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BYLAWS OF THE ASSOCIATION
OF UNIT OWNERS OF
THE COLLECTION

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NOT FOR REAL ESTATE/RESALE PURCHASES

**BYLAWS OF THE ASSOCIATION
OF UNIT OWNERS OF
THE COLLECTION**

THESE BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF THE COLLECTION are made on May 21, 2013, by THE COLLECTION LLC, a Hawaii liability company (hereinafter "Developer").

ARTICLE 1 RECITALS, INTRODUCTORY PROVISIONS

1.1 **Authority for Bylaws.** Developer, acting as the present Association of Unit Owners of the Project, hereby approves and adopts these Bylaws pursuant to the Act.

1.2 **Definitions & Construction.** The terms used herein with initial capital letters shall have the meanings given to them in the Declaration, except as expressly otherwise provided herein. All other words shall be given their normal, commonly understood meaning. The rules of construction in the Declaration apply to these Bylaws.

1.3 **Purpose of Bylaws; Covenants to Run with the Land.** The Developer and the Fee Owner, by joining in these Bylaws, hereby declare that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following Bylaws all of which are declared and agreed to be in furtherance of the plan set forth in the Declaration, to constitute a Condominium Property Regime under the Act and for the purposes of enhancing and perfecting the value, desirability and attractiveness of the Project. These Bylaws shall run with the Land and Units and shall be binding upon all parties having or acquiring any right, title or interest therein.

1.4 **Conflicts.** These Bylaws are set forth to comply with the Declaration and the requirements of the Act and Title 16, Chapter 107 of the Hawaii Administrative Rules ("Administrative Rules"). In any case where any of these Bylaws conflict with the provisions of the Declaration, the Act or Administrative Rules, (i) the provisions of the Act or Administrative Rules shall control over inconsistent provision of the Declaration and Bylaws, and (ii) the provisions of the Declaration shall control over inconsistent provisions of the Bylaws.

1.5 **Binding Effect of Bylaws.** All present and future Owners, mortgagees, vendors and vendees under Agreements of Sale, tenants and occupants of Units and their employees, invitees and any other persons who may use any part of the Project in any manner are subject to these Bylaws, the Declaration and the Administrative Rules. The acceptance of a Unit Deed, or conveyance or mortgage or Agreement of Sale or the entering into of a lease or the act of occupancy of a Unit shall constitute an acceptance, ratification and agreement to comply with the provisions of these Bylaws, the Administrative Rules and the Declaration, as the same may be amended from time to time.

ARTICLE 2 ASSOCIATION OF UNIT OWNERS

2.1 **Purpose.** The Association shall be organized and operated for the purposes of managing, maintaining, acquiring, constructing and caring for the Association property which includes the Common Elements, funds and other property held by the Association or the nominee of the Association, property owned by one (1) or more Unit Owners, but held by the Association, property within or forming part of the Project privately held by one (1) or more Unit Owners, but which may be subject to a common maintenance assessment by the Association for such purposes as insurance, and property owned by a government agency, public utility or other third party and used for the benefit of the Association or one (1) or more Unit Owners.

2.2 **General Powers and Duties.** Except as limited by the Declaration, these Bylaws, the Act, or the Administrative Rules, the Association shall have and may exercise all powers (i) granted to the Association by the Declaration, these Bylaws, the Act, the Administrative Rules; (ii) granted to other legal entities of the same type as the Association; and (iii) necessary and proper for the governance and operation of the Association.

2.3 **Membership.** Each Owner shall be a member of the Association.

2.4 **Allocated Voting Interest.** Each Owner shall be entitled to that fraction of the total vote of all of the Owners which equals the percentage of the Common Interest appurtenant to such Unit as set forth in the Declaration. No vote allocated (if ever) to any area that constitutes a Common Element, regardless of whether it is so designated in the Declaration, shall be cast at any Association meeting.

2.5 **Voting Procedures.** Votes may be cast in person, by mail, by electronic mail, or by proxy by the respective Owners.

2.5.1 **Voting Rights of Vendees.** The vendee of a Unit pursuant to a recorded Agreement of Sale shall have the right to vote unless the vote is retained by the vendor as may be provided in said Agreement of Sale pursuant to Section 514B-124 of the Act.

2.5.2 **Voting Rights of Shared Ownership Units.** The vote for any Unit owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such Unit.

2.5.3 **Voting and Other Rights of Trustees and Owners that are not Natural Persons.** An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association, the percentage of vote for any Unit he or she owns or controls in such capacity, after first presenting satisfactory written evidence to the secretary of the Board or the Managing Agent of ownership or control of such Unit in such capacity. Corporations, general partnerships, limited partnerships and limited liability companies that are Owners shall designate an individual officer, general partner, manager, managing member or agent (each an "Owner Representative") for the purpose of exercising the vote. Each Owner Representative shall present satisfactory written evidence to the Secretary or the Managing Agent of their authority to act as the Owner Representative. In the absence of a challenge to such capacity, a written statement signed by an executor, administrator, guardian, trustee, officer of a corporation, partner of a partnership, or officer, manager or member of a limited liability company shall constitute satisfactory written evidence; such statement shall be delivered to the Secretary or the Managing Agent not later than 4:30 p.m. on the second business day prior to the date of the meeting to which the written statement pertains and shall be effective until changed, revoked, or superseded. If the Declaration or Bylaws now or hereafter provide that officers or directors of the Association must be Owners, then the term "Owner" in such context shall, unless the Declaration or Bylaws otherwise provide, be deemed to include any Owner Representative. Any officer or director of the Association who would not be eligible to serve as such if he or she were not an Owner Representative shall be disqualified from continuing in office if he or she ceases to be an Owner Representative.

2.5.4 **Quorum of Association.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners of Units to which are appurtenant at least fifty percent (50%) of the Common Interest shall constitute a quorum at all meetings of the Association.

2.5.5 **Majority Vote.** The vote of a majority of Unit Owners at a meeting at which a quorum shall be present shall be binding upon all Owners for all purposes, except where a higher percentage vote is required in the Declaration or these Bylaws or by law.

2.5.6 **Majority of Unit Owners.** As used in these Bylaws, the term "Majority of Unit Owners" shall mean Owners of Units to which are appurtenant more than fifty percent (50%) of the Common Interest. Any other designated percentage of Units Owners shall mean the Owners of Units to which are appurtenant the designated percentage of the Common Interest.

2.5.7 **Proxies and Pledges.**

2.5.7.1 A proxy, to be valid, must be delivered to the Secretary of the Association or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Unit or Units for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments and may be limited as the Unit Owner desires and indicates. No proxy shall be irrevocable unless coupled with a financial interest in the Unit.

2.5.7.2 All proxy forms shall, at a minimum, contain four boxes wherein an Owner may indicate that the Owner desires the proxy to be given (i) to the Board or a specific individual whose name is printed by the Owner next to the box for purposes of establishing a quorum only, (ii) to a specific individual whose name is printed by the Owner next to the box, (iii) to the Board as a whole to be voted based on the preference of a majority of the Board, or (iv) to the Board with each member thereof present at the meeting to vote an equal share of the proxy. A proxy form which does not have one of these four boxes marked shall be considered a proxy given to the Board for purposes of establishing a quorum only. A complete, reliable reproduction of an entire proxy, including a fax copy, may be used in lieu of the original proxy for all purposes for which the original proxy could be used. Proxies shall be revoked by writing filed with the Secretary or by the death or incapacity of such Owner or by the attendance of such Owner at the meeting.

2.5.7.3 Voting rights pledged or transferred by a recorded lease, mortgage, or Agreement of Sale of any Unit or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. Nothing contained in this Section 2.6 or Section 2.7, below, shall affect the holder of any proxy under a first mortgage of record encumbering a Unit or under an Agreement of Sale affecting a Unit.

2.5.8 **Prohibited Proxy Practices.**

2.5.8.1 No Managing Agent shall solicit, for use by such Managing Agent, any proxies from any Unit Owner, nor shall a Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

2.5.8.2 No Member of the Board of Directors (each a "Director") who uses Association funds to solicit proxies shall vote any such proxies for the election or reelection of any Director at any Association meeting unless the proxy form specifically authorizes such vote for the election or reelection of Directors and the Board first posts notice of such intention to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall: (i) Mail to all Owners a proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or (ii) Mail to all Owners a proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements. The statement shall not exceed one 8-1/2" by 11" page and shall

indicate the Owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

2.5.8.3 No officer of the Association may use Association funds to solicit proxies; provided that if any member of the Board shall post notice of intention to solicit proxies as provided in Section 2.5.8.2 such officer shall have the same rights as any other Owner to request the use of Association funds to solicit proxies.

2.6 **Association Meetings.** All meetings of the Association shall be held at such place within the Project, or as close thereto as may be practical within the City & County of Honolulu, as may be designated by the Board.

2.6.1 **First Annual Meeting.** The first annual meeting of the Unit Owners shall be held as called by the Developer and shall be held not later than (i) one hundred and twenty days after the date on which Unit Deeds for seventy five percent (75%) of the Units in the Project have been recorded in the Bureau of Conveyances, (ii) one hundred eighty (180) days after recordation of the first Unit Deed, provided that Unit Deeds for not less than forty percent (40%) of the Units in the Project have been recorded in the Bureau of Conveyances, or (iii) three years after the recordation of the first Unit Deed, whichever occurs first. If Unit Deeds for less than forty percent (40%) of the Units in the Project shall not have been recorded within one (1) year of the recordation of the first Unit Deed, an annual meeting shall be called if ten percent (10%) of the Unit Owners so request in writing. At such meeting the Unit Owners shall, if the Developer Control Period has expired, elect a Board. Prior to that time, the Association shall consist solely of the Developer which shall have authority to act in all matters as the Association as set forth in Article 17 (Developer Control Period) of the Declaration.

2.6.2 **Annual Meetings.** All annual meetings of the Association (after the first annual meeting) shall be held within one hundred and twenty (120) days following the close of the calendar year or at such other time as the Board shall from time to time determine. Not less than thirty (30) days prior to each such annual meeting, the Board shall make available to each Unit Owner a copy of the Association's annual audit report, or if the same is not then available, an unaudited financial statement, and the Annual Budget and reserve study prepared pursuant to Section 6.5.2 of these Bylaws. Any audit reports not made available at the annual meeting will be made available in accordance with the provisions of the Act. At such meetings the Board shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 2.5. The Unit Owners may transact such other business at such meetings as may properly come before them.

2.6.3 **Other Regular Meetings.** In addition to annual meetings as provided in Section 2.6.2, the Board by resolution or a Majority of the Unit Owners by petition may establish regular meetings at semiannual, quarterly, or other regular intervals.

2.6.4 **Special Meetings.** Special meetings of the Association may be held at any time upon the call of the President or of any two (2) Directors, or upon the written request of Owners of Units to which are appurtenant at least twenty-five percent (25%) of the Common Interest to the Managing Agent, on behalf of the Board.

2.6.5 **Notice of Meetings and Other Notices.** Written notice of all meetings, annual, regular, special or otherwise, stating the date, time and place of the meeting and whether it is annual, regular or special and stating briefly the business proposed to be transacted thereat and items on the agenda for such meeting, and a standard proxy form authorized by the Board, if any, and any other notices permitted or required to be delivered by these Bylaws shall be given by mailing such notice, postage prepaid, at least fourteen (14) days before the date assigned for the meeting, to the Owners of the Units at their address at the Project or at the address given to the Board for the purpose of service of such notices. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage from any Owner of a Unit may obtain, at such Owner's expense, a copy of any and all notices permitted or required to be given to the

Owner of a Unit, whose interest is subject to said mortgage. Upon notice being given in accordance with the provisions hereof, the failure of any Owner of a Unit to receive actual notice of any meeting shall not in any way invalidate the meeting or the proceedings thereat. Each such Owner shall keep the Board informed of any changes in address.

2.6.6 **Adjournment of Meetings.** If any meeting of Unit Owners cannot be held because a quorum is not present, a majority of the holders of the Common Interest who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

2.6.7 **Conduct of Meetings and Order of Business.** All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order. The order of business at all meetings of the Unit Owners shall be as follows: (a) Determination of Quorum; (b) Proof of notice of meeting; (c) Adoption of meeting rules; (d) Approval of minutes of preceding meeting; (e) Reports of Officers; (f) Reports of committees; (g) Election of inspectors of election (when so required); (h) Election of members of the Board (when so required); (i) Unfinished business; (j) New business; and (j) Adjournment.

2.6.8 **Annual Registration.** The Association shall be registered with the Real Estate Commission in accordance with the Act. The registration shall be in the form required by said Commission and shall include proof of fidelity bond coverage (Section 3.8.8, below), registration fee, names and positions of those persons who handle the Association's funds, name of the Managing Agent, postal address of the Project and name, business address and telephone numbers of the designated contact person for the Association.

ARTICLE 3 BOARD OF DIRECTORS

3.1 **Number and Qualification.** The affairs of the Project shall be governed by a Board of Directors who shall owe a fiduciary duty to the Association. The Board shall be composed of nine (9) persons unless the number of Board members is changed by amendment of these Bylaws by vote of the Owners in accordance with Section 108(b)(1) of the Act and Section 10.15 of these Bylaws. Each member of the Board shall be an Owner, co-Owner, a vendee under Agreement of Sale, a trustee or beneficiary of a trust which owns a Unit, or an officer, partner, member, or other person duly authorized to represent an entity that owns a Unit. At least one (1) member of the Board shall be an Owner or Representative of an Owner of a Commercial Unit. If and when the Midrise Phase becomes part of the Project in accordance with Section 18.11 of the Declaration, at least one (1) member of the Board shall be an Owner or Representative of an Owner of a Residential Unit in the Midrise Phase. There shall not be more than one representative on the Board from any one Unit. No employee of the Managing Agent shall serve on the Board.

