

R-94

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MAR 23, 1995 08:01 AM

Doc No(s) 95-0388RZ

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DOCUMENT TITLE: BY LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
OF AHUPUA'A VILLAGE

PARTY: HEDSCH, INC.,  
Declarant

AHUPUA'A VILLAGE  
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BY LAWS OF THE ASSOCIATION  
OF APARTMENT OWNERS OF  
AHUPUA'A VILLAGE

The following By Laws shall apply to the above-named condominium project (herein called the "Project"), as described in and created by Declaration of Condominium Property Regime (herein called the "Declaration") and Condominium Map No. 2225, to be recorded or filed of record in the Bureau of Conveyances, State of Hawaii contemporaneously herewith, and to all present and future owners, tenants, employees of an owner and other persons using the apartments, also referred to as "apartment" and/or "unit" in the Declaration and these By Laws, of the Project and all other persons who shall at any time use the Project. The mere acquisition or rental of any apartment or the mere act of occupancy of any apartment will signify that these By Laws are accepted, ratified, and will be complied with.

ARTICLE I

MEMBERSHIP

Section 1. Qualification. All owners of apartments of the Project shall constitute the Association of Apartment Owners (herein called the "Association"). The apartment owner means the person owning, or the persons owning jointly or in common, an apartment and the common interest appertaining thereto and the purchaser of an apartment pursuant to a recorded agreement of sale; provided that for the purpose of the exercise of voting rights, a lessee of an apartment for a term of more than 30 years registered under Chapter 501 or recorded under Chapter 502, Hawaii Revised Statutes, shall be deemed the owner thereof. The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease. Notwithstanding anything in these By Laws to the contrary, at all times prior to the time at which the conveyance and/or apartment lease of the first apartment becomes effective to vest in the owner his rights as owner of his apartment, the Developer named in said Declaration shall act in any and all matters as the Association and the Board of Directors.

In the event that any interest in an apartment and the common interest appertaining thereto is transferred to a trustee under a land title holding trust under the Land Trust Act, Chapter 558, Hawaii Revised Statutes, as amended from time to time, or any substitute or successor statute, under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries of any trust shall be deemed to be the owner or owners of said apartment and appurtenant common interest to the extent of their interest

therein and shall have all the rights and obligations of ownership, including the right to vote. A transferee of the beneficial interest in any such trust shall have all of the rights and obligations of an apartment owner when notice of such transfer is given to the Association by the transferor. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and the transferor may continue to be recognized by the Association as the owner and shall have all of the rights and obligations of ownership.

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

Section 3. Annual Meetings. The first annual meeting of the Association shall be held as soon as practicable after recording of the Declaration and these By Laws; provided, however, that said first annual meeting shall in no event be held more than one hundred eighty (180) days after recording of the first apartment conveyance; provided forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one (1) year, an annual meeting shall be called; provided ten percent (10%) of the apartment owners so request. Thereafter, the annual meetings of the Association shall be held within three (3) months after the end of each accounting year.

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

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, and to every institutional holder of a mortgage on an apartment who shall have requested a copy of such notice or copies of all such notices, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting, the items on the agenda for such meeting and a standard proxy form authorized by the Association, if any, in any of the following ways: (a) by delivering it to

him personally, or (b) by leaving it at his apartment in the Project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any apartment owner or mortgagee to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner or mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner or mortgagee unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided, that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two (2) or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment. The purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances of the State of Hawaii or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall have all of the rights of an apartment owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting his security interest in the apartment as more fully set forth in Section 514A-83, Hawaii Revised Statutes,

as amended.

Section 8. Proxies and Pledges.

A. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest therein, a true copy which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

B. No resident manager or Managing Agent may solicit, for use by such manager or Managing Agent, any proxies from any apartment owner of the Association which employs him, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of the Board of Directors who uses Association funds to solicit proxies shall cast any of these proxy votes for the election or re-election of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or re-election of Board of Directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided 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:

- (1) 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
- (2) 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 hundred (100) words, indicating the owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

C. Proxies may be given to the Board of Directors;

provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the Board.

D. A proxy, to be valid, must be delivered to the secretary of the Association of apartment owners 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 of apartment owners, the date of the meeting of the Association of apartment owners, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given and the date that the proxy is given.

