogated to the right of any mortgagee against the Owner or lessee of any Unit or the Association or the Board of Directors or to require any assignment of any mortgage to the insurer;

(C) Provide that, without affecting any protection afforded by such Mortgagee clause, any proceeds payable under such policy will be payable to the Insurance Trustee;

(iv) Provide for the payment of the proceeds to the Insurance Trustee;  
and

(v) Be accompanied by the certificate of a licensed insurance broker or agent certifying that the policy complies with and satisfies the requirements of this subsection 7.2(c); provided, however, that the broker will not be required to confirm that insurance values represent 100% of the replacement costs, which will be the obligation of the Board.

7.3 Requirements of All Policies. All insurance policies obtained by or on behalf of the Association:

(a) Must be issued by an insurance company permitted to do business in the State of Hawaii and having an "A" or better general policyholder's rating and a "6" or better financial performance index rating in Best's Insurance Reports or a "BBBq" or better qualified solvency rating or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service, or such other ratings and systems first approved in writing by the Board;

(b) Must, if obtainable at reasonable cost (as determined by the Board), not relieve the insurer from liability because of loss occurring while the hazard is increased in or to the buildings, whether or not the hazard is within the control or knowledge of the Association or the Board of Directors, or because of any breach of warranty or condition caused by Declarant, an Owner or Occupant of a Unit or because of any act or neglect of the Association, the Board of Directors, or an Owner or Occupant of a Unit;

(c) Must contain a waiver by the insurer of any right of subrogation to any right of Declarant, the Association, the Board of Directors, or an Owner against any of them or any person acting under them;

(d) Must provide that the policy and its coverage may not be canceled, not reviewed or substantially modified (whether or not requested by the Board or the Association) except by giving at least thirty (30) days prior written notice (but ten (10) days for non-payment of premium) to the Association, the Board, any other insured or loss payee, each Owner and every other Person in interest (including Mortgagees) who has requested such notice of cancellation, nonrenewal or substantial modification. A substantial modification is a material adverse change in the amount of coverage, the losses covered, or the perils insured against;

(e) Must contain no provision limiting or prohibiting other insurance by an Owner, but provide that the liability of the insurer will not be affected by, and the insurer will not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance;

(f) Must require that the insurance carrier, at the inception of the policy and on each anniversary date, provide the Board with a summary of the policy written in layman's terms, which summary must include a description of the type of policy, the coverage and limits of coverage, the amount of annual premium and the policy renewal dates, and which summary must be provided by the Board to all Owners;

(g) Must contain a "severability of interest" endorsement precluding the insurer from denying the claim of an Owner because of a negligent act of the Association, the Board or other Owners;

(h) Must name the Unit Owners, the Association and, if possible, the Managing Agent, the Manager and Declarant, its affiliates and subsidiaries, as additional insureds;

(i) Must contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to the Declaration or these Bylaws not to repair, rebuild or replace the damage or destroyed property; and

(j) Must have a loss-payable clause showing the Association or the Insurance Trustee.

7.4 Contractors' Insurance. Any contractor performing work on the Property must obtain, carry and maintain, (a) property insurance upon all tools, material and equipment (owned, borrowed or leased by the contractor or their employees) to the full replacement value thereof during the full term of the contract (the insurance must insure against damage or loss caused by fire and all other perils covered by a standard "All Risk" insurance policy), (b) workers' compensation affording coverage under the laws of the State of Hawaii and employers' liability coverage subject to a limit of no less than \$1,000,000 each employee, \$1,000,000 each accident, and \$1,000,000 policy limit, (c) auto liability insurance for bodily injury and property damage in an amount not less than \$1,000,000 combined covering all owned, non-owned and hired vehicles, and (d) commercial general liability insurance providing minimum coverage of One Million Dollars (\$1,000,000) per occurrence and not less than Two Million Dollars (\$2,000,000) for such claims in the aggregate during any policy year. The contractor also must be required to obtain and maintain products/completed operations coverage on the work performed for not less than ten (10) years after completion, to the extent such coverage is available at a commercially reasonable cost. These required coverages must either be provided by a policy obtained and maintained by the contractor directly or through a policy obtained and maintained by a general contractor and covering such contractor. Such policy or policies must be issued by an insurer authorized in the State of Hawaii and having a minimum A.M. Best rating of A- VIII and name the Association as additional insureds under such policy. Any contractor performing work within the Project must be licensed in the State of Hawaii to perform such work. The contractor must impose the insurance requirements contained in this Section on any subcontractor hired to perform work. Higher limits and additional coverages may be required of the contractor, as determined by the Board.