3.2 **Powers and Duties.** Except as limited by the Bylaws, Declaration, or the Act, the Board shall act in all instances on behalf of the Association and shall have all powers necessary for the administration of the affairs of the Project. The Board is responsible to ensure that the Project is in compliance with all governmental requirements and the Master Community Charter, and for the maintenance, upkeep and repair of the Project, and may do all such acts and things except as limited by law, the Master Community Charter, the Declaration or Bylaws. A Director shall not cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a conflict of interest. The Director shall disclose the nature of any conflict of interest prior to a vote at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. The powers and duties of the Board shall include, but shall not be limited to, the following:

3.2.1 Enforcing the provisions of the Declaration, these Bylaws and the Administrative Rules;

3.2.2 Making payment of all taxes and assessments which are or could become a lien on the Project, the Common Elements or Limited Common Elements or some portion thereof. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and costs incurred by the Board by reason of such lien or liens;

3.2.3 Delegating its powers to committees, representatives, agents, officers, and employees;

3.2.4 Contracting for materials and/or services for the Common Elements or the Association, provided that any contract for goods or services, other than the contract for elevator maintenance services and cable television service, shall provide that such contract may be terminated by either party thereto, without the necessity of cause and without penalty, upon not more than ninety (90) days' written notice.

3.2.5 Contracting for fire, casualty, liability and other insurance on behalf of the Association and, if applicable, individual Owners, pursuant to the provisions of Article 7 hereof, including insurance with coverages or coverage amounts differing from those specified in Section 514B-143 of the Act;

3.2.6 Exercising its right, pursuant to Section 10.7 of these Bylaws, of entry in or upon any privately owned Unit at any time and from time to time and without liability to any Owner for trespass or other consequential damage, but only where necessary (in connection with construction, maintenance or repair) to protect the Common Elements and Limited Common Elements, or any Unit or Units;

3.2.7 Making repairs to Units, or Limited Common Elements for which a Unit Owner is responsible for repairing, if for any reason an Owner fails or refuses to maintain and repair such Unit, or Limited Common Element, within a reasonable time after written notice of the necessity of such maintenance or repair is delivered by the Board to said Owner, provided that the Board shall levy a special assessment against such Unit for the cost of such maintenance or repair;

3.2.8 Making a determination of the Common Expenses and special assessments required for the affairs of the Project, including, without limitation, the operation and maintenance of the Project;

3.2.9 Collecting the Common Expenses and special assessments from the Unit Owners;

3.2.10 Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements, including a resident manager;

3.2.11 Subject to the provisions of Section 10.1 of these Bylaws, adoption and amendment of Administrative Rules covering the details of the operation and use of the Common Elements of the Project;

3.2.12 Opening bank accounts on behalf of the Association and designating the signatories required therefor;

3.2.13 To the extent permitted by law and upon obtaining an Opinion of Counsel prior to exercise of such power, purchasing of Units for a resident manager or at foreclosure or other judicial sale in the name of the Board or its designee, corporate or otherwise, on behalf of all Unit Owners. Any Unit acquired pursuant to this Section shall be treated as a Unit for all

purposes, and the expense of leasing, acquiring, maintaining or operating any such Unit by the Board shall be a Common Expense;

3.2.14 To the extent permitted by law and upon obtaining an Opinion of Counsel prior to exercise of such power, buying, selling, leasing, subleasing, mortgaging, voting the votes appurtenant to, or otherwise dealing with Units acquired by the Association, the Board or its designee, corporate or otherwise, all without the need for vote or other approval of the Owners;

3.2.15 Incorporating the Association and organizing corporations to act as designees of the Board in acquiring title to or leasing of Units on behalf of all Unit Owners;

3.2.16 Making of repairs, additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the other provisions of these Bylaws;

3.2.17 To the extent permitted by law, and subject to Section 6.20, and upon obtaining an Opinion of Counsel prior to the exercise of such power, the Board may borrow funds from time to time on behalf of the Association from one or more lenders for the repair, replacement, maintenance, operation, or administration of the Common Elements, the acquisition of equipment and property (including without limitation one or more Residential Units to house the Project's resident manager), or the making of additions, alterations, or improvements to the Common Elements;

3.2.18 Procuring legal and accounting services, including Opinions of Counsel, necessary or proper in the operation of the Project or the enforcement of the Declaration, these Bylaws, or the Act;

3.2.19 Subject to Article 22 of the Declaration, initiating and prosecuting arbitration, litigation or other legal action;

3.2.20 Paying for all Common Expenses which the Board is required to pay for pursuant to the terms of these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation of the Project or for the enforcement of these Bylaws, provided that if any such payment is required because of the negligence or other misconduct of the Owners of particular Units, the cost thereof shall be specially assessed to such Owners;

3.2.21 Keeping, maintaining and making available for inspection and copying in the manner set forth in the Act the records required by the Act, the Declaration and these Bylaws to be kept, maintained and made available for inspection and copying, including, without limitation, the following: (i) financial records (Section 6.12); (ii) record of mortgagees (Section 8.1); (iii) membership documents (Section 10.18); and (iv) Project documents (Section 10.19).

3.2.22 Reviewing for the purpose of approval or disapproval any Owner's request to alter the Owner's Unit.

3.2.23 Representing the Owners in all proceedings, negotiations, settlements, and agreements relating to any taking by condemnation or by eminent domain affecting the Project.

3.2.24 Exercising voting and other rights allocated to the Project and/or the Land by the Master Community Charter by majority vote of the Board, without the need or requirement to first conduct a vote or poll of the Owners.

3.3 **Managing Agent.**

3.3.1 **Board to Hire Managing Agent.** The Board shall at all times employ a responsible Managing Agent duly qualified under the requirements of the Act to manage and control the Project, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to said Managing Agent by the Board; provided that the term of any such management contract shall be limited to a duration of one (1) year, except with the approval of a Majority of Unit Owners, provided further that such management contract shall also comply with Section 3.2.4. If Developer or a division, subsidiary or affiliate of Developer acts as the first Managing Agent, such management contract shall be subject to termination by either party thereto on not more than ninety (90) days' written notice.

3.3.2 **Authority of Managing Agent.** The Managing Agent shall have such powers and duties as may be necessary or proper in connection with (i) supervision of the immediate management and operation of the Project, (ii) maintenance, repair, replacement and restoration of the exterior of the building(s) and other Common Elements and any additions or alteration thereto, (iii) purchase, maintenance and replacement of any equipment, (iv) servicing of all utilities to the building(s) and the various Units, (v) employment, supervision and dismissal of such personnel 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) collection of assessments, and payment of bills to third parties, (ix) purchase of such insurance as is contemplated by these Bylaws, and (x) custody and control of all funds and maintenance of books and records and preparation of financial reports.

3.3.3 **Board Limits on Managing Agent Authority.** The Board may in its discretion limit any of the powers herein granted to the Managing Agent or grant additional powers to the Managing Agent.

3.3.4 **Owner Request for Unit Account.** Upon written request of any Owner or prospective purchaser of a Unit or the holder, insurer or guarantor of a mortgage of an interest in any Unit, the Managing Agent shall deliver to such party a certified statement of the status of the account of such Unit as described in Section 6.13.4.

3.3.5 **Association Approval of Managing Agent.** The appointment and terms of compensation of the Managing Agent (other than the initial Managing Agent) shall be submitted to the Association for approval at each annual meeting but if not ratified by a majority of the Unit Owners, such contract shall be deemed terminated ninety (90) days after such non-ratification by the Association, and the Board shall give prompt written notice thereof to the Managing Agent and appoint a qualified successor Managing Agent subject to ratification by the Association in the manner set forth above. In no event shall the contract with any Managing Agent (other than the initial Managing Agent) be for a term exceeding three years and any such contract shall be subject to termination, without penalty, by either party thereto on not more than ninety (90) days written notice.

3.3.6 **Representation of the Association by the Managing Agent.** Subject to Article 22 of the Declaration, the Managing Agent, subject to the direction of the Board, may represent the Unit Owners or any two or more Unit Owners similarly situated, as a class, in any action, suit, or other proceeding concerning the Unit Owners, the Common Elements, or more than one (1) Unit, or the Association.

3.4 **Board Election and Term of Office.** In order to provide staggered terms that ensure continuity on the Board, at the first annual meeting of the Association following the expiration of the Developer Control Period, three (3) Directors shall be elected for a term of three (3) years, three (3) Directors shall be elected for a term of two (2) years, and three (3) Directors shall be elected for a term of one (1) year. Subject to the requirement that one Commercial Unit Owner or

Owner Representative and, if applicable, one Midrise Residential Unit Owner or Owner Representative shall at all times be a Director, the three candidates receiving the highest numbers of votes at the initial annual Association meeting shall receive the three-year terms, the three candidates receiving the next highest numbers of votes shall receive the two-year term, and the three candidates receiving the next highest numbers of votes shall receive the one-year term. In case of a tie in voting, tied candidates shall either decide between themselves who shall be considered the winner for purposes of length of term, or the tied candidates shall flip a coin to determine the winner. At the expiration of the term of office of each Director, each Director's successor shall be elected to serve a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until a successor is elected by the Unit Owners.

3.5 **Removal of Members of the Board.**

3.5.1 **Removal for Cause.** Members of the Board may be removed for cause for any of the following reasons: (i) Failure to permit Unit Owners to attend or speak at meetings of the Board as provided in the Act, the Declaration, or these Bylaws; (ii) Failure to comply with the notice and posting requirements or the requirement to call meetings as in this Act; (iii) Failure to record the vote of each Board member as provided in this Act; (iv) Failure to provide Owners with records as provided in this Act or (v) Failure to comply with the terms of these Bylaws or the Declaration. Any Unit Owner who is aggrieved by any of the foregoing acts or omissions by any member of the Board shall have, in addition to any rights granted under the Act, the right to file a written demand to the Board setting forth the particulars of the Act or omission and the relief or other corrective action requested. The Board shall act upon such demand within a reasonable time, in no event to exceed forty-five (45) days from the receipt of the demand, and shall advise the complaining party in writing of its actions. The Board shall have the power in acting upon such demand to take all appropriate action to resolve the matter, including, without limitation, removing the member of the Board, taking corrective action or rejecting the demand.

3.5.2 **Removal by Majority Vote.** At any regular or special meeting of Unit Owners, any one or more of the members of the Board may be removed with or without cause by a Majority of the Unit Owners, and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that an individual member of the Board may not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one member of the Board by cumulative voting (assuming an election for all Board seats) are present in person or by proxy at such meeting and vote against removal. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by Owners of Units as shown in the Association's record of ownership, to which not less than twenty-five percent (25%) of the Common Interest is appurtenant; and provided further that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of Section 2.6.5. Any member of the Board whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting.

3.6 **Vacancies.** Vacancies in the Board caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by a vote of a majority of the remaining members at a regular or special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board for the remainder of the term of the member whose vacancy is being filled (unless sooner removed). A vacancy will be deemed to occur upon the death, mental incapacity, or voluntary resignation of any Director, or upon such person ceasing to have the qualifications for a Director as defined in Section 3.1.

3.7 **Organization Meeting; Conduct of Meetings; Minutes.** The first meeting of the Board shall be held immediately after the first annual meeting of the Association or as soon thereafter as a quorum may be obtained and no notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, provided that a majority of the whole Board shall be present thereat. All meetings of the Board (whether organization, regular or special) shall be conducted in accordance with the most current edition of Robert's Rules of Order. Minutes of all meetings shall include the recorded vote of each Director on all motions, except motions voted on in executive session. In the event that the Board shall resolve to go into executive session, the Board shall record such resolution as part of the record of such meeting; the Board shall not be required to maintain any other minutes of the matters discussed, the votes of Board members, or other actions taken in executive session.

3.8 **Regular Meetings.**

3.8.1 **General.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, fax, electronic mail or other prevalent means of electronic communication at least fourteen (14) business days, if practicable, prior to the day named for such meeting. All meetings of the Board shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion unless a majority of a quorum of the Board determines that such non-Board members shall not so participate in the meeting.

3.8.2 **Executive Session.** The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in private in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, to protect the Association's attorney-client privilege, or to protect the interests of the Association while negotiating contracts, leases or other commercial transactions. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.8.3 **Special Meetings.** Special meetings of the Board may be called by the President on three (3) business days' notice to each member of the Board, given personally or by mail, telephone, fax, electronic mail, or other prevalent means of electronic communication. Such notice shall state the time, place and purpose of the meeting; upon the written request of at least two (2) members of the Board, the President shall call a special meeting of the Board in like manner and upon like notice.

3.8.4 **Posting of Notice.** Notice of all meetings of the Board, whether regular or special meetings, shall be posted at two (2) or more prominent locations within the Project at the same time that notice is given to Directors.

3.8.5 **Waiver of Notice.** Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

3.8.6 **Meetings by Phone, Video Conference or Written Consent.** Provided that all requirements of notice as provided herein have been complied with (or that the same have been waived as provided herein) and provided further that the provisions contained herein for regular meetings of the Board to be open to Association members have been complied with, the Board may conduct meetings by telephone, video conference or by unanimous decision in writing signed by all Board members.