E. A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

F. No officer of a Board of Directors shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising his right as an apartment owner under Subparagraph B above.

G. The provisions of Subparagraphs C, D, E, and F above shall not affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the apartment owners present, whether or not a quorum is present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.

- (f) Election of inspectors of election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

Section 11. Conduct of Meeting. All meetings of the Association and the Board of Directors shall be conducted in accordance with the most current edition of Roberts Rules of Order.

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of not less than two (2) persons. All members of the Board shall be owners, co-owners, beneficiaries under a land trust as defined herein, vendees under an agreement of sale, or an officer or employee, duly designated, of any corporate owner of an apartment. The partners in a general partnership and the general partner(s) of a limited partnership shall be deemed to be the owners of an apartment for this purpose. An officer or employee, duly designated, of a corporate general partner would qualify for membership on the Board of Directors. The directors shall serve without compensation, unless such compensation is specifically authorized by the Association at a regular or special meeting. The resident manager of the Project, if any, may not serve on the Board even though otherwise qualified hereunder. There shall not be more than one (1) representative on the Board of Directors from any one (1) apartment.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefore as are not by law, the Declaration or these By Laws directed to be exercised or done only by the apartment owners, including but not limited to the following: adopting and amending any house rules; adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from apartment owners; hire and terminate managing agents and other employees, agents, and independent contractors; institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more apartment owners on matters affecting the project; make contracts, borrow money, and incur liabilities; regulate the use, maintenance, repair, replacement and modification of common elements; cause additional improvements to be made as part of the common elements; acquire, hold encumber, and convey in its own name any right, title or interest to real or personal property; grant easements, leases, licenses, and concessions through or over the common elements; impose and receive any payments, fees, or charges for the use, rental or operation of the common elements other than limited common elements of the project; impose charges for late payment of assessments; impose reasonable charges for the preparation and recordation of any amendments to

the Declaration of Condominium Property Regime for the project; provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance; exercise any other powers conferred by the Declaration or By Laws; exercise all other powers that may be exercised in this State by legal entities of the same type as this Association; and exercise any other powers necessary and proper for the governance and operation of the Association.

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

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than a vacancy caused by the natural expiration of the term of a director or the removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person selected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six (6) months or his ceasing to qualify for the office of director as set forth above, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the apartment owners, any one or more members of the Board of Directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in the By Laws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the president or by a petition to the secretary or Managing Agent signed by not less than twenty-five percent (25%) of the apartment owners as shown in the Association's record of ownership; 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 the By Laws. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed and conducted in accordance with the By Laws of the Association.

Section 6. Annual Meetings. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board of Directors shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year. The Board of Directors shall meet at least once a year whenever practicable.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar quarter of every year whenever practicable. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone, FAX machine, messenger service, or in any reasonable manner, at least fourteen (14) days, if practicable, prior to the date of such meeting. For purposes of this and the following paragraphs, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail or twelve (12) hours after communicated to a messenger service.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least seventy-two (72) hours' notice to each director, given personally or by telephone, FAX machine or messenger service, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice on the written request of at least two (2) directors.

Section 9. Notices of Meetings. Notice of all Board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board of Directors.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these By Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board of Directors. If less than a

quorum shall be present at any meeting of the Board of Directors, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors shall require that all directors, officers, employees and agents of the Association handling or responsible for funds belonging to or administered by the Association furnish adequate fidelity bonds in favor of the Association. The premiums on such bonds shall be paid by the Association as a common expense. Every such bond shall:

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

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

Section 12. Conflict of Interest. A director shall not cast any proxy vote at any board meeting, nor shall a director vote at any board meeting of any issue in which the director has a conflict of interest. The director shall also disclose the nature of the conflict of interest prior to a vote at the meeting and the minutes of the meeting shall record the fact that the disclosure was made.

Section 13. Procedures at Board Meetings.

A. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussions, other than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise.

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

Section 14. Documents of the Association of Apartment Owners.

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

B. Minutes of meetings of the Board of Directors and the Association for the current and prior year shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board. Minutes of meetings shall include the recorded vote of each Board Member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

C. Financial statement, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association of Apartment Owners for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board; provided:

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

(2) That owners pay for administrative costs in excess of eight (8) hours per year.

Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

D. Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty (30) days following any Association meeting; provided:

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

(2) That owners pay for administrative costs in excess of eight (8) hours per year.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

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

Section 15. Fees and Expenses. Any directors' fees, travel expense and per diem expenses shall not be expended unless the owners of the Association are informed and a majority of the Association approves of such fees and expenses.

Section 16. Duty of Directors. Each director shall owe the Association a fiduciary duty in the performance of the director's responsibilities.

### ARTICLE III

#### OFFICERS

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

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

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

Section 4. President. The President shall be the chief executive of the Association and shall preside at all meetings of the Association and of the Board of Directors.

Subject to the control of the Board of Directors, he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By Laws or assigned to him from time to time by the Board of Directors.

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

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

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all of its funds and securities.

Section 8. Audit, Audited Financial Statement, Transmittal.

A. The Association shall require an annual audit of the association financial accounts and not less than one annual unannounced verification of the Association's cash balance by a public accountant; provided that if the Association is comprised of less than twenty (20) owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an Association meeting.

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

date, the Board shall make available:

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

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

Section 9. Dual Positions. No owner shall act as an officer of the Association and an employee of the Managing Agent employed by the Association.

#### ARTICLE IV

##### ADMINISTRATION

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

- (a) Supervision of its immediate management and operation;
- (b) Maintenance, repair, replacement and restoration of the limited common elements, common elements and any additions and alterations thereto; including the power to borrow money for such purposes as provided in Section 514A-82.3, H.R.S.; provided that prior Association approval shall be obtained for any unbudgeted expenditure over \$25,000;
- (c) Purchase, maintenance and replacement of any equipment and provision of all water, sewer, electricity and such other utility services and utilities required for the limited common elements and common elements;
- (d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;

- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the Project;
- (f) Preparation of an annual operating budget at least 60 days before each fiscal year of a proposed budget which includes the estimated revenues and operating expenses, whether the budget has been prepared on a cash or accrual basis, total replacement reserves, a general explanation of the computation of the estimated replacement reserves and amount Association shall collect for the maintenance fees including the fund for the estimated replacement reserves;
- (g) Operation of the property, payment of the common expenses and determination and collection of the common charges and the manner of collecting common expenses, expenses, costs and fees recoverable by the Association under Section 514A-94, H.R.S., and any penalties and late charges;
- (h) Purchase and maintain in effect all policies of insurance as required by Section 514A-86, H.R.S. including but not limited to fire, flood, director's and officer's, hazard and other types of insurance as determined by the Board to be necessary and applicable. Any such insurance policy to provide for at the inception and anniversary date thereof a written summary of policy information which shall be provided to each apartment owner.
- (i) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;
- (j) Notification in writing to all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;
- (k) Notification in writing to all institutional holders of mortgages on apartments, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to, or taking of, the common elements of the Project if such loss or taking exceeds TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00);
- (l) Notification in writing to the institutional holder of the mortgage on apartments, as shown in the Association's record of ownership or of which the Secretary of the Association has been given written notice, of any loss to such apartment which exceeds TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00);
- (m) Establishment of such penalties and fines chargeable against persons as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By Laws and the House Rules adopted pursuant to Article V,

Section 4, of these By Laws, the method of determination of violations and the manner of enforcing such penalties and fines; provided such penalties and fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such penalties and fines against any apartment owner shall constitute a lien against such apartment owner and against his interest in his apartment which may be foreclosed by the Board of Directors, or Managing Agent in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the said lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record.

(n) The Board of Directors of an Association or the manager, upon the written authorization of an applicant for employment as security guard or manager or for a position which would allow the employee access to the keys of or entry into the units in the condominium project or access to Association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the Board of Directors or the manager shall first certify that the signature or the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as a condominium employee with access to Association funds or the keys of or entry into the units in the condominium project, and the judgment of conviction has not been vacated. For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the Board of Directors, manager or other responsible party, if so directed by the Board or the manager, by means of information obtained through the Hawaii criminal justice data center. Failure of an Association of Apartment Owners or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to a private cause of action against an Association or manager for acts and omissions of the employee hired.