7.5 Insurance Required by Declarant's Lender. It is understood that, pursuant to a loan agreement between Declarant and Declarant's mortgage lender, Declarant may be required to obtain and maintain certain insurance for a period of time ("**Lender-Required Insurance**"). Certain of the Lender-Required Insurance may be obtained through the Association in a manner reasonably acceptable to Declarant's mortgage lender.

7.6 Directors' and Officers' Liability Insurance. The Association must procure, purchase and at all times maintain Directors' and Officers' liability insurance covering, to the extent allowed by Applicable Law, each person who is or was a Director, Officer, agent, or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. The Board will choose policy limits from time to time. If it can be obtained at a reasonable cost, the policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative and entity coverage for the Association. The policy must pay for any expenses actually and reasonably incurred, including, but not limited to, attorneys' fees, court costs and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law. The premiums for such policy or policies will be a common expense of the Project.

7.7 Flood Insurance. If (a) the Property is located in an identified flood hazard area as designated by the appropriate federal agency or department or (b) the Board determines that flood insurance should be obtained for the Project, then, in either event, the Association must procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act (or other applicable statute), with such coverage and terms as required for property insurance under this Article, in an amount equal to at least the lesser of one

hundred percent (100%) of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Administration program. The Board may also procure additional flood insurance as it may deem advisable for the protection of the Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii.

7.8 Insurance Against Additional Risks. The Association may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii. Such additional insurance may include Employment Practices coverage, which will include legal liability coverage arising out of lawsuits related to employment contracts of the Association.

7.9 Assignment of Insurance Proceeds. If any loss intended to be covered by insurance carried by the Board occurs and the proceeds payable thereunder are reduced by reason of any insurance carried by any Owner, then such Owner must assign the proceeds of such insurance carried by it, to the extent of such reduction to the Board for application to the same purposes as the reduced proceeds are to be applied.

7.10 Liability for Insurance Decisions. The Board will not be liable for any decision it makes on insurance unless it was grossly negligent, reckless or was guilty of intentional misconduct. Likewise, neither Declarant nor the Managing Agent will be liable except for their gross negligence, recklessness, or intentional misconduct regarding any decisions on insurance.

7.11 Minimum Required Insurance. Notwithstanding anything to the contrary contained in this Section 7 or elsewhere in these Bylaws, the Association will be required to carry the minimum types and levels of insurance that are required by the Act, including, without limitation, Section 514B-143 of the Act.

7.12 Review; Inspection; Miscellaneous.

(a) The Board must review, not less frequently than annually, the adequacy of the Association's insurance program and must report in writing its conclusions and actions taken on such review to Declarant (as long as Declarant owns a Unit in the Project) and each Owner and to any Mortgagee of a Unit who has requested a copy.

(b) At the written request of any Mortgagee of a Unit, the Board will furnish to the Mortgagee a certificate of insurance or a redacted copy of any policy to which a Mortgagee endorsement has been attached and proof that premiums on such policy have been made for the period for which the Mortgagee has requested. If required by the Act or other Applicable Law, copies of policies of insurance procured by the Board must be made available for inspection by any Owner at a place designated by the Board.

(c) Any coverage procured by the Board will be without prejudice to the right of any Owner to insure the Owner's Unit and the contents for the Owner's own benefit at the Owner's own expense. To the extent that the insurance required under these Bylaws cannot be obtained or is not available on a commercially reasonable basis, the Board must obtain and maintain such available insurance as will most nearly approximate the insurance coverage required hereunder and that is then available on a commercially reasonable basis. The Board will be entitled to obtain and maintain insurance with a deductible.

(d) In the event of loss covered by insurance, the deductible will be paid by the Unit Owner or Owners whose Unit or Units were subject to the loss. If the loss is with respect to a common element, then the deductible will be paid by the Association as a common expense.

(e) The Board, with the vote or written consent of a Majority of Owners, may require Unit Owners to obtain reasonable types and levels of insurance. The liability of a Unit Owner will include, but not be limited to, the deductible of the Owner whose Unit was damaged, any damage not covered by insurance required by this Section 7. If the Unit Owner does not purchase or produce evidence of insurance required by the Board, then the Directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the Unit Owner. In no event is the Association or Board liable to any Person either with regard to the failure of a Unit Owner to purchase insurance or a decision by the Board not to purchase the insurance for the Owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverage obtained.