3.8.7 **Quorum of Board.** At all meetings of the Board, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.9 **Fidelity Bonds.** The Board shall obtain a fidelity bond covering the acts of the Managing Agent and all directors, officers and employees of the Association who handle, control, have custody of, or are responsible for Association funds. The amount of such fidelity bond shall be the greater of (a) One Hundred Thousand and No/100 Dollars (\$100,000.00) or (b) the amount of the fidelity bond required by the Act. The premiums on such bond shall constitute a Common Expense. Such bond must contain a provision providing that it may not be cancelled or substantially modified except by giving thirty (30) days' written notice thereof to the Association, the Board, the Trustee (if any), and to the Owner and/or mortgagee of each Unit who shall have requested such notice. The Managing Agent shall likewise obtain a fidelity bond in the amount required by the Act and shall provide evidence of the same to the Association.

3.10 **Exceptions for Persons with Disabilities.** The Board shall allow Owners and residents with disabilities reasonable modifications to and exemptions from the requirements of the Declaration, Bylaws and Association Rules when necessary and to the extent appropriate to enable them to use and enjoy their Units. All requests for an exemption must be in writing and include a specific and detailed description of the exemption requested and the reason why it is necessary. The Board shall not unreasonably withhold or delay its approval of any such request. The Owner shall be responsible for all costs of making any changes or modifications requested.

3.11 **Compensation; Educational Expenses.** No member of the Board shall receive any compensation from the Association for acting as such or reimbursement for travel expense and per diem expense, except as may be approved by a Majority of the Owners at any annual meeting or as may be specifically permitted by the Act. Board members may be reimbursed for reasonable, ordinary expenses (such as copying charges) incurred in their performance of their duties as directors. Association funds may be spent to educate and train Board members in subject areas directly related to their duties and responsibilities as directors if those expenses are included as separate line items in the Association's approved annual operating budget.

3.12 **Liability, Insurance and Indemnity of the Board and Officers.** The members of the Board and officers shall not be liable to the Unit Owners for any mistake of judgment or otherwise except for their own individual gross negligence or willful misconduct. The Association shall obtain and maintain at the Association's expense a policy of directors' and officers' liability insurance covering the Board and officers of the Association and shall defend and indemnify each Director and officer of the Association against all costs, expenses and liabilities, including the amount of judgments, amounts paid to settle claims and liabilities, and amounts paid for reasonable attorneys' fees and other related expenses which may be incurred by or imposed on any Director or officer in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted, or threatened in which he or she may be involved as a party or otherwise by reason of being or having been such Director or officer, or by reason of any past or future action taken or authorized or approved or any omission to act as such Director or officer, whether or not he or she continues to be such Director or officer at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which he or she is liable by reason of gross negligence or willful misconduct toward the Association in the performance of his or her duties as such Director or officer. As to whether or not a Director or officer was liable by reason of gross negligence or willful misconduct toward the Association in the performance of duties as such Director or officer, in the absence of such final adjudication of the existence of such liability, each Director and officer may conclusively rely upon an Opinion of Counsel obtained by the Board. The foregoing

right of indemnification shall not be exclusive of other rights to which any such Director or officer may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such Director and officer.

3.13 **Association Documents.** Each Director shall be provided with a current copy of the Declaration, Bylaws and Administrative Rules and, annually, a copy of the Act, including all amendments thereto.

ARTICLE 4 OFFICERS

4.1 **Designation.** The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer, all of whom shall be elected by the Board, with the duties set forth in this Section 4.1. The Board may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board. The Vice President, Secretary and/or Treasurer may be the same person, and also the Assistant Secretary and Assistant Treasurer may be the same person. No employee of the Managing Agent shall be designated as an officer.

4.1.1 **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board, and shall have all of the general powers and duties which are incident to the office of a president of a stock corporation organized under Hawaii law, including but not limited to the power to appoint committees from among the Unit Owners from time to time as the President may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

4.1.2 **Vice President.** The Vice President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board or by the President.

4.1.3 **Secretary.** The Secretary shall keep a minutes book wherein all resolutions shall be recorded and shall keep the minutes of all meetings of the Unit Owners and of the Board. The Secretary shall have charge of such books and papers as the Board may direct; and shall, in general, perform all the duties incident to the office of Secretary of a stock corporation organized under the laws of the State of Hawaii, including but not limited to preparation, execution, certification and recordation of all amendments to the Declaration. The duties of the Secretary may be delegated to and performed by the Managing Agent under the Secretary's supervision.

4.1.4 **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. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the Board, and shall, in general, perform all the duties incident to the office of Treasurer of a stock corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent under the Treasurer's supervision.

4.2 **Election of Officers.** The officers of the Association shall be elected annually at the organizational meeting by each new Board and shall hold office at the pleasure of the Board.

4.3 **Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board, any officer of the Association may be removed, either with or without cause, and a

successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

4.4 **Audit.** The Board shall annually appoint a public accountant or accounting firm, who shall not be an officer or own any interest in any Unit, as auditor for the Project. The auditor shall conduct a yearly audit of the books and financial records of the Association in accordance with generally accepted accounting principles and not less than one yearly unannounced verification of the Association's cash balance. The auditor shall also annually, within ninety (90) days of the end of the Association's fiscal year, prepare an audited financial statement for the preceding fiscal year.

4.5 **Execution of Agreements, Contracts, Deeds, Checks, and Other Instruments.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by the President, Vice President, Secretary or Treasurer, or by such other person or persons as may be designated by the Board.

4.6 **Compensation of Officers.** No officer shall receive any compensation from the Association for acting as such.

ARTICLE 5 REPAIR, MAINTENANCE, AND USE

5.1 **Owner Duty to Repair and Maintain.** Every Owner from time to time and at all times shall promptly perform all repair, maintenance and alteration work within his or her Unit the omission of which, as determined by the Board, would adversely affect any Common Element, any other Unit, or, in the case of Residential Units, the exterior appearance of the Project and shall be responsible for all loss and damage caused by the failure to do so.

5.2 **Owners' Maintenance Responsibilities.** Each Owner shall be responsible for repairing replacing, and maintaining, at the Owner's expense, the following:

5.2.1 The interior of the Owner's Unit, including the surfaces of the walls, floors, and ceilings, doors and door locks, the interior surfaces of all windows, and all appliances, water heaters and air conditioning equipment located therein;

5.2.2 The Unit's lanai (if any), including lanai door, light fixtures, railings, the interior surface of any glass or other lanai barrier, any Unit air conditioning equipment located on the lanai, and the surface of the lanai walls, floor and ceiling;

5.2.3 The water lines, faucets, wall stop valves, connections to the water supply lines for the Unit, and other plumbing of any kind within the Owner's Unit;

5.2.4 Clogs in any lateral drain line serving the Owner's Unit;

5.2.5 The wiring serving the Owner's Unit from and including the electrical fuse/breaker box to the outlets, lights, switches, range, and other electrical installations and fixtures of any kind, together with any telephone, cable, internet and other wiring or cables of any kind;

5.2.6 The windows, window panes, and window frames of the Owner's Unit, excluding in the case of Residential Units their exterior surface;

5.2.7 All portions of the Unit's air conditioning system located outside of the Unit, including without limitation air conditioning compressor units located on Limited Common Elements located remotely from the Unit, and the power, control and refrigerant lines and conduits connecting the Unit to such system;

5.2.8 All repairs of internal installations within each Unit such as water, light, gas, power, sewage, telephone, sanitation, doors, interior windows, light fixtures, and all other appliances, equipment, fixtures and accessories belonging to such Unit, including interior walls and partitions and the inner decorated or finished surfaces of the perimeter walls, floors, and ceilings of such Unit shall be at the Owner's expense;

5.2.9 All items and fixtures in or appurtenant to the Unit that have been duly designated by the Board as "high risk components" in accordance with such inspection, replacement and maintenance requirements set by the Board; and

5.2.10 In the case of a Commercial Unit, any grease trap serving the Unit and the Unit's trash collection area.

5.3 **Unlicensed Contractors.** Repair, maintenance, and alteration work may be performed by unlicensed contractors to the extent permitted by law, provided that any repair, maintenance or alteration work which may affect the Common Elements in a material way shall be performed by a licensed contractor.

5.4 **Reimbursement of Association.** Every Owner shall reimburse the Association for any expenditures incurred in repairing damage to, or in preventing or attempting to prevent damage to the Common Elements or to furniture, furnishings, or other property of the Association or any other Owner damaged or lost through the fault of such Owner or any person using the Project under him, and such Owner shall give prompt notice to the Managing Agent of any such damage, loss, or other defect when discovered.

5.5 **No Interference with Others' Use.** No Owner shall use or keep anything on the grounds or any other Common Element not located within his or her Unit which would in any way hinder the full use and enjoyment thereof by any other Owner entitled to the use thereof.

5.6 **Pest Control.** The Association shall have the right from time to time, but not the duty, to enter the Units to spray, fumigate, or otherwise treat the Units to control or eliminate insects and other pests. The Association shall have the right to spray, fumigate, or otherwise treat the Common Elements and Limited Common Elements, including storage lockers, to control or eliminate insects and other pests.

5.7 **Pet Rules and Restrictions.** As set forth in Section 7.10 of the Declaration, a maximum of two (2) dogs and/or cats may be kept or housed in each Residential Unit as domestic pets (and not for commercial or breeding purposes). In addition, a reasonable number of small pet birds (such as canaries and parakeets) and fish may be kept as domestic pets in cages or aquariums within a Residential Unit. All pets shall be subject to the following:

5.7.1 Pets must be kept within the interior of a Residential Unit, not on its Lanai, and no animals may be placed or kept in storage lockers. Pets shall be walked only in exterior areas allowed by the Board or, in the case of Tower residents, in the Tower's dog run. Pets are otherwise strictly prohibited from the Tower Recreational Facilities. Pets shall not be allowed in the Common Elements except in transit to a vehicle, an approved exterior area, or the dog run. Pets outside of Units shall be carried or on a short leash.

5.7.2 No resident shall permit his or her pet(s) to produce or cause any waste or unsanitary material or condition anywhere on the Common Elements, and any such waste or unsanitary material or condition shall be immediately removed and disposed of or remedied by such resident.

5.7.3 Residents must register their dogs, cats and any service animals with the Managing Agent. When outside a Unit all dogs and cats shall wear a collar with a tag or label with their owner's name and phone number.

5.7.4 The Board shall annually establish a reasonable annual registration fee payable by all dog and cat owners to defray the Association's additional costs of dealing with pet-related issues, including cleaning associated with the presence of pets and maintenance of the pet registry. Such fee shall initially be \$75 per dog or cat per year.

5.7.5 Pets shall not be permitted to cause or create a disturbance to any other Owner or occupant, including but not limited to excessive barking by dogs. Any pet which, in the sole judgment of the Board, causes a nuisance, unreasonable disturbance or threat to the health or safety of any Owner, occupant or guest may be ejected from the Project; provided, however, that upon assessment of the severity of the nuisance, disturbance or threat caused by such pet, the board, in its sole discretion may give the pet's owner an opportunity to remedy the situation short of ejection.

5.7.6 The Association Rules may contain additional restrictions applicable to pets that are not inconsistent with the Declaration and Bylaws.

5.8 **Use Restrictions.** In addition to the use restrictions set forth in Article 7 of the Declaration, all Residential Units in the Project shall be subject to the following restrictions on use:

5.8.1 **Garbage.** No garbage, refuse, or trash of any kind shall be thrown, placed or kept on or in any storage locker, parking stall or other Common Element other than disposal facilities provided for such purposes.

5.8.2 **Lanai Use & Appearance.** Lanais shall not be used for drying laundry or for storage in any manner, including without limitation storage of bikes, surfboards or other sports and play equipment, cartons, boxes, or any other belongings. Cooking, barbeques, fires, candles and smoking are strictly prohibited on lanais. Any furniture, plants, or other articles which, in the opinion of the Board, are unsightly, shall be removed from and kept off of the lanais upon request by the Board. Plants must be kept and watered in such a way as to prevent water from flowing over the edge of the lanai or otherwise causing any damage, stains or discoloration. Plants may not protrude over lanai railings. All belongings kept on lanais shall be secured. The Association Rules may contain additional restrictions on lanais.

5.8.3 **Electrical Wiring.** No Owner or occupant of a Residential Unit shall install any wiring or other device for electrical or telephone installations, television, antenna, machines, or other equipment or appurtenances on the exterior of the building or protruding through the walls, windows, or roof thereof, without the prior written consent of the Board, except as permitted by applicable law, including but not limited to the federal Telecommunications Act of 1996.

5.8.4 **No Overloading.** Nothing shall be allowed, done, or kept in any Residential Unit, lanai, or Common Element which in the Board's reasonable assessment could overload or impair the structural integrity of floors, walls, or roofs of the building. Without limiting the foregoing, spas and hot tubs are prohibited in Residential Units and lanais.

5.8.5 **Protection of Post-Tension Concrete System; Window Covering Restrictions.** No Owner shall alter, pierce or otherwise tamper with the post-tension concrete slabs above and below a Unit, which could result in serious damage the integrity of the post-tension concrete system and/or cause serious injury or damage to persons and property. Without limiting the foregoing, window coverings may not be attached or anchored to such slabs. Window

coverings may be mounted or attached only to designated locations on window frames using methods or systems approved by the Board.

5.8.6 **No Impact on Association Insurance.** Nothing shall be allowed, done, or kept in any Residential Unit or Common Element which in the Board's reasonable assessment could cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Board with respect to the Project.

5.8.7 **Nuisances.** No Owner or occupant of a Residential Unit shall cause, make or permit any noxious or offensive activity or nuisance.