Section 2. Managing Agent. The Board of Directors may employ a responsible Managing Agent to manage and control the Project subject at all times to direction by the Board of Directors, with all of the administrative functions specifically set forth in the preceding Section 1 and with such other powers and duties and at such compensation as the Board of Directors may establish from time to time, subject to prior approval of every such employment contract by a majority of owners of all apartment owners. Every Managing Agent shall:

(a) Be licensed as a real estate broker in compliance with Chapter 467 and the rules of the Real Estate Commission ("Commission") or be a corporation authorized to do business under Chapter 406.

(b) Register annually with the Commission, the information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, name, business address, and phone number.

(c) Provide evidence annually and at time of initial registration of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the Managing Agent's contracts; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the Association of Apartment Owners against fraudulent or dishonest acts by persons handling the Association's funds. Any Association aggrieved by the actions of a Managing Agent on the grounds of fraud, misrepresentation, or deceit shall recover by order of the Circuit or District Court of the county where the violation occurred from the bond required by this section, and if the Managing Agent is a licensed real estate broker, secondly from the real estate recovery fund established under Section 467-16. A Managing Agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the Commission. The Commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or bond alternative.

(d) Pay an initial registration fee of \$25 for the first year and subsequently pay an annual re-registration fee as prescribed by rules adopted by the Director of Commerce and Consumer Affairs pursuant to Chapter 91. A compliance resolution fee shall also be paid pursuant to Section 26-9(N) and the rules adopted pursuant thereto.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts, any amendments to Declaration, By Laws, House Rules and other instruments and any amendments to the Declaration, By Laws and/or House Rules shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution applicable to such instrument, or by the President or Vice President and by the Treasurer or Secretary.

Section 5. Association's Funds; Handling and Disbursement.

A. The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a Managing Agent commingle any Association's funds with the Managing Agent's own funds.

B. For purposes of Subsection A, lease rent collection and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association or the collection of ground lease rents from individual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that:

(1) The collection is allowed by the provisions of the Declaration, By Laws, Master Deed, Master Lease or individual Apartment Leases of the Project.

(2) If a management contract exists, it requires the Managing Agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor.

(3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the Association.

(4) No Managing Agent or Association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

C. All funds collected by an Association, or by a Managing Agent for any Association, shall be:

(1) Deposited in a financial institution located in the state whose deposits are insured by an agency of the United States of Government.

(2) Held by a corporation authorized to do business under Chapter 406.

(3) Invested in the obligations of the United States Government.

Records of the deposits and disbursements shall be disclosed to the Commission upon request. All funds collected by

an Association shall only be disbursed by employees of the Association under the supervision of the Association's Board of Directors. All funds collected by a Managing Agent from an Association shall be held in a client trust fund account and shall be disbursed only by the Managing Agent or the Managing Agent's employees under the supervision of the Association's Board of Directors. The Commission may draft rules governing the handling and disbursement of condominium association funds.

D. A Managing Agent or Board of Directors shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

E. A Managing Agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, Chapter 467, the rules of the Commission, and all other applicable laws.

F. Any person who embezzles or knowingly misapplies Association funds received by a managing agent or Association shall be guilty of a Class C Felony.

Section 6. Association Employee's Activity. An Association's employees shall not engage in selling or renting apartments in the condominium except Association-owned units, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the membership.

Section 7. Condominium Documents and Laws for Board of Directors. Association at its own expense shall provide all Board members with a current copy of the Association's Declaration, By Laws, House Rules, and, annually, a copy of Chapter 514A, Hawaii Revised Statutes, with amendments.

#### ARTICLE V

#### OBLIGATIONS OF APARTMENT OWNERS

##### Section 1. Assessments.

A. All apartment owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expense of the project in accordance with the Declaration unless such sums are required to be paid to and accumulated by the mortgagee under any subsisting mortgage of any apartment and notice of such requirement is filed with the Board. The grantee of a voluntary conveyance of an apartment is jointly and severally liable with the grantor for all unpaid common expenses as provided for in Section 514A-91, H.R.S.

B. No apartment owner shall withhold any assessment claimed by the Association. An apartment owner who disputes the

amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;
- (5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

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

C. An apartment owner who pays an 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. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of Chapter 514A, Hawaii Revised Statutes; provided that an apartment owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the apartment owner fails to keep all Association Assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all Association assessments within thirty (30) days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the thirty day

period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

D. No apartment owner may exempt himself from contribution towards the common expenses by waiver of the use and enjoyment of any of the common elements or by abandonment of the apartment.