7.13 Restoration After Casualty. Provisions relating to restoration after damage to or destruction of parts of the Project are set forth in the Declaration.

## **8. GENERAL AND MISCELLANEOUS PROVISIONS**

### **8.1 Amendment of Bylaws.**

(a) Vote or Consent Requirements. Except as otherwise expressly provided in these Bylaws (including, specifically, subsections (d) and (e) below) or in the Act, these Bylaws may be amended in any respect not inconsistent with law or the Declaration by the affirmative vote and/or written consent of Owners of Units to which are appurtenant not less than sixty-seven percent (67%) of the common interest of the Project, which amendment will be effective upon the Recording of a written instrument setting forth such amendment and vote and/or consent, duly executed by all of the consenting Owners or any two Officers of the Association; provided, however, that each one of the particulars set forth in Section 514B-108(b) of the Act will always be embodied in these Bylaws. Notwithstanding any other provision in these Bylaws to the contrary, amendments to the provisions of these Bylaws that are for the express benefit of Declarant will also require the express written consent and joinder of Declarant, together with such other approval requirements set forth in this Section. Subject to the Owner-approval requirements set forth above and any other requirements set forth in these Bylaws, any two Officers may prepare, execute, certify, and Record an amendment to these Bylaws on behalf of the Association.

(b) Proposed Amendments. Proposed amendments to these Bylaws together with the detailed rationale for the proposal may be submitted to the Owners either by the Board of Directors or by any Residential Unit Owner. If a Residential Unit Owner desires to submit a proposal to the other Owners, then the proposal must be accompanied by a petition supporting the proposed Bylaws signed by not less than twenty-five percent (25%) of the Owners. The proposed Bylaws, rationale, and ballots for voting on any proposed Bylaw must be mailed by the Board to the Owners at the expense of the Association for vote or written consent without change within thirty (30) days after the receipt of the petition by the Board. The vote or written consent, to be valid, must be obtained within 365 days after mailing for a proposed Bylaw submitted by either the Board or an Owner. If the Bylaw is duly adopted, then the Board will cause the Bylaw amendment to be Recorded. A Unit Owner will be precluded from submitting a petition for a proposed Bylaw that is substantially similar to that which has been previously mailed to the Owners within 365 days after the original petition was submitted to the Board. This subsection



does not preclude any Unit Owner from proposing any Bylaw amendment at any annual Association meeting.

(c) Adoption of Owner's Proposal. If the Board fails to mail the proposed amendments to these Bylaws, rationale, and ballots for voting to the Owners within thirty (30) days after the receipt of the petition by the Board, then the Owner making the proposal may mail such items to the other Owners, and the vote thus taken will be valid, provided the Owner has complied with all other applicable rules on voting for Bylaw amendments. The results of such vote will be presented to the Officers of the Association, who will promptly execute such documents as will be necessary to permit the amendments to be Recorded.

(d) Declarant's Right to Amend. Any other provision of this Section or these Bylaws to the contrary notwithstanding (except the Mortgagee-approval requirements in the Declaration, if applicable), and until the Recording of Unit conveyances or agreements of sale with respect to all of the Units in the Project in favor of Persons other than Declarant or an affiliate of Declarant, Declarant, acting alone, may amend these Bylaws, without the approval, consent or joinder of any Person or group of Persons, including the Association, any Unit Owner or any Mortgagee, Occupant, lienholder, Unit purchaser, or any other Person who may have an interest in the Project, to make such amendments as authorized in the Declaration. Further, these Bylaws may be unilaterally amended by Declarant at any time prior to the closing of the sale of the first Unit.

(e) Restatement of Bylaws and Declaration. The Association, at any time may, by a resolution adopted by the Board, restate the Declaration or these Bylaws to amend the Declaration or these Bylaws for the reasons set forth in Section 514B-109(b) of the Act, subject, however, to the requirements of Section 514B-109(b) of the Act.

(f) When Amendments Are Effective. An amendment to these Bylaws will be effective only upon the Recording of such amendment.

8.2 Animals/Pets. The provision in the Project Rules relating to animals and pets is incorporated into these Bylaws by this reference. Except as set forth in the Project Rules, no pets or other animals may be allowed or kept in any part of the Project (including the Units and the common elements).