ARTICLE 6 COMMON EXPENSES, RESERVE ASSESSMENTS, TAXES; COLLECTION AND ENFORCEMENT

6.1 **Obligation to Pay Common Expenses.** As provided in the Declaration, the Owner of each Unit shall be liable for and pay a share of the Common Expenses in proportion to the Owner's proportionate share of the Common Interest, except as provided below with respect to certain Common Expenses that are allocated to and payable by certain groups of Owners. In the event that the Owner shall be a vendee under Agreement of Sale, the vendor shall also be responsible, along with vendee, for the payment of a share of the Common Expenses.

6.2 **Determination of Common Expenses Assessment for the Current Operation of the Project.** Except as otherwise provided herein, the Board shall determine the Common Expenses for the Project. The Common Expenses shall include all charges, costs and expenses whatsoever incurred by the Association for and in connection with the administration and operation of the Project, including without limitation, all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance, including fire and other casualty and liability insurance, ownership, any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any fire, accident or nuisance thereon, cost of repair, reinstatement, rebuilding and replacement of the premises, landscaping, janitorial, and other similar services, wages, accounting and legal fees, management fees, start-up fees and other necessary expenses of operation, maintenance, management, repair, and replacement actually incurred on or for the Common Elements, and the cost of all common utility services, including water, electricity, gas, garbage disposal, cable television, telephone and any other similar services, unless separately charged, metered or otherwise allocated or attributable to a Unit or group of Units, in which case the amounts charged, allocated or attributable to each Unit or group of Units shall be as set forth in Section 6.7 below or determined by the Board with the advice of a licensed professional engineer, accountant, or such other consultant as the Board may deem necessary or helpful. The Common Expenses may also include such amounts as the Board may deem proper to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required for improvements, alterations and acquisitions, including, without limitation, the purchase or lease of any Unit by the Board on behalf of the Association, as permitted under Hawaii law or these Bylaws; provided, however, that the Board shall first obtain an Opinion of Counsel prior to any purchase of a Unit, and provided further that the Board may not purchase a Unit without first obtaining the approval of the Owners of at least sixty-seven percent (67%) of the Units, provided that the Board shall not be required to secure such approval in order to purchase a Unit for a resident manager or a Unit in a foreclosure proceeding as set forth in Section 3.2.14.

6.3 **General Operating Reserve Assessment for Projected Repairs and Replacements.** In addition to the assessment for current Common Expenses, the Board shall establish and maintain, in accordance with the Act and the rules of the Real Estate Commission promulgated pursuant thereto, a General Operating Reserve in such additional amount as the Board determines to be adequate to provide not less than fifty percent (50%) of the funding (or one

hundred percent (100%) of the funding, if using a cash flow plan as defined by Section 514B-148 of the Act) for the upkeep, repair and replacement of the portions of the Project which the Association is obligated to maintain. The General Operating Reserve shall be kept in one or more accounts segregated from other Association accounts in accordance with the applicable rules of the Real Estate Commission. The General Operating Reserve shall include such separate subaccounts as may be established for certain components of the Project pursuant to Section 6.7. The Board may use the General Operating Reserve to meet any deficiencies in Common Expense funds only (1) as permitted by the Act and the rules of the Real Estate Commission, and (2) only after obtaining an Opinion of Counsel. Thereafter, the General Operating Reserve shall be replenished through a subsequent increase in the monthly General Operating Reserve assessment.

6.4 Capital Improvement Reserve for Specific New Alterations and Improvements.

From time to time, as specifically authorized by a Majority of the Unit Owners, the Board may establish and maintain a Capital Improvements Reserve Fund and one (1) or more subparts thereof. Each subpart of the Capital Improvements Reserve Fund shall be earmarked for specific new improvements or additions to the Project having a useful life of one (1) year or more and the amount of each such subpart of the Capital Improvements Reserve Fund shall be such annual amount as the Association determines to be adequate (but no more) to provide for specific new improvement or addition to the Project. Disbursements from said Capital Improvements Reserve Fund shall be made only upon authorization of the Board. The Capital Improvements Reserve Fund shall be kept in accounts segregated from other Association accounts. If the Capital Improvements Reserve Fund or a subpart thereof exceeds the cost of the particular new improvement or addition to the Project, or if the planned improvement is for any reason not implemented within a reasonable time (in any event not more than five (5) years) after creation of said Capital Improvements Reserve Fund or subpart thereof, said Capital Improvements Reserve Fund remaining shall be distributed to all Owners in proportion to their respective Common Interests or, if applicable, Limited Common Interest (as defined below).

6.5 Special Assessments. In addition to the regular monthly assessment of Common Expenses and reserves as provided in Section 6.6, the Board may from time to time make special assessments, in the same manner as the assessment of Common Expenses, to cover those Common Expenses not covered by regular monthly assessments. The Board may also make special assessments against the Owner of one (1) or more Units to collect any amount owed by a Unit Owner under the provisions of the Act or the Declaration, these Bylaws or the Administrative Rules.

6.6 Monthly Assessments. Except in the case of special assessments or as otherwise provided herein, the Common Expenses, General Operating Reserves and any Capital Improvements Reserve Fund(s) shall be funded by monthly assessments to the Owners. The monthly assessment shall consist of four components: (1) the Owner's share, based on the Common Interest percentage of the Owner's Unit, of the general operating expenses and reserve funding requirements of the Project that are not specially allocated in this section to groups of Units; (2) the Owner's share, based on the Limited Common Interest percentage (defined below) of certain operating expenses and reserve funding requirements which are allocated to certain groups of Units; (3) charges for the Owner's electrical usage within the Unit and for the Unit's air conditioning system; and (4) other monthly fees and charges that are payable directly by Unit Owners but for convenience are assessed through the Association, which shall initially include all Master Association fees and assessments of the Units and monthly charges for cable television and internet service to the Residential Units. **All components of the monthly assessments are mandatory and an Owner may not opt out of paying them by waiving use or enjoyment of any facility, amenity or service.**

6.7 Allocations of Common Expenses. The Project initially contains a mix of Commercial and Residential Units in the Tower, with the Residential Units having a variety of amenities and services that are not available to and do not benefit the Commercial Units. Further, if and when

the Midrise Phase is developed, it is expected that Residential Units in that Phase will not have access to recreational facilities in the Project or the full range or other services and amenities provided to Residential Units in the Tower. Unit Owners in each Phase are generally intended to bear the expenses of maintaining, operating, repairing and replacing the Buildings in their own Phase. Accordingly, the Developer has determined that it would not be reasonable, fair or equitable to assess Commercial Units for Common Expenses that primarily or exclusively benefit Residential Units, or to assess Residential Units outside the Tower for Common Expenses that primarily or exclusively benefit Residential Units in the Tower. Instead, the Developer has determined that it is reasonable, fair and equitable to allocate certain Common Expenses to certain groups of the Units as shown in the table below. Where expenses are allocated to a group of Units, the share of each Unit shall be a percentage (the "Limited Common Interest") determined by dividing that Unit's Common Interest percentage by the aggregate Common Interest percentages of all Units in that group. The initial Limited Common Interest of the Residential and Commercial Units in the Tower is set forth in **Exhibit B**, and shall be recalculated upon the addition of any more Units or Phases to the Project as set forth in Article 18 of the Declaration.

6.7.1 For the foregoing reasons, all Common Expenses, General Operating Reserves and Capital Improvements Reserve Fund(s), and special assessments assessed against the Units, whether by regular or special assessments, shall be allocated among the Units as set forth in the following table:

<p>Expenses and Reserves Assessed to All Units (Assessed Based on Common Interest)</p> <ul style="list-style-type: none"> • Managing Agent fees and charges. • General Association legal, tax, consulting and audit expenses. • Association tax liabilities. • General Association overhead and operating expenses (excluding employee-related costs). • Costs of Association corporate and Real Estate Commission registrations. • All costs of maintaining the Project's ground-level Common Element lighting, signage, exterior roadways, hardscaping, and landscaping (including irrigation expense). • All Association premiums, deductibles and expenses for insurance the Association maintains under the Declaration, the Bylaws or the Act. However, if the Board determines that it is more cost-effective to procure separate policies of property and/or liability insurance for the Tower and Midrise Phases, premiums, deductible and expenses for such policies shall be separately assessed to the Units in those Phases. • All reserves maintained with respect to any of the Common Elements that are not allocated to portions of the Project pursuant to the following sections of this table. • All expenses not specifically allocated that the Board reasonably determines should be shared by all Units.
<p>Expenses and Reserves Assessed to Tower Residential Units Only (Assessed Based on Tower Residential Unit Limited Common Interest)</p> <ul style="list-style-type: none"> • All costs of operating, maintaining, repairing and replacing the Building Structure of the Tower • All costs (including utility costs) of operating, maintaining, repairing and replacing the Tower Recreation Facilities, the Tower Parking, the Tower lobby area, and other common areas, equipment, fixtures, furnishings, services and amenities within the Tower that

exclusively or primarily serve the residents of the Residential Units in the Tower.

- All salaries, benefits, health and other insurance, and other costs of the Project's resident manager and other operations, maintenance, housekeeping and security personnel hired by the Association. It is specifically intended, understood and agreed that this allocation is justified because the overwhelming majority of all employees' time and services will be devoted to operation of the residential portion of the Tower due to the higher level of services and amenities provided to Tower residents. In lieu of directly participating in these costs, certain fixed fees set forth below are assessed against the Commercial Units and Midrise Phase Residential Units.
- All costs of acquiring, owning and maintaining any Residential Unit owned or leased by the Association as a resident manager's unit.
- All reserves maintained for the Building Structure of the Tower and all components thereof, including the Tower Recreation Facilities and the Tower Parking, for any other Limited Common Elements appurtenant, collectively, to the Residential Units in the Tower Phase, and for all other improvements, equipment, fixtures, furnishings and amenities included in this section of the table.
- All expenses not specifically allocated that the Board reasonably determines should be allocated only to the Tower Residential Units collectively.

**Expenses and Reserves Assessed to Midrise Residential Units Only
(Assessed Based on Midrise Residential Unit Limited Common Interest)**

- All costs of operating, maintaining, repairing and replacing the Building Structure of the Midrise Building
- All costs (including utility costs) of operating, maintaining, repairing and replacing the Midrise Parking Garage and other Common Areas, equipment, fixtures and furnishings within the Midrise Building that exclusively or primarily serve the residents of the Residential Units in the Midrise Building.
- A fixed monthly maintenance services fee commensurate with the limited maintenance, housekeeping and security services that the Association provides to the Midrise Phase. The Board shall establish this fee as part of its annual budget in an amount that shall not exceed the average of at least two independent third-party quotes to provide such services. Upon petition of a majority of the Residential Units in the Midrise Phase prior to the start of any fiscal year, in lieu of assessing such fee and providing such services, the Board shall contract with an independent third party to provide maintenance services for the Midrise Phase for that year, and all costs of that contract shall be allocated pursuant to this section of the table.
- All reserves maintained for the Building Structure of the Midrise Building and all components thereof, for the Midrise Parking Garage, for any other Limited Common Elements appurtenant, collectively, to the Residential Units in the Midrise Phase, and for all other improvements, equipment, fixtures, furnishings and amenities included in this section of the table.
- All expenses not specifically allocated that the Board reasonably determines should be allocated only to the Midrise Residential Units collectively.

**Expenses and Reserves Assessed to All Commercial Units Only
(Assessed Based on Commercial Unit Limited Common Interest)**

- All costs of any utilities or services the Association provides separately to the Commercial Units collectively.
- A fixed monthly fee representing the Commercial Units' proportionate share of the costs to the Association of providing roving security patrols around the exterior of the Project and the Parking Garage outside of normal business hours. The Board shall establish this

fee annually based on the Managing Agent's advice as to the cost of securing such security patrol services from a third-party provider.

- All reserves maintained regarding any Limited Common Element improvements, equipment, fixtures, and furnishings appurtenant to the Commercial Units collectively.
- All expenses not specifically allocated that the Board reasonably determines should be allocated only to the Commercial Units collectively.

6.7.2 In allocating Common Expenses pursuant to this Section, the Board shall at all times endeavor to fulfill the stated purposes of this Section. The Board shall not substantially deviate from past practice in the Project of making such allocations without an Opinion of Counsel advising that such a deviation is warranted and consistent with this Section. In making allocations pursuant to this Section, the Board may use and rely on the advice of the Managing Agent, and such licensed professional engineers, architects, accountants, or such other consultants as the Board may deem necessary or helpful. Reserves collected for the benefit of one group of Owners pursuant to this Section shall be kept in segregated accounts and shall not be commingled or expended for the benefit of other Owners.

6.8 Status of Common Expense and Reserve Accounts; Payment to Unit Owners in Case of Termination. All Common Expense and reserve accounts established under this Article 6 shall be the sole and exclusive property of the Association. Except as expressly provided in these Bylaws, the proportionate interest of each Owner in the Common Expense and Reserve may not be withdrawn, transferred, anticipated, mortgaged or assigned separately but shall be deemed to be transferred with each Unit even though not mentioned or described expressly in the instrument of transfer. If the Condominium Property Regime established by the Declaration is terminated, the Common Expense and Reserve funds remaining after payment of all expenses required to be paid by the terms of the Declaration and these Bylaws shall be distributed to the Owners in proportion to their respective Common Interests or Limited Common Interest, as applicable to the funds in question.