Section 2. Maintenance of Units. Every apartment owner shall at his own expense at all times substantially repair, maintain, and keep his apartment and the limited common elements appurtenant thereto, including without limitation all internal installations therein such as water, electricity, telephone, sewer, sanitation, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment and the exterior finished surfaces of all walls, windows and frames thereof, roofs, beams, foundations, with all necessary reparations and replacements and in the event the Association shall be required to undertake any such repairs, whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors, or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the limited common elements, common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the Project when discovered.

Section 3. Use of and Change of Use of Project.

A. The use of the Project is as follows:

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

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

(3) It is intended that the exterior of the buildings shall present a clean appearance, and to effect that end, the owners of the apartments hereby agree that the Board of Directors may require the

painting or repair of the exterior portions of the buildings.

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

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

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

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

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

(9) No unlawful use shall be made of the Project or any part thereof, and all valid laws, orders, rules and regulations of all governmental agencies having jurisdiction thereof (collectively "Legal Requirements") shall be strictly complied with. Compliance with any Legal Requirements shall be accomplished by and at the sole expense of

the apartment owner or owners, or the Board, as the case may be, whichever shall have the obligation under the By Laws to maintain and repair the portion of the Project affected by any such Legal Requirement. Each apartment owner shall give prompt notice to the Board of any written notice it receives of the violation of any Legal Requirement affecting his apartment or the Project. Notwithstanding the foregoing provisions, any apartment owner may, at his expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement affecting any portion of the Project which such apartment owner is obligated to maintain and repair, and the Board shall cooperate with such apartment owner in such proceedings, provided that:

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

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

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

obligation of an apartment owner to defend, save harmless and indemnify the Board, and the Association shall be secured by lien created in the same manner as provided in the Condominium Property Act for common expenses.

B. The change of use and leasing of the common elements of the Project. Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to:

- (1) The right of the Board of Directors, upon the approval of the owners of seventy-five percent (75%) of the common interests, to change the use of the common elements.
- (2) The right of the Board of Directors, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the Board of Directors; provided that unless the approval of the owners of seventy-five percent (75%) of the common interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto or not more than sixty (60) days written notice.
- (3) The right of the Board of Directors to lease or otherwise use for the benefit of the Association of Apartment Owners those common elements not falling within Paragraph (2) above, upon obtaining: (A) the approval of the owners of seventy-five percent (75%) of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements, and (B) approval to which owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgages.
- (4) The exclusive use of the limited common elements as provided in the Declaration.

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

D. An undivided interest in the land included in the common elements equal to the apartment's common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this shall not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements.

E. Lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar areas not located inside apartments intended for residential use or the conduct of a business shall constitute common elements unless designated as limited common elements by the Declaration.

Section 4. Building and House Rules. The Declarant shall initial adopt the Building and House Rules and it shall have the sole authority to amend such Building and House Rules until such time as sixty five per cent of the common interest is owned by apartment owners other than Declarant. Thereafter the Building and House Rules may be amended by a sixty five percent vote of the apartment owners affected in the same manner as herein provided for the amendment of the By Laws. The scope of the Building and House Rules may include design review, design standards, environmental matters, enforcement and further implementation of any existing restrictive covenants for the use and enjoyment of the Project and the units within the Project.

Section 5. Manner of Collecting Common Expenses, Attorney's Fees and Expenses of Enforcement.

A. The Managing Agent or Association shall give notice of the monthly assessment which shall indicate the date after which any interest on the delinquent account shall accrue, and any like charges, any penalties recoverable by the Association. After such notice is given and the owner fails to pay, then the Association or Managing Agent shall give further notice that such costs and expenses are due to the Association and the owner shall pay all costs and expenses as set forth hereafter.

B. All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the Association for:

- (1) Collecting any delinquent assessments against any owner's apartment;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the Declaration, By Laws, House Rules, and the Condominium Property Act; or
- (4) The rules and regulations of the Commission;

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

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

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

If any claim by an owner is not substantiated in any court action against an Association, any of its officers or directors, or its Board of Directors to enforce any provision of the Declaration, By Laws, House Rules, or Chapter 514A, Hawaii Revised Statutes, then all reasonable and necessary expenses, costs and attorneys' fees incurred by an Association shall be awarded to the Association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under Part VII of Chapter 514A, Hawaii Revised Statutes, and made a good faith effort to resolve the dispute under any of those procedures.