8.3 Project Rules. Declarant, during the Declarant Control Period, will establish and adopt, and, either with Declarant's consent or after the Declarant Control Period, the Board (by a majority of the Directors) and/or the Association (by a Majority of the Owners) can thereafter amend or repeal Project Rules as the Board and/or the Association may deem necessary to govern the conduct, management, use and operation of the Project, including the Units, common elements and the limited common Elements. Unless prohibited by the Act, the Project Rules will be permitted to regulate use of or behavior in the Units; provided, however, that the Project Rules initially established by Declarant are agreed to be and will be deemed, reasonable regulations of use and behavior. Each Owner agrees that the Owner's rights with respect to the Project are in all respects subject to the Project Rules. Each Owner agrees to obey the Project Rules as the same may be promulgated and amended from time to time and will see that the Project Rules are faithfully observed by the Owner's Occupants, invitees, guests, employees and tenants. The Project Rules will uniformly apply to and be binding upon all Occupants of the Units. The Project Rules will take effect upon the first conveyance of a Unit to an Owner other than Declarant. Unless Declarant specifically subjects itself in writing to one or more of the Project Rules, the Project Rules will not apply to Declarant and Declarant will not be obligated to observe or perform the Project Rules, whether as a Unit Owner or otherwise.

8.4 Abatement and Enjoinment of Violations. The violation of any Project Rules adopted by the Board, or the breach of any of these Bylaws or the breach of any provision of the Declaration, will give the Board the right, in addition to any other right set forth in the Declaration or these Bylaws:

(a) to enter the Unit and/or limited common elements appurtenant thereto, in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the appropriate Owner or Occupant, any structure, thing or condition that may exist therein contrary to the intent and meaning of the Project Documents, and the Board will not be deemed guilty in any manner of trespass; and/or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs, including attorneys' fees, will be paid by the appropriate Owner upon demand.

8.5 Penalties for Violation. The violation of any of the covenants, conditions and restrictions set forth in the Declaration, these Bylaws or the Project Rules by any Owner, Occupant, guest, invitee, employee, contractor or other Person claiming by or through an Owner will give the Board the right, in addition to other rights set forth in the Declaration or these Bylaws, to assess a reasonable fine against the Owner; provided that if any such violation continues for a period of ten (10) days after notice of the violation has been given to such Owner, such continuing violation will be deemed to be a new violation and will be subject to the imposition of new penalties. The unpaid amount of such fines against any Owner will constitute a lien against the Owner's interest in the Owner's Unit, which may be foreclosed by the Board or the Managing Agent in the same manner as provided in the Declaration, these Bylaws or the Act for unpaid Common Assessments; provided, however, that the lien for such penalties and fines will be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Unit and to the liens established by the use, sale and transfer restrictions of the HCDA Sale and Transfer Restrictions, the HCDA Occupancy Requirements and/or the HCDA Equity Sharing Requirements in favor of HCDA, as established and/or set forth in the Kalaeloa Reserved Housing Rules. No penalty may be imposed under this Section until the applicable Owner has been afforded the right to have a hearing before the Board or a committee designated by the Board to conduct such hearing, or has waived such right in writing. Each such Owner will have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing.

8.6 Expenses of Enforcement. Each Owner must pay all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such Owner, in foreclosing its lien therefor or in enforcing any provisions of the Declaration, these Bylaws or the Project Rules.

8.7 Notices. All notices permitted, required or otherwise described in these Bylaws must be in writing and made according to the provisions of the Declaration.

8.8 Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed under these Bylaws may be exercised and enforced by a nonprofit membership corporation, formed under Applicable Laws for the purposes set forth in these Bylaws. If such a corporation has not already been formed at the time these Bylaws are Recorded, then such corporation will be formed upon the approval of a Majority of Owners. The formation of the corporation will in no way alter the terms, covenants and conditions set forth in these Bylaws, and the Articles of Incorporation of the corporation will be subordinated to and

controlled by these Bylaws. Any action taken by such corporation that is in violation of any or all of the terms, covenants or conditions contained in these Bylaws will be void and of no effect.

If, as expected, the Association is incorporated as a nonprofit membership corporation, then, upon an administrative merger of the Association with another association (or other associations) of unit owners, the unit owners in such other merged association(s) will automatically become members of the Association.

If, as expected, the Association is incorporated as a nonprofit membership corporation, then, in the event that one or more association(s) of unit owners that is/are to be merged with the Association were incorporated prior to an administrative merger with the Association, the Association and such other association(s) of unit owners, acting through their respective board of directors, will, upon such administrative merger, take the appropriate steps to (a) merge the associations into one nonprofit membership corporation or consolidate the associations into a new nonprofit membership corporation, and (b) have the unit owners in the unincorporated association(s), if any, become members of the association of unit owners of the entity that survives the merger or consolidation.