6.9 Income Taxation of Association. The Board shall 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 shall be a Common Expense. The income, expenditures and net earnings of the Association shall be monitored by the Board so as to maintain an exemption from general excise taxation under Hawaii Revised Statutes Section 237-24(19), or any successor statute. The Association may elect to be treated as a homeowner's association exempt from tax under Internal Revenue Code Section 528. In the event of such an election, the income, expenditures and net earnings of the Association shall be monitored as to maintain exempt status under Internal Revenue Code Section 528.

6.10 Real Property Taxes and Assessments. Each Owner of a Unit shall be obligated to pay the real property taxes for his or her own Unit and its appurtenant interest in the Common Elements and Limited Common Elements. With respect to any taxes or assessments which now are or may hereafter be levied against the Association or the property, each Owner shall be obligated to pay to the Board, as a Common Expense, a proportionate share of any such tax or assessment. If, in the opinion of the Board, any taxes or assessments may become a lien on the Project or any part of the Common Elements, the Board may pay such taxes or assessments and shall assess the same to the Owners as a Common Expense.

6.11 Budget.

6.11.1 Annual Budget. The calendar year shall be the fiscal year of the Association. The Board shall annually prepare, adopt and distribute to all Unit Owners an Annual Budget for its next fiscal year at least 60 days prior to the beginning of that year. The Annual Budget shall include the following: (i) The estimated revenues and operating expenses of the

Association; (ii) A statement as to whether the Annual Budget has been prepared on a cash or accrual basis; (iii) The total General Operating Reserve of the Association as of the date of the Annual Budget; (iv) The General Operating Reserve the Association will require during the current fiscal year to maintain the Project; (v) An explanation of how the General Operating Reserve is computed; (vi) The amount the Association must collect for the current fiscal year to fund the General Operating Reserve; and (vii) Information as to whether the amount the Association must collect for the fiscal year to fund the General Operating Reserve was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the General Operating Reserve amount determined by the reserve study pursuant to subparagraph 6.11.2, below, and Section 514B-148 of the Act.

6.11.2 Reserve Study. The Board shall annually prepare a reserve study in accordance with the applicable rules of the Real Estate Commission set forth in Title 16, Chapter 107, Subchapter 6 of the Hawaii Administrative Rules, as may be amended from time to time. The Board shall establish and maintain the General Operating Reserve based upon the reserve study. In establishing a General Operating Reserve for any fiscal year, the Board shall take into consideration any surplus or deficit in the General Operating Reserve for the previous period. Funds for any maintenance, replacement or repair having an estimated cost in excess of Ten Thousand and No/100 Dollars (\$10,000.00) shall be kept in a separate fund within the General Operating Reserve; all other maintenance, replacement or repair funds may be maintained as a single fund. No Director, Officer, Managing Agent, Unit Owner or Employee of an Association who provides information or an estimate or who makes a calculation of the General Operating Reserve in good faith shall be liable if the information, estimate or calculation proves to be incorrect.

6.11.3 Board Authority for Expenditures. The Board may not make expenditures which exceed its Annual Budget by more than twenty percent (20%) in any fiscal year except in emergency situations. Prior to the imposition or collection of any special assessment to meet an insufficiency in the Common Expense assessment, the Board shall pass a resolution setting forth a statement as to the necessity of the special assessment and why the expense was not or could not have been reasonably foreseen. Said resolution shall be distributed to the Unit Owners with the notice of the special assessment. For the purpose of this section, "emergency situation" means an extraordinary expense: (i) required by an order of a court; (ii) necessary to repair or maintain any part of the Project, which repair or maintenance was necessitated by the discovery of a condition threatening the safety of persons occupying the Project; (iii) necessary to repair any part of the Project, which repair could not have been reasonably foreseen by the Board in preparing and distributing the Annual Budget; (iv) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the Annual Budget; or (v) Necessary for the Association to obtain adequate insurance for the property that the Association must insure pursuant to the provisions of Article 7.

6.12 Collection and Payment of Common Expenses.

6.12.1 Payment of Assessments. All Owners shall pay to the Association or the Managing Agent all monthly and special assessments of Common Expenses against their respective Units. Except as otherwise expressly provided in Sections 3.3 and 3.4 of the Declaration or Sections 6.2, 6.3 and 6.7 above, all of such assessments shall be assessed among and against the Units in proportion to their respective Common Interests. Regular monthly assessments shall be payable in advance on or before the first day of each and every month and without notice or demand. Special assessments, costs, expenses, fees, penalties and late charges shall be payable on the date set forth in the statement; if no date is stated, then the amount shall be due upon demand. Any payments on account of such assessments shall first be applied to attorneys' fees incurred in effort to collect such assessments, then to any fines or penalties payable as the result of any delinquency in the payment of such assessments, then to any interest that has accrued on such assessments, and then to the assessments starting with

the oldest unpaid assessment. The Association will pay or cause to be paid, for and on behalf of the Owners, all Common Expenses. The Board will annually render or cause to be rendered a statement to each Owner of all receipts and disbursements during the preceding year. Members of the Board and the Managing Agent shall not be liable as principals to third persons for the obligations of the Association or of any Owner or Owners.

6.12.2 **Owner Challenge to Assessment.** An Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim pursuant to Hawaii Revised Statutes Section 514B-146(d). If unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of the Act, subject to the requirements set forth in said Section 514B-146(d). The Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

6.12.3 **Grantee Responsible for Assessments.** In a voluntary conveyance, the grantee of a Unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor for the grantor's share of the Common Expenses. Any grantor or grantee is entitled to a statement of unpaid assessments as set forth in Section 3.3.4. The grantee is not liable for any unpaid assessments against the grantor in excess of the amount on the statement, except as to the amount of subsequently dishonored checks received within the thirty (30) day period immediately preceding the statement date noted on the statement. Except as provided in Section 514B-146(g) of the Act, the acquirer of title to a Unit pursuant to the foreclosure of a mortgage on the Unit, and such acquirer's successor and assigns, shall not be liable for the unpaid portion of assessments against the Unit that were payable prior to delivery of the commissioner's deed at the foreclosure; such unpaid portion shall be a Common Expense collectible from all Owners, including the acquirer, its successors and assigns.

6.12.4 **No Exemptions.** No Owner may exempt himself from liability for contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit.

6.13 **Default in Payment of Assessments; Lien.** Each monthly assessment, each special assessment and each obligation of an Owner under these Bylaws which is enforceable as a special assessment shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed. All sums assessed by the Association against a Unit which are unpaid shall constitute a lien against the Unit; such lien shall be prior to all other liens except (1) liens for taxes and assessments lawfully imposed by governmental authority against the Unit and (2) all sums unpaid on any mortgage of record which was recorded in the Bureau prior to the recordation of notice of a lien by the Association, and costs and expenses, including attorneys' fees as provided in such mortgages. If the Owner shall fail to pay an assessment when due, then the Owner shall pay an additional late charge assessment equal to five percent (5%) of the unpaid assessment for each such failure; in addition, all delinquent assessments shall bear interest at the rate of one percent (1%) per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments, in addition to any other remedies herein or by law provided hereof, the Board may enforce each such obligation as follows:

6.13.1 **Suit to Enforce Obligation.** By suit or suits at law to enforce each such assessment obligation or by non-judicial foreclosure or power of sale foreclosure pursuant to Hawaii Revised Statutes Chapter 667. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted by the Board on behalf of the Association. Each such action shall be brought in the name of the Association by its Board and the Board shall be deemed to be acting on behalf of all the Owners. In any such action the Unit Owner may be required to pay a reasonable rental for the Unit, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. Any judgment rendered in any such action shall include, where permissible under any law, interest

and a sum for reasonable attorneys' fees and costs in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two (2) members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

6.13.2 **Notice of Default.** At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting Owner, with a copy to the mortgagee of such Owner, if such mortgagee has furnished its name and address to the Board, which notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof.

6.13.3 **Lien Against Owner.** If such delinquency is not paid within ten (10) days after delivery of such notice to an Owner, the Board may elect to record in the Bureau a notice of lien against the Unit of such delinquent Owner. Such notice of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the Unit against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these Bylaws and the Act, and (5) that a lien is claimed against said described Unit in an amount equal to the amount of the stated delinquency. Any such notice of lien (or the release thereof) shall be signed and acknowledged by any two (2) members of the Board. Upon recordation of a duly executed original or copy of such notice of lien in the Bureau, the Board shall have all remedies provided in the Act or permitted by law, including without limitation non-judicial or power of sale foreclosure authorized by Hawaii Revised Statutes Chapter 667, as that chapter may be amended from time to time. Each default shall constitute a separate basis for a notice of lien or a lien. Such lien may be foreclosed as provided by law and the Association shall be entitled to recover the attorneys' fees and expenses it incurs in so doing.

6.13.4 **Certificate of Amount Owed.** For the purposes of this Section 6.13, a certificate executed by any two (2) members of the Board or by the Managing Agent shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his or her Unit (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee not to exceed Fifty and No/100 Dollars (\$50.00), provided that this limit may be adjusted from time to time by multiplying such dollar limit by the Cost of Living Factor.

6.13.5 **Mortgagee Rights.** Any holder, insurer or guarantor of a mortgage on any Unit may file a written demand for notice with the Board; upon filing such demand, such party shall be entitled to receive written notice from the Board of any default by the Owner of the Unit in question arising under the Declaration, Bylaws or Administrative Rules, which default has continued for not less than sixty (60) days.

6.14 **Collection from Lessee.**

6.14.1 **Board Right to Demand Payment.** If an Owner shall at any time rent or lease his or her Unit and shall default for a period of thirty (30) days or more in the payment of the Owner's monthly or special assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any lessee or occupant (hereinafter in this section referred to as "lessee") of the Owner occupying the Unit, the rent due or becoming due from such lessee to the Owner up to an amount sufficient to pay all sums due from the Owner, including interest, fines, penalties, and attorneys' fees, if any, and any such payment of such rent to the Board by the lessee shall be sufficient discharge of such lessee, as between such lessee and the Owner to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a consent to or approval of any lease by the Owner or a release or discharge of any of the obligations of the Owner hereunder or an acknowledgment of surrender

of any rights or duties hereunder. If the Board makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board to make such demand, but shall be obligated to make the said payments to the Board as demanded by the Board with the effect as aforesaid.

6.14.2 **Board Notice to Owner.** Before the Board exercises the rights provided by the foregoing subparagraph 6.14.1, the Board shall give the delinquent Owner written notice of its intent to do so. Such notice shall be sent to the Owner by first-class and certified mail to the most recent address that the Owner has designated, in writing, to the Board, shall set forth the exact amount that is due and owing by the Owner, and shall state that the Board intends to collect such amount from the Owner's lessee's rent, along with any other amounts that become due and remain unpaid.

6.14.3 **Limitation on Right to Collect from Lessee.** The Board may not exercise the rights provided by this Section if (i) a receiver has been appointed to take charge of the delinquent Owner's Unit pending a mortgage foreclosure, (ii) if a mortgagee is in possession pending a mortgage foreclosure, or (iii) if the tenant is served with a court order directing the lessee to pay the lessee's rent to a third party.

6.14.4 **Owner's Implied Consent.** Each Owner's acquisition of a Unit in the Project shall be deemed to be consent to the written policy contained in this Section and the Board's exercise of the rights provided by this Section.

6.15 **Termination of Services and Privileges upon Default.** If an Owner defaults in the payment of the Owner's monthly or special assessments, the Board may, at its option, so long as such default shall continue, terminate access from the Owner's Unit to the Common Elements and cease supplying such Unit any and all services, including utilities, that the Association supplies or pays for; provided that the Board shall first give sixty (60) days' written notice of nonpayment and intent to terminate access and services to the Owner and to the holder of any first mortgage on the Owner's Unit. Each Owner's acquisition of a Unit in the Project shall be deemed to be consent to the written policy contained in this Section and the Board's exercise of the rights provided by this Section.

6.16 **Attorneys' Fees and Expenses of Enforcement.**

6.16.1 **Board Right to Collect Fees and Expenses.** All costs and expenses, including reasonable attorneys' fees and costs, incurred by or on behalf of the Association by the Board for: (i) collecting any delinquent assessments against any Owner's Unit; (ii) foreclosing any lien thereon; or (iii) enforcing any provision of the Declaration, Bylaws, Administrative Rules, and the Act; against an Owner, occupant, lessee, employee of an Owner, or any person who may in any manner use the Project, shall be promptly paid on demand to the Board by such person or persons; provided that if the claims upon which the Board takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees and costs, incurred by any such person or persons as a result of the action of the Board, shall be promptly paid on demand to such person or persons by the Board on behalf of the Association, as a Common Expense.

6.16.2 **Owner Right to Collect Fees and Expenses.** If any claim by an Owner is substantiated in any action against the Association, any of its officers or directors, or its Board to enforce any provision of the Declaration, these Bylaws, the Administrative Rules, or the Act, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless: (i) The Owner first shall have demanded and allowed reasonable time for the Board to pursue such enforcement; or (ii) The Owner demonstrates to the satisfaction of the court or arbitrator that a demand for enforcement made to the Board would have been fruitless.

6.16.3 **Non-prevailing Owner Liability for Fees and Expenses.** If any claim by an Owner is not substantiated in any court action against the Association, any of its officers or directors, or the Board to enforce any provision of the Declaration, Bylaws, Administrative Rules, or Chapter 514B, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association except as otherwise provided by the Act.

6.17 **Notification of Maintenance Fee Increases.** The Managing Agent or the Board shall notify the Owners in writing of increases in any assessments at least thirty (30) days prior to such an increase.