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

Section 7. Mortgages.

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

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

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

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

E. Priority of Lien. The priority of lien as provided in Section 514A-90, H.R.S. shall be controlling:

- (1) All unpaid sums assessed by the Association shall

constitute a lien prior to all other liens except (i) liens for governmental taxes and assessments against the apartment; and (ii) all sums unpaid on any mortgage of record which was recorded prior to the recordation of notice of unpaid assessments by the Association, and costs and expenses, including attorney's fees as provided in such mortgages. The apartment owner in a foreclosure shall be required to pay a reasonable rental for the apartment if provided in the By Laws and the plaintiff shall be entitled to a receiver to collect the same. The Managing Agent or Board on behalf of the apartment owners may unless prohibited in the Declaration bid on the apartment at foreclosure sale and acquire and hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(2) The acquirer of title and its successors and assigns shall not be liable where there is a foreclosure of a mortgage of record for the common expenses or assessments by the Association which became due prior to acquisition of title to the apartment by the acquirer. The unpaid share of common expenses and assignments shall be deemed to be collectible from all apartment owners including the acquirer and its successors and assigns.

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

F. Notice to Mortgagee. The Association whenever so requested in writing by a registered mortgagee with the Association, or a guarantor or insurer of a loan secured by a mortgage lien on an apartment in the Project, shall release the following information to such person:

(1) Any condemnation or casualty loss that affects either a material portion of the Project or the apartment securing such mortgage;

(2) Any 60 day delinquency in the payment of assessments or charges owed by the apartment owner encumbered by the subject mortgage;

(3) A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(4) Promptly report to such person any then unpaid assessments for common expenses due from the subject apartment owner.

A reasonable fee may be charged to any party requesting the foregoing information for processing such request and the Association may also require the requesting party to provide documentation to establish that such party has an interest in the subject apartment and mortgage.

Section 8. Personal Application.

A. All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof are subject to Chapter 514A, Hawaii Revised Statutes, and to the Declaration and By Laws of the Association adopted pursuant to Chapter 514A.

B. All agreements, decisions, and determinations lawfully made by the Association in accordance with the voting percentages established by Chapter 514A, Hawaii Revised Statutes, the Declaration and the By Laws are binding on all apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that in any manner use such property or any part thereof.

Section 9. Compliance with Declaration, By Laws and Administrative Provision. Each apartment owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the By Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the Declaration. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or Board of Directors on behalf of the Association or in property case, by an aggrieved apartment owner.

Section 10. Disposition of Unclaimed Possessions. Each apartment owner, tenant of such owners, employees of owners and tenants or any other persons that may in any manner use property or any part thereof is obligated to dispose of his or her personalty in or on the common elements of a project. The following shall be the procedure for the disposition of such personalty.

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

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

(i) The identity and location of the personalty.

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

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

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

## ARTICLE VI

### MISCELLANEOUS

Section 1. Amendment. These By Laws may be amended in any respect not inconsistent with provisions of law or the Declaration at any meeting of the Association duly called for such purpose, by vote of sixty-five percent (65%) of the apartment owners or by written consent of sixty-five percent (65%) of the apartment owners, and shall be effective only upon the recording of an amendment to the Declaration setting forth such amendment of these By Laws; provided that the approval of eligible holders of first mortgages (as defined below) on apartments to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated shall be required to materially amend any provisions herein, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following: (a) voting rights; (b) increases in assessments by more than 25% assessment liens or subordination or priority of such liens; (c) reduction in reserves for maintenance, repair and replacement of the common