The Board will have the power and obligation to amend the Association's articles of incorporation and any other appropriate articles of incorporation to reflect the name of the merged association as the "Association of Unit Owners of Ka'ulu by Gentry" as specified in the Declaration of Intent to Develop and Merge.

8.9 Captions. The captions in these Bylaws are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions of these Bylaws.

8.10 Waiver. No restriction, condition, obligation or provision contained in these Bylaws will be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

8.11 Severability. The provisions of these Bylaws will be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision will not affect the validity or enforceability of any other provision of these Bylaws.

8.12 Exclusion from Project. Notwithstanding any other provision of the Declaration or these Bylaws to the contrary, the Board has the absolute and irrevocable right, upon reasonable notice under the circumstances, to exclude Owners and Occupants (other than Declarant) from any Unit or the common elements for such period of time as the Board deems necessary when appropriate, as determined by the Board, in connection with any maintenance, repair, replacement or construction of the common elements, or for the purpose of correcting any condition originating in one Unit and threatening another Unit or the common elements, and no Owner or Occupant will have any claim of any kind whatsoever for compensation or damages on account of any such exclusion, including, but not limited to, any claims for lost rental income or for the cost of alternative accommodations.

8.13 Termination of Rental Agreements and Leases. The breach of any of these Bylaws or the breach of any provision of the Declaration or the Project Rules or the violation of the Act by an Occupant other than an Owner will give the Board the right, in addition to any other rights or remedies provided by law, the Declaration or these Bylaws, to initiate and prosecute to conclusion a legal action to terminate any lease, rental agreement or other occupancy right of such Occupant and/or to obtain a court order directing such Occupant immediately to permanently vacate such

Unit and to refrain from re-entering the Project, without joining the Owner as a party to the legal action, and, in such event, the Association will have no liability to the Owner for lost rentals or any other consequence of such termination or removal.

8.14 Amendment of Declaration. Subject to the Owner-approval and other requirements set forth in the Declaration, any two Officers may prepare, execute, certify, and Record an amendment to the Declaration on behalf of the Association.

8.15 Governing Law. These Bylaws are governed by the laws of the State of Hawaii without giving effect to the principles of conflict of laws thereof.

8.16 Provisions Run With Land. The provisions of these Bylaws are intended to run with the land. When any interest in real property in the Project is conveyed, the interest will be burdened by the provisions of these Bylaws for the benefit of the remaining portions of the Project and the interest conveyed will be entitled to the benefit of these Bylaws.

8.17 Conflicts. These Bylaws are intended to comply with the Act. In case of any conflict between the provisions of these Bylaws and those of Hawaii law, the Act or the Declaration, the provisions of Hawaii law, the Act or the Declaration, as the case may be, will control.

8.18 Changes in Law. During the Development Period, Declarant has the reserved right to make amendments to the Declaration, the Condominium Map and these Bylaws to comply with changes in the Act and to take advantage, to the fullest extent permitted by Applicable Law, of changes in the Act that give Declarant more rights than currently permitted under the Act. In the event of a change in statutory law applicable to the Project occurring after the Recording of these Bylaws or the Declaration, such change in law will control over the provisions of these Bylaws or the Declaration only to the extent the legislative body enacting such change in law expressly provides that the provisions of such change in law will control over provisions to the contrary in preexisting Project Documents.

8.19 Interpretation. Except for construction by a court of law or arbitrator, the Association, by its Board (including while the Association and the Board are controlled by Declarant), shall have the exclusive right to construe and interpret the provisions of these Bylaws and the other Project Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction or arbitrator, the Board's construction or interpretation of the provisions of these Bylaws and the other Project Documents shall be final, conclusive and binding as to all Persons and property benefited or bound by the provisions of these Bylaws.

8.20 Time of Essence. Time is of the essence of each provision of these Bylaws of which time is an element.

8.21 Construction.

(a) The use of the singular will be deemed to include the plural whenever the context so requires. The use of the plural will be deemed to include the singular whenever the context so requires.

(b) The terms "herein," "hereof" or "hereunder" or similar terms used in these Bylaws refer to these entire Bylaws and not to the particular provision in which the terms are used.