6.18 **Financial Records.** The Board, or the Managing Agent at the direction and under the supervision of the Board, shall maintain, at the Project or at such other place within the State of Hawaii which shall be convenient for the Unit Owners, accurate and detailed books of account and other financial records, which shall enumerate all receipts and expenditures of the Association, shall specify and itemize all expenses paid or incurred in connection with the restoration, repair, maintenance, and replacement of the Common Elements, and any other expenses incurred, and shall include all vouchers authorizing the payment of such expenses and monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for Common Expenses. The financial records of the Association, including such records, vouchers and statements, shall be available for examination and copying by Owners as set forth in Section 10.16.

6.19 **Prohibition on Telephonic Transfer and Commingling of Funds.** Neither the Board nor Managing Agent shall transfer by telephone any Association funds between accounts including, but not limited to, the Common Expense, General Operating Reserve and Capital Improvements Reserve Fund accounts. The funds in the Common Expense accounts, General Operating Reserve account and Capital Improvements Reserve accounts shall not be commingled with funds of other activities, such as rental operations. The Managing Agent shall not commingle any Association funds with the Managing Agent's own funds.

6.20 **Deposits in Financial Institutions; Investments.**

6.20.1 All funds collected by the Association or by the Managing Agent shall be: (i) Deposited in a financial institution, including a federal or community credit union, located in the State whose deposits are insured by an agency of the United States government; (ii) Held by a corporation authorized to do business under Article 8 of Hawaii Revised Statutes Chapter 412; (iii) Held by the United States Treasury; or (iv) Purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission of the United States, has an office in the State of Hawaii, and the accounts of which are held by member firms of the New York Stock Exchange or the National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

6.20.2 All funds collected by the Association, or by the Managing Agent for the Association, shall be invested only in: (i) Demand deposits, investment certificates, and certificates of deposit; or (ii) Obligations of the United States government, the State of Hawaii, or their respective agencies, or mutual funds comprised solely of investments in such obligations; provided that in either case those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the Owners at an annual or special meeting of the Association at an annual or special meeting or by written consent of a majority of the Owners. The Board must approve in advance any investment on behalf of the Association that will not mature for more than one (1) year and must also clearly disclose all such investments to the Owners at the annual meeting held pursuant to Section 2.6.3.

6.21 **Disbursement Requirements.** The Managing Agent shall keep and disburse funds collected on behalf of the Owners in strict compliance with any agreement made with the

Association, Hawaii Revised Statutes Chapter 467, the rules of the Real Estate Commission, and all other applicable laws.

6.22 **Embezzlement.** Any person who embezzles or knowingly misapplies Association funds received by the Managing Agent or the Association shall be guilty of a class C felony or such other penalty as may be proscribed by law.

6.23 **Association Borrowing.** The Board may borrow funds from time to time on behalf of the Association from one or more lenders for the repair, replacement, maintenance, operation, or administration of the Common Elements, the acquisition of equipment and property (including without limitation one or more Residential Units to house the Project's resident manager), or the making of additions, alterations, or improvements to the Common Elements. The cost of any such borrowing, including without limitation, any principal, interest, loan fees or other expense, shall be a Common Expense, provided that if any such borrowing is for repair, replacement, maintenance or operation of Limited Common Elements, the costs of the borrowing shall be allocated to the Owners to which the Limited Common Elements are appurtenant. Prior to any such borrowing, the Board shall provide the Owner's written notice of the proposed borrowing stating its purpose, key terms, and whether costs of the borrowing will be a Common Expense payable by all Owners or only certain group of the Owners. The prior approval of a Majority of Unit Owners shall be required for such borrowing and if the costs of such borrowing are to be paid by a certain group of Unit Owners, a majority of those Unit Owners must approve it as well.

ARTICLE 7 PROPERTY INSURANCE AND RESTORATION

7.1 **Property Insurance.** The Board shall procure and maintain insurance with an insurance company licensed to do business in the State of Hawaii covering the Common Elements as shown on the Condominium Map against loss or damage by fire or other casualty in an amount sufficient to provide for the replacement or repair thereof, including coverage for increases in construction costs due to increased building code requirements. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Board for rebuilding, repairing, or otherwise reinstating the damaged or destroyed improvements 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 as shall first be approved by the Board. The insurance coverage shall be written in the name of the Association. Premiums shall be Common Expenses and allocated as set forth in Section 6.7. The insurance policy ("Policy"):

7.1.1 **Owner Insurance.** Shall contain no provision limiting or prohibiting other insurance by the Owner of any Unit, such right being provided by statute but, if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any such other insurance. If any loss intended to be covered by insurance carried by the Board shall occur and the proceeds payable thereunder shall be reduced by reason of any insurance carried by any Unit Owner, such Unit Owner shall 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;

7.1.2 **Coverage for Ongoing Hazards and Breach of Warranty.** Shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building(s), whether or not within the control or knowledge of the Association or Board or, if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by the Association or the Board or the Owner or tenant of any Unit or any other person under any of them, or by reason of any act or neglect of the Association or the Board or the Owner or tenant of any Unit or any other person under any of them;

7.1.3 **Notice of Cancellation or Non-renewal.** Shall provide that the Policy may not be cancelled, non-renewed or substantially modified (whether or not requested by the Association) except by giving to the Association and the Board and to the Owner and/or mortgagee of each Unit who shall have requested such notice of the insurer in writing addressed to him at the premises, thirty (30) days' written notice of such cancellation;

7.1.4 **Waiver of Subrogation.** Shall contain a provision waiving any right of subrogation by the insurer to any right of the Association, Board, or Owner against any of them or any other persons under them;

7.1.5 **Repair or Rebuilding.** Shall contain a provision waiving any right of the insurer to repair, rebuild or replace if a decision is made pursuant to Section 7.5 not to repair, reinstate, rebuild or restore the damage or destruction;

7.1.6 **Adjustment of Losses.** Shall provide that any loss shall be adjusted with the Association and the mortgagee of any Unit directly affected by the loss;

7.1.7 **Mortgage Clause.** Shall contain a standard mortgage clause which: (i) Shall name the holder of any mortgage affecting any Unit whose name shall have been furnished to the Board; (ii) Shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Association, Board, or the Owner or tenant of any Unit or any person under any of them; (iii) Shall waive (a) any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy; (b) any requirement that the mortgagee pay any premium (provided, however, in case the Association shall fail to pay the premium due or to become due under the policy, the mortgagee may pay the same prior to the effective date of the termination of the policy), (c) any contribution clause, and (d) 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 or to require an assignment of any mortgage to the insurer; (iv) Shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a Trustee selected by the Board who shall be a substantial bank or trust company doing business in Hawaii; (v) Shall provide that any reference to a mortgagee in the Policy shall include all mortgagees on any Unit, in order of preference whether or not named therein;

7.1.8 **Payment of Proceeds.** Shall provide for payment of the proceeds to the Trustee; and

7.1.9 **Written Policy Summary.** Shall contain a provision requiring the insurance carrier, at the inception of the Policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the Policy. The summary shall include the type of Policy, a description of the coverage and the limits thereof, amount of annual premium, and renewal dates. The Board shall provide this information to each Unit Owner.

7.2 **Commercial General Liability - Occurrence Form.** The Association shall procure and maintain from a reputable company or companies a policy or policies (herein called the "Policy") of liability insurance to insure the Association, the Board, the officers, each Unit Owner, and the Managing Agent and other employees of the Association against claims for personal injury, death and property damage arising out of the condition or use of the Common Elements or activities thereon. The Association shall have no obligation to maintain liability insurance with respect to claims arising from the condition or use of the Units or other areas use of which is restricted to an Owner.

7.2.1 **Coverage for Ongoing Hazards and Breach of Warranty.** The Policy shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Association or the Board, or by any breach of warranty or condition caused by the Owner of any

Unit, or by any act or neglect of the Association, the Board, or the Owner of any Unit or any persons under any of them;

7.2.2 **Notice of Cancellation or Non-Renewal.** The Policy shall provide that the Policy may not be cancelled (whether or not requested by the Association) or non-renewed except by giving to the Association and the Board and to the Owner of each Unit and any mortgagee, who shall have requested such notice of the insurer in writing, thirty (30) days' written notice of such cancellation;

7.2.3 **Minimum Limits.** The liability Policy shall contain the following minimum limits, or such higher limits as the Board may from time to time establish with due regard to then prevailing prudent business practice: \$2,000,000 - General Aggregate; \$2,000,000 - Products and Completed Operations Aggregate; \$1,000,000 - Each Occurrence; \$1,000,000 - Personal and Advertising Injury; \$100,000 Fire and Water Damage; \$10,000 Medical Expense;

7.2.4 **Waiver of Subrogation.** To the extent reasonably obtainable, the Policy shall contain a waiver by the insurer of any right of subrogation to any right of the Association, the Board, or the Owner of any Unit against any of them or any other persons under them; and

7.2.5 **Severability of Interest Endorsement.** The Policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of the Owner because of the negligent act of the Association or any other Owner.

7.3 **Flood Insurance and Insurance Against Additional Risks.** The Project is not currently in an area designated by the Federal Emergency Management Agency as an identified flood hazard area. If in the future the Project is designated to be within such an area, the Association shall procure, purchase and at all times maintain flood insurance under the provisions of the federal Flood Disaster Protection Act of 1973, as amended, with the same coverage and terms as required for fire insurance under Section 7.1, but only to the extent required by law or otherwise deemed advisable by the Association. The Board may also procure insurance against such additional risks as the Board may deem advisable for the protection of the Unit Owners of a character normally carried with respect to properties of comparable character and use in the State of Hawaii, the premiums for which shall be a common expense.

7.4 **Miscellaneous Insurance Provisions.**

7.4.1 All insurance required under these Bylaws will be obtained and maintained by the Association, acting through the Board, from an insurance company authorized to do business in the State of Hawaii having a "A" or better general policyholder's rating or a "6" or better financial performance rating by Best's Insurance Reports. To the extent that the insurance required hereunder is not reasonably available, the Board shall obtain and maintain such available insurance as shall most nearly approximate the insurance coverage required hereunder. The Board shall review not less frequently than annually the adequacy of its insurance program and shall report in writing the Board's conclusions and action taken on such review to the Owner of each Unit, and to the holder, insurer or guarantor of any mortgage on any Unit who shall have requested a copy of such report.

7.4.2 At the request of the holder, insurer or guarantor of any mortgage of any Unit, the Board shall furnish to such party a copy of the Policy described in Section 7.1 and of any other Policy to which a mortgagee endorsement shall have been attached, and proof satisfactory to such mortgagee that payment of premiums on such policy has been made for the period for which the party may request such proof. Copies of every policy of insurance procured by the Association shall be available for inspection by any Unit Owner (or purchaser holding a contract to purchase an interest in a Unit) at the office of the Managing Agent. Any holder, insurer, or guarantor of a mortgage on any Unit may file a written demand for notice with the Board; upon

filing such demand, the party will be entitled to receive notice of any casualty loss to the Unit or to the Project.

7.4.3 Any coverage procured by the Association shall be without prejudice to the right of the Owners of Units to insure such Units and the contents thereof for their own benefit at their own expense. The Board shall be entitled to obtain and maintain insurance with a deductible. In the event of loss covered by insurance, the deductible shall 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, the deductible shall be paid by the Association as a Common Expense.

7.5 **Damage and Destruction.** If the Project is damaged by fire or other casualty which is insured against and said damage is limited to a single Unit, the insurance proceeds shall be used by the Trustee for payment of the contractor employed by the Board to rebuild or repair such Unit, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor (and including improvements of the Unit Owner but only if such improvements are covered by insurance carried by the Board pursuant to Subsection 7.1.1 and then only to the extent made possible by actual recovery of the insurance proceeds thereunder). If such damage extends to two or more Units or extends to any part of the Limited Common Elements or to the Common Elements:

7.5.1 **Repair of Damage.** The Board shall thereupon contract to repair or rebuild the damaged portions of the building or buildings, including all Units so damaged, as well as the Common Elements, in accordance with plans and specifications therefor, (and including improvements of the Unit Owner but only if such improvements are covered by insurance carried by the Board pursuant to Subsection 7.1.1 and then only to the extent made possible by actual recovery of the insurance proceeds thereunder), which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board as provided in Article 15 of the Declaration; provided that in the event said modified plan or any decision not to rebuild made pursuant to the Declaration eliminates any Unit and such Unit is not reconstructed, the Trustee shall pay to the Owner of said Unit and/or said Owner's mortgagee, if any, the portion of said insurance proceeds allocable to said Unit (less the proportionate share of said Unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Section 7.5.

If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding such Common Elements, the Board is expressly authorized to pay such costs in excess of the insurance proceeds from the General Operating Reserve and the Capital Improvements Reserve Fund, or from any applicable separate reserve fund established with respect to the Common Elements repaired or rebuilt, and, if such funds are insufficient for this purpose, the Board shall levy a special assessment for the balance on the Owners in accordance with Section 6.7. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any Unit shall be specially assessed against such Unit and said special assessment shall be secured by the lien created under Section 7.4 hereof.

7.5.2 **Payment.** The cost of the work (as estimated by the Board) shall be paid out from time to time or at the direction of the Board as the work progresses, but subject to the following conditions:

7.5.2.1 **Professional Oversight of Work.** An architect or engineer (who may be an employee of the Board) shall be in charge of the work.

7.5.2.2 **Request for Payment.** Each request for payment shall be made on seven (7) days' prior notice to the Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Trustee the sum requested does not exceed the value of the work done to the date of such certificate.

7.5.2.3 **Lien Waivers.** Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record.