elements other than in connection with the expenditure of a sum for an item(s) that the reserve was established for; (d) responsibility for maintenance and repair for the Project; (g) reallocation of interests in the common or limited common elements, or rights to their use; (h) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (i) boundaries of any apartment; (j) the interests in the common elements or limited common elements; (k) convertability of apartments into common elements or of common elements into apartments; (l) restricting the leasing of apartments; (m) imposition of any right of first refusal or similar restrictions on the right of a unit owner to sell, lease, or otherwise convey his or her apartment; and (n) a decision by the Association to abandon the use of a professional managing agent unless such abandonment arises in connection with the transition period between the time an existing managing agent is terminated and the time when the new managing agent is capable of commencing its services. Any proposed By Laws with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owner's committee. If submitted by such a committee, it shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the apartment owners. The proposed By Laws, rationale, and ballots for voting on the proposed By Laws shall be mailed to the owners for approval without change within thirty (30) days of the receipt of the petition by the Board of Directors at the expense of the Association. The vote or written consent must be obtained within one hundred twenty (120) days after mailing to be valid. Any volunteer apartment owner's committee shall be precluded from submitting a petition for a proposed By Law which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board of Directors. The foregoing shall not preclude any apartment owner or voluntary apartment owners committee from proposing any By Law amendment at any annual Association meeting.

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

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

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

Section 5. Books of Receipts and Expenditures. The Managing Agent or Board of Directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the limited common elements and common elements, specifying and itemizing the maintenance and repair expenses of the limited common elements, the common elements and any other expenses incurred and monthly statements indicating the total current delinquent dollar amount of any unpaid assessment for common expenses. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the Board of Directors, and shall be available for examination by the apartment owners at convenient hours of week days. No person shall knowingly make any false certificate, entry, or memorandum upon any of the books of records of any Managing Agent or Association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a Managing Agent or Association. The Managing Agent may dispose of the records of the condominium which are more than five (5) years old without liability if the Managing Agent first provides the Board of Directors with written notice of its intent to dispose of the records if not retrieved by the Board of Directors within sixty (60) days. The notice shall include an itemized list of the records which the Managing Agent intends to dispose of.

Section 6. Project Documents. An accurate copy of the Declaration, By Laws, and any amendments thereto, house rules, if any, master lease, if any, a sample of the original conveyance document, all public reports, shall be kept at the Managing Agent's office and shall be available to owners and prospective purchasers and/or agents during a normal business hours, upon payment of a reasonable fee to the Managing Agent. If there is no Managing Agent, then the foregoing requirements shall be undertaken by a person who is delegated such function.

Section 7. Gender. The term "owner" herein or any other pronoun used in place thereof shall mean and include the masculine, feminine or neuter, the singular or plural number and jointly and severally individuals, firms or corporations and

their respective heirs, executors, administrators, successors and assigns, according to the context hereof.

Section 8. Arbitration of Disputes. At the request of any party, any dispute, including the failure to attend a meeting to establish a quorum, or to vote creating a stalemate concerning or involving one or more apartment owners, the Association, Board of Directors, and/or managing agent relating to the interpretation, application or enforcement of Chapter 514A, Hawaii Revised Statutes, Declaration, By Laws, House (Building) Rules, and Declarations of Covenants, Conditions and Restrictions running with the land shall be subject to arbitration and disposition as provided under Part VII, Arbitration, under said Chapter 514A. The arbitrator can exercise such powers and render such decision as may be necessary to provide for action to take place or to break a deadlock in the event of a tie. The arbitrator may if he determines that a party is at fault assess costs and expenses including a reasonable attorney's fees against the party at fault.

Section 9. Unanimous Consent. Notwithstanding any procedural requirements, the Association by the unanimous written consent of all of the apartment owners or the Board of Directors with the unanimous written consent of all of the Directors may take the necessary action in writing that reflects the action taken by the Apartment Owners or Board of Directors as to matters set forth in the Declaration and By Laws.

CERTIFICATE OF ADOPTION

The undersigned Declarant being owner of 100% of the apartments of the Project hereby adopt the foregoing as the By Laws of the Association of Apartment Owners of AHUPUA'A VILLAGE condominium this 8<sup>th</sup> day of March, 1995.

DECLARANT:

HEDSCH, INC.

By

Hedda Schmutz  
Hedda Schmutz  
Its President

STATE OF HAWAII )  
                          ) ss.  
COUNTY OF KAUAI )

On this 8<sup>th</sup> day of March, 1995, before me appeared Hedda Schmutz, to me personally known, who, being by me duly sworn, did say that she is the President of HEDSCH, INC. a Hawaii corporation, and that the corporation has no seal and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Hedda Schmutz acknowledged said instrument to be the free act and deed of said corporation.

LS

James A. DeW

NOTARY PUBLIC, STATE OF HAWAII

My commission expires: 11/20/97

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