(c) When the terms "include" or "including" are used in these Bylaws, they will not be interpreted as a term of limitation, but will mean "include or including, but not limited to".

(d) When, in these Bylaws, a Person reserves or is given or granted a right to do something, the Person will not be obligated to exercise that right, even if a term such as "but is not obligated" or "but not the obligation" does not accompany the reservation, giving or granting of the right.

(e) References to "days" in these Bylaws mean calendar days unless otherwise specified. References to "business days" means those non-weekend days that are not recognized as holiday days by the government of the State of Hawaii.

(f) When used in these Bylaws, the words "and/or" will be deemed to mean one, some or all of the listed items.

(g) The provisions of these Bylaws are to be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners will carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

8.22 Successors and Assigns. These Bylaws are binding upon all Owners and each of their respective successors, successors in trust, successors in title and assigns. These Bylaws will inure to the benefit of Declarant, its affiliates and each of their respective successors and assigns.

8.23 Further Assurances. Each Owner agrees to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of these Bylaws.

*[Signature Page Follows]*

**CERTIFICATE OF ADOPTION**

The undersigned Declarant and Owner of all Units in the Project hereby adopts the foregoing as these Bylaws as of July 21, 2023.

**GENTRY KALAELOA, LLC,**  
a Hawaii limited liability company

By:   
Andrew Kamikawa  
Its Vice President

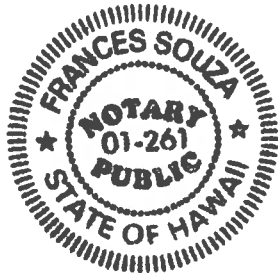
Declarant

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

On July 21, 2023, before me personally appeared ANDREW KAMIKAWA, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Further, I certify, as of this date, as follows:

Date of Document: July 21, 2023  
Number of Pages: 56  
Document Description: Bylaws of the Association of Unit Owners of  
Ka`ulu by Gentry I  
Jurisdiction/Judicial Circuit Where Signed: First Circuit



Name: Frances Souza  
Notary Public, State of Hawaii  
My Commission Expires: November 20, 2024

## EXHIBIT "1"

### Description of Lot 13047-C

All of that certain parcel of land (being a portion of Lot 13047, shown on Map 957 of Land Court Application No. 1069, having been deregistered and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-72090613) situate, lying and being at Honouliuli, Ewa, City and County of Honolulu, State of Hawaii, being Lot 13047-C (DPP FILE NO. 2019/SUB-160), being a portion of said Lot 13047, and thus bounded and described in Affidavit recorded as Document No. A-79770205, as follows:

Beginning at the northwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI NEW" being 9,927.31 feet south and 3,592.17 feet west and thence running by azimuths measured clockwise from true South:

1. 285° 23' 716.14 feet along Lot 13047-G (DPP File No. 2019/SUB-160), being a portion of Lot 13047 (Map 957) of Land Court Application 1069;
2. Thence along Lot 13047-F (DPP File No. 2019/SUB-160), being a portion of Lot 13047 (Map 957) of Land Court Application 1069, on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:  
330° 23' 42.43 feet;
3. 15° 23' 63.13 feet along Lot 13047-F (DPP File No. 2019/SUB-160), being a portion of Lot 13047 (Map 957), of Land Court Application 1069;
4. Thence along Lot 13047-F (DPP File No. 2019/SUB-160), being a portion of Lot 13047 (Map 957) of Land Court Application 1069, on a curve to the left with a radius of 5,785.00 feet, the chord azimuth and distance being:  
12° 51' 36" 509.37 feet;
5. 105° 23' 768.57 feet along Lot 13047-E (DPP File No. 2019/SUB-160), being a portion of Lot 13047 (Map 957) of Land Court Application 1069;
6. 195° 23' 602.01 feet along Lot 13047-B (DPP File No. 2019/SUB-160), being a portion of Lot 13047 (Map 957) of Land Court Application 1069 to the point of beginning and containing an area of 452,798 square feet, more or less.



Together with access over Lot 13047-F and Lot 13047-G (together "**Roadway Lots**") , as shown on Map approved by the Department of Planning and Permitting, City and County of Honolulu, Subdivision File No. 2019/SUB-160, on August 13, 2021; provided, however, that in the event that any Roadway Lots are conveyed for public use to the State of Hawaii, the City and County of Honolulu or other governmental authority, said right of access as to said Roadway Lots so conveyed shall immediately terminate.

**END OF EXHIBIT "1"**