7.5.2.4 **Occupancy Certificates.** The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.

7.5.2.5 **Trustee Payment as Common Expense.** The fees and expenses of the Trustee as determined by the Board and the Trustee shall be paid by the Association as Common Expenses as set forth in Section 6, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Trustee.

7.5.2.6 **Other Payment Conditions.** Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

7.5.3 **Excess Funds.** Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Trustee shall be paid or credited to the Owners of the Units (or to the holder of any mortgage on a Unit if there be a mortgage) in proportion to their respective Common Interests.

7.5.4 **Partial Waiver of Covered Claims.** To the extent that any loss, damage or destruction to the building(s) or other property is covered by insurance procured by the Association, the Association shall have no claim or cause of action for such loss, damage or destruction against any Unit Owner or lessee. To the extent that any loss, damage or destruction to the property of any Unit Owner or lessee is covered by insurance procured by such Owner or lessee, such Owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other Unit Owner, or the Association. All policies of insurance referred to in this Section 7.5 shall contain appropriate waivers of subrogation.

7.6 **Waiver.** Pursuant to Section 514B-143 of the Act, the Board may in its discretion waive or modify the insurance requirements set forth in this Article 7.

ARTICLE 8 MORTGAGES

8.1 **Notice to Board; Record of Mortgagees.** A Unit Owner who mortgages the Owner's interest in a Unit shall promptly notify the Board of the name and address of the mortgagee and within ten (10) days after the execution of the same shall file a conformed copy of the mortgage with the Board; the Board shall maintain a record of such information.

8.2 **Notice of Unpaid Common Expenses.** The Board, whenever so requested in writing by an Owner or the holder, insurer or guarantor of any mortgage of an interest in a Unit, shall, upon receipt of payment of a reasonable charge therefor, promptly report any then unpaid assessments for Common Expenses due from the Owner of the Unit involved.

8.3 **Notice of Default.** The Board, when giving notice to a Unit Owner of a default in paying Common Expenses or other default, shall send a copy of such notice to each holder, insurer or guarantor of a mortgage covering such Unit or interest therein who has requested such notice in writing.

8.4 **Examination of Records.** Each Owner and each holder, insurer or guarantor of any mortgage of an interest in a Unit shall be permitted to examine the books of account of the Association at reasonable times, on business days, but not more often than once a month. Upon written request, each Owner and each holder, insurer or guarantor of any mortgage on a Unit shall be entitled to a copy of budgets, financial statements, reserve studies and other such reports prepared in connection with the Project upon payment of a reasonable charge therefor.

8.5 **Mortgagee Protection.** Notwithstanding all other provisions hereof:

8.5.1 **Subordination of Liens.** The liens created hereunder upon any Unit and its appurtenant interests in the Common Elements shall be subject and subordinate to, and shall not affect the rights of, the holder of any indebtedness secured by any mortgage made for value that was recorded in the Bureau prior to the Association's recordation in the Bureau of a notice of such lien, provided that after the foreclosure of any such mortgage there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such Unit if falling due after (i) the recordation of the commissioner's deed pursuant to such foreclosure sale, (ii) the thirty-sixth day after the filing of the court order confirming such sale, or (iii) the sixtieth day after the hearing at which the court grants the motion to confirm such sale, whichever occurs first, which lien shall have the same effect and be enforced in the same manner as provided in Section 6.10 hereof;

8.5.2 **Amendments Not to Affect Mortgagee Rights.** No amendment to this Section 8.5 shall affect the rights of the holder of any such mortgage recorded in the Bureau prior to the filing or recordation of such amendment which does not join in or consent to the execution thereof.

8.5.3 **Notice of Abandonment.** Except as provided in Section 514B-47 of the Act, the Project shall not be abandoned, terminated or removed from the Condominium Property Regime created by the Declaration and the Act without the prior written approval of all mortgagees.

8.5.4 **Other Notices.** Any holder, insurer or guarantor of a first mortgage of a Unit whose interest appears in the Association's records and who has delivered a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Unit number) shall be entitled to:

8.5.4.1 Prior written notice of any proposed amendment to the Declaration or these Bylaws effecting a change in (i) the boundaries of a Unit subject to its mortgage, (ii) the Common Interest pertaining to the Unit, or (iii) the purposes to which the Unit, the Limited Common Elements appurtenant thereto or the Common Elements are restricted;

8.5.4.2 Prior written notice of any proposed termination of the Project;

8.5.4.3 Timely written notice of any actual or threatened condemnation or eminent domain proceeding affecting the Property or any portion thereof;

8.5.4.4 Timely written notice of any significant damage or destruction to the Common Elements or to a Unit on which there is a first mortgage held, insured or guaranteed by such holder;

8.5.4.5 A copy of any bond required to be posted before commencing or permitting construction of any improvements on or to the Project;

8.5.4.6 Timely written notice of all meetings of the Association (the holder or insurer of a first mortgage being permitted to designate a representative to attend all such meetings);

8.5.4.7 Notice of any default by the Owner of the Unit involved which is not cured within sixty days;

8.5.4.8 Upon request therefor, a certificate of any then unpaid assessments for common expenses due from the Owner of the Unit involved;

8.5.4.9 A copy of all pleadings filed in any lawsuit, administrative proceedings or other action affecting the Project, or any portion thereof, upon specific written request and at such person's expense; and

8.5.4.10 Prior written notice of any proposal to subdivide, encumber, sell or transfer the Common Elements or any part thereof, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Project shall not be deemed a transfer within the meaning of this subsection.

ARTICLE 9 CONDEMNATION

9.1 **Condemnation.** If there is a taking in condemnation or by eminent domain of part or all of the Project, all compensation payable for or on account thereof shall be payable to a condemnation Trustee. If the entire Project is taken or so much thereof that the Association terminates the Condominium Property Regime with respect to the Project, then the Trustee shall pay to each Unit Owner and mortgagee, as their interests may appear, the portion of the condemnation proceeds allocable to the Owner's Unit. Otherwise, the Board shall arrange for the repair and restoration of the Project in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board.

9.2 **Partial Condemnation or Taking.** In the event of a partial taking in which any Unit is eliminated or not restored, the Trustee shall disburse the portion of the proceeds of such award allocable to said Unit, less the proportionate share of said Unit in the cost of debris removal, to the Owner of said Unit and the mortgagee, if any, as their interests may appear, in satisfaction of their interests in said Unit. The Trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs thereof the Board is expressly authorized to pay such excess costs from the General Operating Reserve and Capital Improvements Reserve Fund and if the General Operating Reserve and Capital Improvements Reserve Fund are insufficient for this purpose the Board shall levy a special assessment on the Owners of the Units in proportion to their Common Interests.

In the event sums are received in excess of the cost of repairing and restoring the Project, such excess proceeds shall be divided among the Owners of the Units in accordance with their Common Interests. In the event all or any of the Units are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each Unit so taken, the amount allocable to each Unit (including the Unit's appurtenant interest in the Common Elements) shall be determined by a real estate appraiser who shall be a member of the American Institute of Real Estate Appraisers or any successor association and who shall have acted on behalf of the Association in the condemnation proceedings; or, if no such appraiser shall have acted on behalf of the Association, or if more than one (1) appraiser shall have so acted, then the Board shall select the appraiser; provided, however, if the Owners of the Units taken, within fifteen (15) days after all of such Owners have received notice of the appointment of such appraiser, shall elect, by a majority vote, to have the allocation determined by a panel of three (3) appraisers, then Board shall select three (3) qualified appraisers and the decision of any two of them shall determine the allocation of the condemnation proceeds. The Association shall represent the Owners in all proceedings, negotiations, settlements, and agreements relating to any taking in condemnation or by eminent domain.

9.3 **Notice to Mortgagees.** Any holder, insurer or guarantor of any mortgage of an interest in any Unit may file a written demand for notice with the Board; upon filing such notice, such party shall be entitled to receive notice of any condemnation proceeding.

ARTICLE 10 GENERAL PROVISIONS

10.1 **Rules and Regulations.** Each Owner recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations ("Administrative Rules") as the Board may deem necessary for the management and control of the Project, including, without limitation, the Common Elements, the Limited Common Elements, and, if necessary for the protection of the Project, the Units, and the Owner agrees that the Owner's rights under the Declaration and Bylaws shall be in all respects subject to appropriate Administrative Rules consistent therewith, which shall be taken to be a part hereof; and the Owner agrees to obey all such Administrative Rules as the same now are or may from time to time be amended, and see that the same are faithfully observed by the invitees, guests, employees and lessees of the Owner; and the Administrative Rules shall uniformly apply to and be binding upon all occupants of the Units. The following provisions shall govern the promulgation of the Administrative Rules authorized herein, which shall include the establishment of a system of fines and penalties:

10.1.1 The Board shall have the power to adopt such Administrative Rules, including any amendments thereof, as are consistent with and in furtherance of the Act, these Bylaws, the Declaration, and the law existing at the time of such adoption. Upon the vote or written consent of a majority of the Board, such Administrative Rules or amendments shall take effect. Any such Administrative Rules shall apply uniformly to all Owners, except as expressly provided herein. Notwithstanding the foregoing, no new or amended Administrative Rules restricting or affecting the occupancy or use of Commercial Units shall be effective without the consent of the Owner(s) of those Units.

10.1.2 The Board in its discretion shall recommend to the Owners a schedule of specific fines and penalties for the violation by any Owner of the provisions of these Bylaws, the Declaration and the Administrative Rules. Upon the vote or written consent of a Majority of the Owners, such schedule of fines and penalties shall be adopted and shall become binding on all Owners and shall be enforceable by the Association as a special assessment enforceable under Section 6.4. Such fines and penalties shall not be deemed to be exclusive and the Board shall have such other remedies as are provided for by applicable law, these Bylaws, the Declaration and the Administrative Rules.

10.1.3 Any Administrative Rules promulgated pursuant to this Section shall provide that no fine or penalty shall be levied without the following procedural safeguards which

safeguards may be waived by the Owner or other person against whom the Association proposes to impose a penalty:

10.1.3.1 A written statement of the alleged violations shall be provided to any Owner or other person against whom such charges are made, and such written statement shall provide a date on which the charges shall be heard;

10.1.3.2 No proceedings under this Section shall be brought against any Owner or other person unless such Owner or other person shall have received a written statement of charges at least fifteen (15) days prior to that hearing;

10.1.3.3 No proceeding shall be brought against any Owner or other person more than sixty (60) days after the occurrence of the events upon which the charge is based, unless such Owner or the other parties involved are unavailable during such sixty (60) day period;

10.1.3.4 The Board shall appoint a panel of three (3) capable persons (one of whom shall be designated as chairperson) who may or may not be Owners, and who shall hear the charges and evaluate the evidence of the alleged violation;

10.1.3.5 At such hearing, the Owner or other person so charged shall have the right to present oral and written evidence and to confront and cross-examine adverse witnesses;

10.1.3.6 The panel shall deliver to the Owner or other person so charged within seven (7) days after the hearing a written decision which specifies the fines or penalties levied, if any, and the reasons therefor.

10.2 Abatement and Enjoyment of Violations by Unit Owners. The violation of any Administrative Rules, or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws:

10.2.1 To enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or

10.2.2 To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees and costs, shall be borne by the defaulting Unit Owner; provided, however, that the Board shall not summarily alter or demolish any improvements constructed by an Owner without first initiating judicial proceedings.

10.3 Maintenance and Repair of Units. All maintenance of and repairs to any Unit shall be made by the Unit's Owner at the Owner's expense.

10.4 Maintenance and Repair of Common Elements and Certain Other Areas. All maintenance, repairs and replacements to the Common Elements and the Limited Common Elements shall be made by the Board and shall be charged to the Owners as set forth in Section 6 unless necessitated by the negligence, misuse or neglect of an Owner or occupant of a Unit in which case such expense shall be charged to the Owner of such Unit.

10.5 Additions or Alterations by Residential Unit Owners. Except as set forth in the Declaration, no Owner shall make any addition or alteration in or to a Residential Unit without first

complying with the requirements of this Section and securing the prior written approval of the Board. This section does not apply to Commercial Units.

10.5.1 Written Submission of Request for Approval and Requirement of Board Action. No Unit Owner shall commence work on any alterations or additions within a Unit until the Owner has submitted to the Board a written request (which may include plans and specifications if the Board so requires) and the Board (or a subcommittee of the Board established for such purpose) either approves the request in writing or the Board is deemed to have approved the request as provided in Section 10.5.2 below.

10.5.2 Time Limit for Board Response. The Board must respond to the submission of a request within sixty (60) days of the receipt thereof by the Board; if the Board shall fail to disapprove the request or to request revisions or amendments by the Owner, the request shall be deemed to be approved, provided that nothing contained in this section shall authorize or permit any work affecting the Common Elements, the exterior appearance of the Project or the rights of any other Owner.

10.5.3 Board May Impose Reasonable Conditions. The Board may impose reasonable conditions on its approval of any such request including, without limitation, requiring (i) changes or amendments to the request, including changes or amendments designed to minimize the potential effects of such additions or alterations on Owners or occupants of other Units, (ii) supervision of the work by an architect, or engineer, or other construction professional, and (iii) performance of the work by a licensed contractor in cases where the work may affect the Common Elements, the exterior of the Project, or the rights of any other Unit Owners. Without limitation to the foregoing, the Board may, as a condition to approving any request to install tile, hardwood, or similar hard surface flooring, require the Owner to install subfloor padding or acoustical insulation.

10.5.4 Board May Require a Halt in Construction or Removal of Unauthorized Work. The Board may inspect the work from time to time and direct a halt in construction for any reason and the Board may require the removal or correction of any work which was (i) not authorized by the Board, or (ii) which may adversely affect the Common Elements, the exterior of the Project or the rights of any other Unit Owner.

10.6 Right of Access. The Association, acting through the Board or its designee, shall have the right of access to each Unit or its exclusive Limited Common Elements, without liability for trespass or other consequential damages, from time to time during reasonable hours as may be necessary for the operation of the Project upon twenty-four (24) hours written notice, or, at any time without notice, for making emergency repairs in the Unit necessary to prevent damage to the Common Elements or to another Unit or Units.

10.7 Owners May Incorporate. All of the rights, powers, obligations and duties of the Owners set forth hereunder may be exercised and enforced by a non-profit, membership corporation, formed under applicable laws for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a Majority of the Unit Owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and Bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which said action is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect. Nothing contained herein shall prohibit the Association from forming a non-profit corporation or limited liability company for the purpose of holding title to real property. In the event of a corporation or company is established pursuant to this Section, the Board shall be responsible for taking all steps required to maintain such corporation or company in good standing and for filing all tax returns required with respect thereto.

10.8 **Sales or Rental Activities by Employees of the Association.** Unless authorized by a vote of not less than sixty-seven percent (67%) of the Unit Owners, employees of the Association shall not, except as to any Unit owned by the Association, act as sales or rental agents with respect to Units in the Project.

10.9 **Notices.** Except as otherwise expressly provided herein, all notices hereunder shall be in writing and sent by (1) hand delivery, (2) first class mail, postage prepaid, or (3) at the written election of the Owner, by email. All notices to any Owner shall be sent to the Owner's address at the Project or to such other address as may have been designated by him from time to time, in writing, to the Board. Except as otherwise expressly provided in these Bylaws, all notices to mortgagees of Units shall be sent by first class mail, postage prepaid, to their respective addresses, as designated by them from time to time, in writing, to the Board. All notices shall be deemed to have been given when mailed, regardless of the actual receipt thereof, except notices of change of address which shall be deemed to have been given when received.

10.10 **Captions.** The captions herein 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 thereof.

10.11 **Gender.** The use of any gender in these Bylaws shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

10.12 **Waiver.** No restriction, condition, obligation or provision contained in these Bylaws shall 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 thereof which may occur. No act or omission to act shall be deemed to constitute a waiver on the part of the Association or its Board, unless the same is expressed in writing and signed by an officer or Director of the Association or the Managing Agent.

10.13 **Interpretation.** The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform Condominium Property Regime whereby the Owners of Units shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

10.14 **Amendment.** The provisions of these Bylaws, other than this paragraph, may be amended at any time by the vote or written consent of the Owners of Units to which are appurtenant not less than sixty-seven percent (67%) of the Common Interest, which amendment shall be effective upon recording in the Bureau of an instrument in writing, signed and acknowledged by such Owners or by two (2) officers of the Association; provided, however, that each one of the particulars set forth in Section 514B-108 of the Act shall always be embodied in these Bylaws; and provided further that (ii) the vote or written consent of the Owners of Units to which are appurtenant not less than sixty-seven percent (67%) of the Common Interest, and (ii) Fifty-One Percent (51%) Eligible Mortgage Holders' Consent shall be required to make any amendment of a material adverse nature to mortgagees. The failure of an Eligible Mortgage Holder to respond within sixty (60) days of mailing of a written request for such consent that is mailed, postage prepaid, registered or certified mail, return receipt requested, to the last known address of such mortgagee, shall be deemed to constitute consent. Notwithstanding the foregoing and notwithstanding the sale of any of the Units, the Developer acting alone may amend these Bylaws to exercise the rights reserved to the Developer in Article 18 of the Declaration or elsewhere in the Declaration or these Bylaws.

10.14.1 Notwithstanding the provisions of Section 10.14, (i) no amendment to these Bylaws affecting the use or occupancy of the Commercial Units may be adopted by vote of the Owners without the consent of the Owners of such Commercial Units, (ii) no amendment of these Bylaws affecting a Unit owned by the Master Association may be adopted without the consent of

the Master Association, and (iii) no amendment to these Bylaws affecting the Development Rights, the use or occupancy of any Unit owned by the Developer or an affiliate of the Developer, or the ownership, use or control of any parking areas within the Project may be adopted by vote of the Owners without the consent of the Developer. This Section 10.14.1 may not be amended by vote of the Owners without the consent of the Developer, the Master Association and all of the Commercial Unit Owners.

10.14.2 Any proposed amendment to or addition to the Bylaws together with the rationale for the proposal may be submitted by the Board or by a volunteer Unit Owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by Owners of Units to which are appurtenant not less than twenty-five (25%) percent of the Common Interest. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the Unit Owners at the expense of the Association for vote or written consent without change within thirty (30) days of the receipt of the petition by the Board. The percentage vote or written consent required to adopt the proposed bylaw shall be as set forth in Section 15(a), above; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the bylaw is duly adopted, then the Board shall cause the amendment to the Bylaws to be recorded in the Bureau. The volunteer Unit Owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board. This subsection shall not preclude any Unit Owner or voluntary Unit Owner's committee from proposing any bylaw amendment at any annual Association meeting.

10.14.3 These Bylaws may be restated as set forth in Section 514B-110 of the Act.

10.15 **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

10.16 **Examination of Documents of the Association.** The minutes of meetings of the Board and Association and the Association's financial records, including, without limitation, audit reports and budgets, shall be available for examination by Unit Owners or by the holder, insurer or guarantor of any mortgage pertaining to any Unit. Copies of such minutes of meetings and financial records shall be provided to any Owner and to the holder, insurer or guarantor of any mortgage pertaining to any Unit upon such party's request and upon payment of a reasonable charge for duplicating, postage, stationery and other administrative charges. Such Association documents shall be made available as follows:

10.16.1 The Association's most current financial statement and minutes of the most current Board meeting, once approved, shall be available to any Owner by email or posting to the Association's website at no cost or on twenty-four hour loan, at a convenient location designated by the Board.

10.16.2 To the extent that such records are maintained in printed form, as opposed to records maintained on electronic or computer storage media, the following documents shall be available at convenient hours at a place designated by the Board: (i) Minutes of meetings of the Board and the Association for the current and prior year; such minutes of meetings shall include the recorded vote of each Director on all motions except motions voted on in executive session; and (ii) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the Association and the list of delinquent assessment accounts of ninety (90) days or more for the current and prior year.

10.16.3 Proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election shall be available for inspection for a period of thirty (30) days following any association

meeting, after which time proxies and ballots may be destroyed. Tally sheets, Owners' check-in lists, and the certificate of election shall be retained as Association records.

10.16.4 An Owner may file a written request with the Board to examine other documents of the Association. The Board shall give written authorization for inspection or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

10.16.5 As to any request for inspection under the above Sections 10.16.2, .3, or .4, the Board may require the party requesting inspection to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the Association, its members or both, and that in the event that the administrative time to respond to such request exceeds eight (8) hours in any calendar year, the party requesting inspection shall pay for administrative time in excess of eight (8) hours per year.

10.16.6 The Managing Agent may dispose of Association records which are more than five (5) years old without liability if the Managing Agent first gives the Board with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board within sixty (60) days, which notice contains an itemized list of the records which the Managing Agent intends to destroy.


10.16.7 No person shall knowingly make any false certificate, entry or memorandum upon any of the books or records of the Managing Agent or the Association. No person shall knowingly alter, mutilate, destroy or conceal and books or records of the Managing Agent or the Association.


10.17 **Membership List.** Each Owner shall promptly file with the Board and Managing Agent a true and complete copy of each document whereby such Owner acquired an ownership interest in the Unit, including, without limitation, any Unit Deed, lease, mortgage, Agreement of Sale, condominium conveyance document, or other instrument entitled to recordation in the Bureau. The Board or Managing Agent, under the direction of the Board, shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under Agreements of Sale, if any. The list shall be maintained at a place designated by the Board and a copy shall be available, at a reasonable charge, to any Owner who furnishes to the Managing Agent or Board a duly executed and acknowledged affidavit stating that the list (a) will be used by such Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters and (b) shall not be used by such Owner or furnished to anyone else for any other purpose.

10.18 **Project Documents.** The Managing Agent shall maintain at its office accurate copies of the Declaration, these Bylaws, a current list of all Unit Owners of whom it has been informed, the Administrative Rules, a sample original Unit Deed, and all public reports issued for the Project and any amendments thereto. The Managing Agent shall provide copies of those documents transmitted to the Managing Agent to Unit Owners, the holders, insurers, and guarantors of mortgages on Units, and prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs.

IN WITNESS WHEREOF, Developer has adopted these Bylaws as of the date first set forth above.

THE COLLECTION LLC
By A&B Properties, Inc.
Its Manager

By: 
Name: RICHARD B. STACK
Its SENIOR VICE PRESIDENT

By: 
Name: ALYSON J. NAKAMURA
Its SECRETARY

FEE OWNER JOINDER

Fee Owner, as owner of the fee simple interest in the Real Property described in **Exhibit A** to the Declaration, hereby joins in these Bylaws of the Association of Unit Owners of The Collection and pursuant to Sections 514B-108 of the Act.

Fee Owner, however, is not the Developer of the Project and makes no representations or warranties of any kind, express or implied, with respect to any and all aspects of the Project. The Developer, and not the Fee Owner, shall be solely responsible for all aspects of the Project, including, without limitation, the marketing, sale, development, and construction of the Project.

These Bylaws have been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

Approved as to Content, Authority, and Compliance with KS Policy:

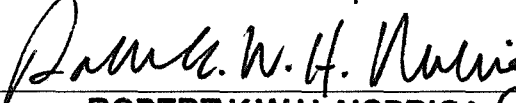


Manager



Vice President/Director


TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, acting in their fiduciary and not in their individual capacities



ROBERT K.W.H. NOBRIGA



MICAH A. KANE



CORBETT AARŌN KAMOHAIKIOKALANI KALAMA

Approved as to Form:

Legal Group



Retained Counsel:

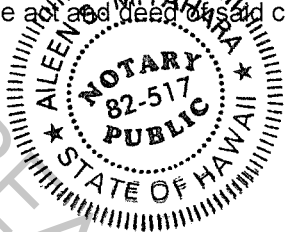


NOT FOR SALE PURCHASES

STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU)

ss.

On this 17th day of May, 2013, before me personally appeared RICHARD B. STACK to me personally known or proved, who, being by me duly sworn, did say that such person is the SENIOR VICE PRESIDENT of A&B Properties, Inc., a Hawaii corporation, and that such corporation is the Manager of The Collection LLC, a Hawaii limited liability company, and that said instrument was duly authorized and executed on behalf of said company as the free act and deed of said company.



Aileen S. Miyahara
Name: AILEEN S. MIYAHARA

Notary Public, State of Hawaii

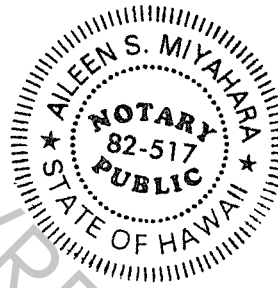
My commission expires: 7/15/14

Date: Undated at time of notarization
Name: AILEEN S. MIYAHARA
Document Description: Bylaws of the Association of Unit Owners of the Collection

Number of Pages: 50
First Circuit

Aileen S. Miyahara 5/17/13
Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU)

ss.

On this 17th day of May, 2013, before me personally appeared ALYSON J. NAKAMURA to me personally known or proved, who, being by me duly sworn, did say that such person is the SECRETARY of A&B Properties, Inc., a Hawaii corporation, and that such corporation is the Manager of The Collection LLC, a Hawaii limited liability company, and that said instrument was duly authorized and executed on behalf of said company as the free act and deed of said company.



Aileen S. Miyahara
Name: AILEEN S. MIYAHARA

Notary Public, State of Hawaii

My commission expires: 7/15/14

Date: Undated at time of notarization
Name: AILEEN S. MIYAHARA
Document Description: Bylaws of the Association of Unit Owners of the Collection

Number of Pages: 50
First Circuit

Aileen S. Miyahara 5/17/13
Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII

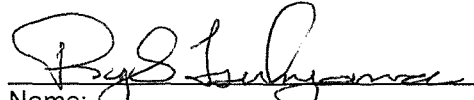
CITY & COUNTY OF HONOLULU

)
)
)

SS.

On this _____ day of MAY 21 2013, 2013, before me appeared

ROBERT K W H NOBRIGA
CORBETT AARON KAMOHAIKI KALANI KALAMA, MICAH A. KANE,
as three of the Trustees of the Estate of Bernice
Pauahi Bishop and not individually, to me known to be the persons described in the foregoing
instrument and who did say that they executed the foregoing instrument as their free act and deed as
such Trustees.


Name: _____

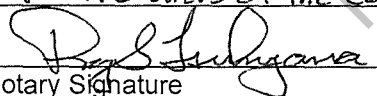
ROY S. TSUKIYAMA
Notary Public, State of Hawaii
My commission expires: **November 9, 2016**

My commission expires: _____

Date: MAY 21 2013

Number of Pages: 48
First Circuit

Name: Bylaws
Document Description: Bylaws of the Association
of Unit Owners of the Collection


Notary Signature MAY 21 2013
Date

NOTARY CERTIFICATION

ROY S. TSUKIYAMA
Notary Public, State of Hawaii
My commission expires: **November 9, 2016**

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NOTARY PUBLIC STATE RESALE PURCHASES